FINAL

Environmental Impact Report

# Inland Empire North Logistics Center Apple Valley

## State Clearinghouse No. 2023090366

**MARCH 2025**

*Prepared for:*

**SYNERGY CONSULTING CA**
410 Patti Ann Woods Drive
Henderson, Nevada 89002
*Contact: Jessica Haughton*

*Prepared by:*

DUDEK

605 Third Street
Encinitas, California 92024
*Contact: Cindi Hoover, AICP*

Printed on 30% post-consumer recycled material.

# Table of Contents

**SECTION** **PAGE NO.**



## TABLE



## APPENDICES

INTENTIONALLY LEFT BLANK

# 1 Introduction

## 1.1 Introduction

This Final Environmental Impact Report (EIR) was prepared for the Inland Empire North Logistics Center (IENLC) Apple Valley (Project) in accordance with the California Environmental Quality Act (CEQA) (California Public Resources Code Sections 21000-21177).

### Project Overview

The Project involves the development of two industrial/warehouse buildings totaling approximately 2,604,446 square-feet on an approximate 178-acre site located directly east of Interstate (1) 15, north of Falchion Road and south of Norco Street in the northwestern portion of the Town of Apple Valley (Town). Building 1 would be 1,507,326 square feet while Building 2 would be 1,097,120 square feet. The Project's associated improvements would include loading docks, truck and vehicle parking, and landscaped areas. The Project would also include several off-site utility and public street improvements, including improvements along Falchion Road, Norco Street, Apple Valley Road, and Outer Hwy 15, including frontage landscaping and pedestrian improvements, as well as installation of or upsizing of water and sewer lines in the immediate vicinity of the Project site. A detailed description of the Project is contained in the Draft EIR in Chapter 3, Project Description. As described below, the Draft EIR is incorporated herein as part of the Final EIR but provided under a separate cover.

### Contents and Use of a Final EIR

In accordance with California Public Resources Code Section 21002.1 and in conformance with the requirements of CEQA and the CEQA Guidelines, public agencies are charged with the requirement to identify and mitigate, to the extent feasible, and avoid significant effects on the environment of projects that agency is asked to approve. If economic, social, or other conditions make it infeasible to mitigate one or more substantial effects on the environment from a project, then public agencies are required to make certain findings and determinations in order to approve the project. As required by CEQA, this Final EIR assesses the significant direct and indirect environmental effects of the Project, as well as the significant cumulative impacts that could occur from implementation of the Project. This Final EIR is an informational document only, the purpose of which is to identify the significant effects of the Project on the environment; to indicate how those significant effects could be avoided or significantly lessened, including feasible mitigation measures; to identify any significant and unavoidable adverse impacts that cannot be mitigated to less than significant; and to identify reasonable and feasible alternatives to the Project that would avoid or substantially lessen any significant adverse environmental effects associated with the Project and achieve the fundamental objectives of the Project.

Before approving a project, CEQA requires the lead agency to prepare and certify a Final EIR. The contents of a Final EIR are dictated by the requirements in California Public Resources Code Section 21100 and Section 15132 of the CEQA Guidelines, and include the following:

1. The draft EIR or a revision of the draft inclusive of technical studies.
2. Comments and recommendations received on the draft EIR either verbatim or in summary.
3. A list of persons, organizations, and public agencies commenting on the draft EIR.

4. The responses of the Lead Agency to significant environmental points raised in the review and consultation process.
5. Any other information added by the Lead Agency.

In accordance with the above-listed requirements, this Final EIR for the Project specifically includes and incorporates the publicly circulated Draft EIR[1], which is provided under a separate cover, and also includes the following:

1. All agency and public comments received during the public review comment period for the Project.
2. Responses to public comments.
3. Changes to the Draft EIR since it was circulated for public review.
4. The Project's Mitigation Monitoring and Reporting Program.

This Final EIR, in combination with the Draft EIR, as amended by text changes, constitute the EIR that will be considered for certification by the Town and may be used to support approval of the proposed Project, either in whole or in part, or one of the alternatives to the Project discussed in the Draft EIR.

As required by Section 15090 (a) (1)-(3) of the CEQA Guidelines, a lead agency, in certifying a Final EIR, must make the following three determinations:

1. The Final EIR has been completed in compliance with CEQA.
2. The Final EIR was presented to the decision-making body of the lead agency, and the decision-making body reviewed and considered the information in the Final EIR prior to approving the project.
3. The Final EIR reflects the lead agency's independent judgment and analysis.

As required by California Public Resources Code Sections 21002.1 and 21081 and Section 15091 of the CEQA Guidelines, no public agency can approve or carry out a project for which an EIR has been certified that identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings (Findings of Fact) for each of those significant effects, accompanied by a brief explanation of the rationale for each finding, supported by substantial evidence in the record. The possible findings are as follows:

1. Changes or alterations have been required in or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.
2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
3. Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.

Additionally, pursuant to California Public Resources Code Sections 21002 and 21081 and Section 15093(b) of the CEQA Guidelines, when a lead agency approves a project that would result in significant unavoidable impacts

[1] The IENLC Apple Valley Project Draft EIR was circulated for a 45-day public review period from September 30, 2024 to November 13, 2024.

that are disclosed in the Final EIR, the agency must state in writing the reasons supporting the action. The Statement of Overriding Considerations must be supported by substantial evidence in the lead agency's administrative record.

The Draft Findings of Fact and Statement of Overriding Considerations are provided as a separate document that may be considered for adoption by the Town at the time at which the Project is considered.

## 1.2 Contents and Organization

The Final EIR will be used by the Town as an informational document for the proposed Project. In accordance with and in compliance with California Public Resources Code Section 21100 and Section 15132 of the CEQA Guidelines, this Final EIRis organized as follows:

**Chapter 1, Introduction.** This chapter provides general information on, and the procedural compliance of, the proposed Project and the Final EIR.

**Chapter 2, Changes to the Draft Environmental Impact Report.** This chapter contains a summary of changes made to the document since publication of the Draft EIR as a result of the written comments received. Revisions to the Draft EIR are intended to provide clarifications of information presented in the Draft EIR, and include minor technical changes or additions. The purpose of these textual changes is to provide clarity in response to comments received on the Draft EIR. Nothing in this FEIR changes the significance of the conclusions presented in the Draft EIR. Changes made to the Draft EIR are signified by strikeout text (i.e., ~~strikeout~~) where text was removed and by underlined text (i.e., <u>underline</u>) where text was added.

**Chapter 3, Response to Comments.** This chapter includes a list of public agencies and individuals who provided comments on the Draft EIR during the public review period. Appendix A includes copies of the written comment letters received during the public review process for the Draft EIR and the Town's responses to these comments are in Chapter 3. Each comment letter is numbered and presented with brackets indicating how the letter has been divided into individual comments. Each comment is given a binomial with the number of the comment letter appearing first, followed by the comment number. For example, comments in Letter 1 are numbered 1-1, 1-2, 1-3, and so on. Responses to specific comments are included in Chapter 3 of this Final EIR, each with binomials that correspond to the bracketed comments.

**Chapter 4, Mitigation Monitoring and Reporting Program.** This chapter provides the Mitigation Monitoring and Reporting Program for the proposed Project. The Mitigation Monitoring and Reporting Program is presented in table format and identifies mitigation measures for the proposed Project, the party responsible for implementing the mitigation measures, the timing of implementing the mitigation measures, and the monitoring and reporting procedures for each mitigation measure. Project design features that were identified in the Draft EIR are reiterated in this chapter to confirm these features are incorporated within the Project.

**Draft EIR (Under Separate Cover).** This Final EIR incorporates the Draft EIR as circulated during public review. The Draft EIR includes a detailed description of the Project, an analysis of the Project's environmental impacts, and a discussion of alternatives to the Project. The Draft EIR is available for review on the Town's website at https://www.applevalley.org/services/planning-division/environmental. Copies of the Draft EIR are also available for public review at the following locations:

Apple Valley Town Hall, Planning Department
14955 Dale Evans Parkway
Apple Valley, California 92307

## 1.3 California Environmental Quality Act Review

In accordance with Section 15082 of the CEQA Guidelines, the Town released an Initial Study and Notice of Preparation for the Project on September 18, 2023, for the required 30-day review period to interested agencies, organizations, and individuals. The purpose of the Notice of Preparation is to provide notification that an EIR for the Project is being prepared, and to solicit guidance on the scope and content of the planned EIR document. The Notice of Preparation was sent to the State Clearinghouse at the California Governor's Office of Planning and Research. The State Clearinghouse assigned a state identification number (SCH No. 2023090366) to the Project. The Notice of Preparation was also posted at the County Clerk's office and on the Town's website at https://www.applevalley.org/services/planning-division/environmental. Copies of the Notice of Preparation were distributed to all applicable agencies and tribes on the Town's noticing list, as well as surrounding property owners within 900 feet of the Project site. Hard copies of the Initial Study and Notice of Preparation were made available for review at both the Town's Planning Department, located at 14955 Dale Evans Parkway, Apple Valley, California 92307, and at the San Bernardino County Library, located at 14901 Dale Evans Parkway, Apple Valley, California 92307. A hybrid in person and virtual public scoping meeting was held on October 5, 2023 at Apple Valley Town Hall to solicit public comments and additional input on the scope of the environmental document. During the scoping meeting, no agency representatives or members of the public attended and the Town did not receive any substantive comments on the scope of the environmental analysis to be included in the Draft EIR.

The 30-day public scoping period ended on October 17, 2023. Comments received during the 30-day public scoping period were considered and addressed during preparation of the Draft EIR. Copies of the comment letters received in 2023 are provided in Appendix A of the Draft EIR, and came from the following:

- Native American Heritage Commission
- Mojave Desert Air Quality Management District
- Californians Allied for a Responsible Economy (CARE CA)
- Center for Community Action and Environmental Justice (CCAEJ)

In general, the comments focused on issues and potential Project impacts related to the air quality, biological resources, cultural, tribal cultural, and paleontological resources, greenhouse gas emissions, and transportation. Issues, concerns, and potential impacts raised in comment letters received during the 2023 public scoping period were discussed and addressed in the Draft EIR. No further response to the scoping comments is needed in this Final EIR.

A Notice of Availability of the Draft EIR was sent to agencies and interested parties on September 30, 2024, and the Draft EIR was circulated for a 45-day public review period from September 30, 2024, through November 13, 2024. The Notice of Availability was also posted at the County Clerk's office and both the Notice of Availability and Draft EIR were posted on the Town's website. Copies of the Notice of Availability were distributed to all applicable agencies and tribes on the Town's noticing list, as well as surrounding property owners within 900 feet of the Project site and other interested parties who had requested notification. Hard copies of the Draft EIR were made available for review at both the Town's Planning Department, located at 14955 Dale Evans Parkway, Apple Valley, California 92307, and at the San Bernardino County Library, located at 14901 Dale Evans Parkway, Apple Valley, California 92307.

The Town received twelve comment letters during the 2024 Draft EIR public review period, and two after the close of the public review period. A list of the comments received and responses to comments are included in Chapter 3 of this Final EIR. Appendix A contains copies of the comment letters received.

Per CEQA Guidelines Section 15088, responses to comments submitted by public agencies are required to be provided to the commenting agency at least 10 days prior to the public hearing at which the EIR and Project will be considered. Three agencies (California Department of Fish and Wildlife, Mojave Desert Air Quality Control District, and San Bernardino County Department of Public Works) commented on the Draft EIR. Notwithstanding, the Town has distributed a NOA of a Final EIR to all parties that were previously provided a NOA of the Draft EIR, as well as parties that commented on the Draft EIR. The Town has also posted this Final EIR on the Town's website at https://www.applevalley.org/services/planning-division/environmental. Hard copies of the Final EIR were made available for review at the Town's Planning Department, located at 14955 Dale Evans Parkway, Apple Valley, California 92307.

INTENTIONALLY LEFT BLANK

# 2 Changes to the Draft Environmental Impact Report

This chapter presents minor corrections, additions, and revisions made to the Draft Environmental Impact Report (EIR) initiated by the Lead Agency (Town of Apple Valley), reviewing agencies, the public, and/or consultants based on their review. New text is shown in underline and deleted text is shown in ~~strikethrough~~, unless otherwise noted in the introduction preceding the text change. Text changes are presented in the section and page order in which they appear in the Draft EIR.

The changes provide clarifications, corrections, or minor revisions of the analysis contained in the Draft EIR and do not constitute significant new information that, pursuant to California Public Resources Code Section 21092.1 and CEQA Guidelines Section 15088.5, would trigger the need to recirculate portions or all of the Draft EIR.

## Chapter 3, Project Description

pp. 3-8 Revise text as follows:

To account for the maximum potential disturbance associated with all on-site and off-site improvements, a maximum disturbance footprint has been developed, as shown on Figure 3-~~13~~8, ~~Maximum Disturbance Footprint~~Project Development Setting. Specifically, known improvements are depicted on this figure. Areas in which lateral utility connections may occur or where other roadway and pedestrian improvements may be necessary are also depicted. Together, these off-site improvements are referred to as the Off-Site Street and Utility Improvements. Utility connections for the proposed Project would tie-in to improvements approved and conditioned for the Apple Valley 143 Project[1]. The environmental effects of the Apple Valley 143 utility improvements were fully analyzed in the Apple Valley 143 Project EIR (Town of Apple Valley 2023). Construction of the Apple Valley 143 Project commenced in 2024.

## Chapter 4.2, Air Quality

pp. 4.2-37 Correct typographical error as follows:

The potential impact of Project-generated air pollutant emissions at sensitive receptors has been considered. Sensitive receptors can include uses such as long-term health care facilities, rehabilitation centers, and retirement homes. Residences, schools, playgrounds, child-care centers, and athletic facilities can also be considered as sensitive receptors. The nearest sensitive receptor to the Project site is a residence approximately ~~4,700~~ 3,910 feet to the southwest

pp. 4.2-41-42 Revise MM-AQ-1 as follows:

[1] Apple Valley 143 Project EIR (SCH No. 2022070019) was considered and certified and Project entitlements with conditions of approval were approved by the Apple Valley Planning Commission on November 15, 2023. The Apple Valley 143 Project EIR fully analyzed the environmental effects of "off-site improvements" inclusive of utility improvements. The Apple Valley 143 Project EIR can be found at https://www.applevalley.org/services/planning-division/environmental.

MM-AQ-1 ~~Architectural Coating~~ Construction Requirements.

- Architectural and industrial maintenance coatings (e.g., paints) applied to the Project site shall have volatile organic compound levels of less than 10 grams per liter.
- The Project's construction manager shall maintain and keep current construction logs detailing the following:
    - An inventory of construction equipment, maintenance records, and datasheets, including design specifications and emission control tier classifications;
    - Verification that construction equipment operators have been advised of idling time limits and photographic evidence that signage with idling time limits have been posted around the construction site; and
    - Evidence that construction contractors have been provided with transit and ridesharing information for construction workers.

The construction logs shall be kept on the construction site at all times and shall be made available to local, regional, or state officials (e.g., officials from the Town of Apple Valley, MDAQMD, or CARB) by request or when conducting an inspection at the Project site.

- In addition, the Project's construction manager or its designee shall provide to all Project construction employees the fact sheet entitled "Preventing Work-Related Coccidioidomycosis (Valley Fever)" by the California Department of Public Health and ensure all employees are aware of the potential risks the site poses. The Project construction manager or its designee shall schedule mandatory training for all Project construction employees providing information on the occupational responsibilities and requirements contained in these measures to reduce potential exposure to *Coccidioide*s spores.

  The training for Project construction employees shall include all the following topics:

    - What Valley Fever is and how it is contracted.
    - High-risk areas and types of work and environmental conditions during which the risk of contracting Valley Fever is highest.
    - Personal risk factors that may create a higher risk for some individuals.
    - Personal and environmental exposure prevention methods.
    - Importance of early detection, diagnosis, and treatment.
    - Recognizing common signs and symptoms of Valley Fever.
    - Importance of reporting symptoms to the employer and seeking medical attention.
    - Common treatment and prognosis for Valley Fever.

## Chapter 4.3, Biological Resources

p. 4.3-1 Revise text as follows:

The BSA is composed predominantly of undeveloped, vacant lands with approximately 20-acres of the BSA ~~of an existing mining facility~~ used for stockpiling of soil and similar type materials from off-site mining activities; a metal storage structure associated with the stockpiling activities is located within the stockpiling area. The off-site improvement areas include dirt and paved roadways

(specifically Outer Highway 15 or Interstate-15 frontage road, Norco Road, Falchion Road, and Quarry Road), as well as undeveloped, vacant lands immediately adjacent to these roadways. Topography within the BSA is generally flat with some areas of small hills.

p. 4.3-6 Revise text as follows:

Protocol-level surveys for Mohave ground squirrel were negative. Therefore, this species is not expected to occur ~~and will not be analyzed further~~.

p. 4.3-7 Revise text as follows:

Burrowing owl is a ~~California Species of Special Concern~~ state-listed candidate species.

p. 4.3-9 Revise text as follows:

Therefore, Crotch's bumble bee ~~this species~~ is not expected to occur within the BSA.

p. 4.3-9 Revise text as follows:

Based on the discussion above, Mohave ground squirrel ~~this species~~ is not expected to occur within the BSA.

p. 4.3-10 Revise text as follows:

~~It is important to note that the ultimate decision on the amount and location of jurisdictional resources is made by the resource agencies (i.e., USACE, CDFW, and RWQCB), and, therefore, impacts to potential aquatic resources may increase or decrease.~~ See Appendix B of Appendix C-1 for further descriptions of these resources.

p. 4.3-24 Revise text as follows:

Based on The WJTCA Fish and Game Code Section 1927.3 requires the applicant to mitigate by paying the statutorily prescribed fees. Trees located in the area described in Fish and Game Code Section 1927.3 (e) are in the reduced ~~standard~~ fee area; therefore, impacts to western Joshua tree can be mitigated on a per-tree basis as follows:

- Five meters or greater in height - $~~2,500~~1,000
- One meter or greater but less than five meters in height - $~~500~~200
- less than one meter in height - $~~340~~150

T~~herefore, t~~he Project would result in direct impacts to four Joshua trees that are 5 meters or greater in height, 201 trees 1 meter or greater but less than 5 meters in height, and 78 trees less than 1 meter in height.

As required by **MM-BIO-1** (Conservation of Western Joshua Tree Lands), mitigation for direct impacts to 283 individuals would be fulfilled through ~~payment through~~ compliance with The Western Joshua Tree Conservation Act.

p. 4.3-26 Revise text as follows:

Upon completion of Project construction, with adherence to the ~~City of Hesperia~~ Town of Apple Valley Municipal Code, and because of the low ignitability of the proposed structures and implementation of fire-resistant and irrigated landscaping, the Project would not facilitate wildfire spread or exacerbate wildfire risk.

p. 4.3-27 Revise text as follows:

Consistent with MM-BIO-10 (Pre-construction Clearance Surveys for Mojave Desert Tortoise and Avoidance), a pre-construction clearance survey for Mojave desert tortoise would be conducted ~~in areas supporting potentially suitable habitat~~ on the Project site ~~14 to 21 days prior to the start of construction activities; or, alternatively, pre-construction clearance surveys may be conducted~~ following the installation ~~construction~~ of ~~a~~ desert ~~–~~ tortoise exclusionary fencing ~~proof fence~~ encompassing the Project site that would ensure that tortoises cannot enter the Project after clearance surveys are completed.

p. 4.3-28 Revise text as follows:

~~Additionally, as required by MM-BIO-1, mitigation for direct impacts to 283 western Joshua trees will be fulfilled through a payment of fees consistent with the WJTCA. Conservation efforts for western Joshua tree will focus on the conservation of large, interconnected Joshua tree woodlands on lands where edge effects are limited, versus lands in urban settings that are subject to habitat fragmentation and edge effects, such as the Project site. Thus, mitigation for impacts to western Joshua tree would also mitigate for loss of suitable habitat for desert tortoise, which use similar habitat.~~

In summary, implementation of ~~MM-BIO-1 (Conservation of Western Joshua Tree Lands),~~ MM-BIO-3 (Designated Biologist Authority), MM-BIO-4 (Compliance Monitoring), MM-BIO-5 (Education Program), MM-BIO-6 (Construction Monitoring Notebook), and MM-BIO-10 (Pre-construction Clearance Surveys for Mojave Desert Tortoise and Avoidance) would reduce potential direct impacts (permanent and temporary) to Mojave desert tortoise to less than significant.

p. 4.3-28 Revise text as follows:

Pursuant to the California Fish and Game Code and the MBTA, focused non-breeding season surveys and a pre-construction survey in compliance with the Staff Report on Burrowing Owl Mitigation (CDFW 2012) would be necessary to reevaluate the locations of potential burrowing owl burrows located within the Project limits so take of owls or active owl nests can be avoided. Consistent with MM-BIO-11.1 (Focused Non-Breeding Season Surveys and MM-BIO-11.2 (Pre-construction Survey~~s for Burrowing Owl and Avoidance~~), focused non-breeding season surveys will occur within the Project site prior to the start of construction activities in accordance with the 2012 Staff Report, and pre-construction surveys for burrowing owl shall be conducted ~~in areas supporting potentially suitable habitat~~ within the Project site with the first survey no less than 14 days prior to the start of construction activities, and the second within 24 hours of start of construction. If it is evident that the burrows are actively being used by burrowing owl, avoidance and preparation of a Burrowing Owl Plan will occur as outlined in MM-BIO-11.3 (Avoidance) and MM-BIO-11.4 (Burrowing

Owl Plan). In Accordance with MM-BIO-11.6 (Burrowing Owls Observed During Construction), CDFW shall be notified immediately if burrowing owls are observed within the Project site during Project implementation and construction. ~~A burrowing owl relocation plan has been prepared to facilitate implementation of this mitigation measure (Appendix C-2).~~ In addition, implementation of MM-BIO-3 (Designated Biologist Authority), MM-BIO-4 (Compliance Monitoring), MM-BIO-5 (Education Program), and MM-BIO-6 (Construction Monitoring Notebook) would reduce potential direct impacts to a less-than significant level.

Furthermore, should burrowing owl be located during the pre-construction survey, the Project would result in the loss of 165.4 acres of suitable habitat for burrowing owl, consisting of total vegetation impacts to creosote bush scrub, rubber rabbitbrush scrub, and disturbed habitat. These direct permanent impacts would be significant absent mitigation. As required by MM-BIO-11.5 (Compensatory Mitigation~~Pre-construction Surveys for Burrowing Owl Avoidance~~), mitigation for direct impacts to 165.4 acres, should burrowing owl be found during pre-construction surveys, would be fulfilled through conservation of suitable burrowing owl habitat through the purchase of credits at a minimum of 1:1 in-kind habitat replacement.

p. 4.3-29 Revise text as follows:

~~Additionally, as required by MM-BIO-1, mitigation for direct impacts to 283 western Joshua trees will be fulfilled through a payment of fees consistent with the WJTCA. Conservation efforts for western Joshua tree will focus on the conservation of large, interconnected Joshua tree woodlands on lands where edge effects are limited, versus lands in urban settings that are subject to habitat fragmentation and edge effects, such as the Project site. Thus, mitigation for impacts to western Joshua tree would also mitigate for loss of suitable habitat for burrowing owl, which use similar habitat.~~

In summary, implementation of ~~MM-BIO-1 (Conservation of Western Joshua Tree Lands),~~ MM-BIO-3 (Designated Biologist Authority), MM-BIO-4 (Compliance Monitoring), MM-BIO-5 (Education Program), MM-BIO-6 (Construction Monitoring Notebook), and MM-BIO-11 (Pre-construction Surveys for Burrowing Owl and Avoidance) would reduce potential direct impacts (permanent and temporary) to burrowing owl to less than significant.

p. 4.3-29 Revise text as follows:

~~The Project would also result in the loss of approximately 156.0 acres of potentially suitable habitat for LeConte's thrasher (i.e., total vegetation impacts to creosote bush scrub and rubber rabbitbrush scrub). The Project is surrounded by similar habitat that can continue to support LeConte's thrasher, if present in the region. While focused surveys were not conducted for LeConte's thrasher, this vocal and conspicuous species would likely have been detected during numerous site visits conducted at the site in the spring, summer, or fall. The absence of detections indicates that there is low likelihood that this species is present in the region. Impacts to potentially suitable habitat will be minimized through the conservation of Joshua tree woodlands Aa required by **MM-BIO-1**. Thus, the loss of suitable habitat for LeConte's thrasher would be considered less than significant.~~

~~In summary, implementation of **MM-BIO-12** (Pre-construction Nesting Bird Surveys and Avoidance) would reduce potential direct impacts to LeConte's thrasher to less than significant.~~

The Project would also result in the loss of approximately 156.0 acres of potentially suitable habitat for LeConte's thrasher (i.e., total vegetation impacts to creosote bush scrub and rubber rabbitbrush scrub). The Project is surrounded by similar habitat that can continue to support LeConte's thrasher if they are present in the region. While focused surveys were not conducted for LeConte's thrasher, this vocal and conspicuous species would likely have been detected during numerous site visits conducted at the site in the winter, spring, or summer. The absence of detections indicates that there is low likelihood that this species is present in the region. Impacts to potentially suitable habitat will be minimized through the conservation of Joshua tree habitat as required by **MM-BIO-1**. Thus, the loss of suitable habitat for LeConte's thrasher would be considered less than significant.

In summary, implementation of **MM-BIO-12** (Pre-construction Nesting Bird Surveys and Avoidance) would reduce potential direct impacts to LeConte's thrasher to less than significant.

p. 4.3-30 Revise text as follows:

~~The Project would also result in the permanent loss of 156.0 acres of suitable habitat for loggerhead shrike (i.e., total vegetation impacts to creosote bush scrub and rubber rabbitbrush scrub). As required by **MM-BIO-1**, mitigation for direct impacts to 283 western Joshua trees will be fulfilled through a payment of fees consistent with the WJTCA. Conservation efforts for western Joshua tree will focus on the conservation of large, interconnected Joshua tree woodlands on lands where edge effects are limited, versus lands in urban settings that are subject to habitat fragmentation and edge effects, such as the Project site. Thus, mitigation for impacts to western Joshua tree would also mitigate for loss of suitable habitat for loggerhead shrike, which use similar habitat; the loss of 156.0 acres of suitable habitat for loggerhead shrike would be considered less than significant.~~

~~In summary, implementation of **MM-BIO-12** (Pre-construction Nesting Bird Surveys and Avoidance) and **MM-BIO-1** (Conservation of Western Joshua Tree Lands) would reduce potential direct impacts to loggerhead shrike to less than significant.~~

The Project would also result in the permanent loss of 156.0 acres of potentially suitable habitat for loggerhead shrike (i.e., total vegetation impacts to creosote bush scrub and rubber rabbitbrush scrub). The Project is surrounded by similar habitat that can continue to support loggerhead shrike if they are present in the region. While focused surveys were not conducted for loggerhead shrike, this conspicuous species would likely have been detected during numerous site visits conducted at the site in the winter, spring, or summer. The absence of detections indicates that there is low likelihood that this species is present in the region. Impacts to potentially suitable habitat will be minimized through the conservation of Joshua tree habiat as required by **MM-BIO-1**. Thus, the loss of suitable habitat for loggerhead shrike would be considered less than significant.

In summary, implementation of **MM-BIO-12** (Pre-construction Nesting Bird Surveys and Avoidance) would reduce potential direct impacts to loggerhead shrike to less than significant.

p. 4.3-30 Revise text as follows:

~~The Project would result in the permanent loss of 165.4 acres of suitable foraging habitat, consisting of total vegetation impacts to creosote bush scrub, rubber rabbitbrush scrub, and~~

~~disturbed habitat, for native bats, including the pallid bat and Townsend's big-eared bat. As required by **MM-BIO-1**, mitigation for direct impacts to 283 western Joshua trees will be fulfilled through a payment of fees consistent with the WJTCA. Conservation efforts for western Joshua tree will focus on the conservation of large, interconnected Joshua tree woodlands on lands where edge effects are limited, versus lands in urban settings that are subject to habitat fragmentation and edge effects, such as the Project site. Thus, mitigation for impacts to western Joshua tree would also mitigate for loss of suitable foraging habitat for pallid bat and Townsend's big eared bat, which use similar habitat; the loss of 165.4 acres of suitable habitat for foraging bats would be considered less than significant.~~

~~In summary, implementation of **MM-BIO-1** (Conservation of Western Joshua Tree Lands) would reduce potential direct impacts to foraging bats to less than significant.~~

The Project would result in the permanent loss of 165.4 acres of potentially suitable foraging habitat, consisting of total vegetation impacts to creosote bush scrub, rubber rabbitbrush scrub, and disturbed habitat, for native bats, including the pallid bat and Townsend's big-eared bat. The Project is surrounded by similar habitat that can continue to support native bats if they are present in the region. Impacts to potentially suitable habitat will be minimized through the conservation of Joshua tree woodlands as required by **MM-BIO-1.** Thus, the loss of suitable foraging habitat for pallid bat and Townsend's big-eared bat would be considered less than significant.

p. 4.3-41 Revise text as follows:

Therefore, even though impacts associated with wildlife movement, wildlife corridors, and wildlife nursery sites would be less than significant MM-BIO-15~~8~~ (Lighting) would ensure all lighting during operations and within 50 feet of the outside edge of the impact footprint containing habitat for special-status wildlife would be directed away from natural areas.

In summary, although indirect impacts to wildlife movement would be less than significant, implementation of MM BIO-15~~8~~ (Lighting) would further reduce potential indirect impacts to wildlife movement.

p. 4.3-43 Revise text as follows:

$~~2,5~~1,000 for each western Joshua tree 5 meters or greater in height, $~~500~~200 for each western Joshua tree 1 meter or greater but less than 5 meters in height, and $~~340~~150 for each western Joshua tree less than 1 meter in height.

p. 4.3-44 Revise text as follows:

One candidate for state listing under CESA, western Joshua tree, was observed and would be directly impacted by the Project. Four special-status wildlife species were determined to have a moderate potential to occur within the BSA and would potentially be directly impacted by the Project: burrowing owl, LeConte's thrasher, loggerhead shrike, and Moj~~h~~ave desert tortoise. Suitable habitat for Moj~~h~~ave desert tortoise, burrowing owl, LeConte's thrasher, and loggerhead shrike would be directly impacted by the Project.

p. 4.3-44 Revise text as follows:

In conformance with the reduced fee schedule, mitigation will consist of payment of $~~2,500~~1,000 for each western Joshua tree 5 meters or greater in height, $~~500~~200 for each western Joshua tree 1 meter or greater but less than 5 meters in height, and $~~340~~150 for each western Joshua tree less than 1 meter in height.

p. 4.3-45 Revise MM-BIO-1, MM-BIO-4, MM-BIO-5, MM-BIO-6, MM-BIO-10, MM-BIO-11, and MM-BIO-12 as follows:

MM-BIO-1 Conservation of Western Joshua Tree Lands. Mitigation for direct impacts to 4 western Joshua trees that are 5 meters or greater in height, 201 trees 1 meter or greater but less than 5 meters in height, and 78 trees less than 1 meter in height will be fulfilled through a payment of the elected fees as described in Section 1927.3 of the Western Joshua Tree Conservation Act, or through obtaining an Incidental Take Permit pursuant to California Fish and Game Code Section 2081. In conformance with the reduced fee schedule of the Western Joshua Tree Conservation Act, mitigation will consist of payment of $1,000 for each western Joshua tree 5 meters or greater in height, $200 for each western Joshua tree 1 meter or greater but less than 5 meters in height, and $150 for each western Joshua tree less than 1 meter in height.

MM-BIO-4 Compliance Monitoring. The designated biologist shall be on site daily when impacts occur. The designated biologist shall conduct compliance inspections to minimize incidental take of western Joshua trees and impacts to other sensitive biological resources, including Mohave ground squirrel, if present; prevent unlawful take of western Joshua trees; and ensure that signs, stakes, and fencing are intact, and that impacts are only occurring outside the permitted impact footprint. Weekly written observation and inspection records that summarize oversight activities and compliance inspections and monitoring activities required by the Incidental Take Permit shall be prepared.

**Species Connectivity Database Observation Reporting.** During all Project ground disturbing activities, the Qualified Biologist shall report any collision-related mortalities of special status-species that may occur within adjacent roadways (I-15 Frontage Road, Falchion Road, Norco Road and Apple Valley Road in the immediate project vicinity) of the Project site to the California Roadkill Observation System. In addition, the qualified Biologist shall report any identifiable recently sprouted native and nonnative plant species that occur within the Project area during Project activities to the CalFlora Plant Observation database.

MM-BIO-5 Education Program. An education program (Worker Environmental Awareness Program [WEAP]) for all persons employed or otherwise working in the Project area shall be administered before performing impacts. The WEAP shall consist of a presentation from the designated biologist that includes a discussion of the biology and status of western Joshua trees, burrowing owls, and loggerhead shrikes, and other biological resources mitigation measures described in the California

Environmental Quality Act document. The training shall also discuss the invasive plant species currently present within the Project area as well as those that may pose a threat to or have the potential to invade the Project area through implementation of ground disturbing activities. The discussion shall describe the potential long-lasting effects of introduced invasive species that may encroach on native plant species and continue to spread following the construction of the Project and beginning of industrial work. Interpretation for non-English-speaking workers shall be provided, and the same instruction shall be provided to all new workers before they are authorized to perform work in the Project area. Upon completion of the WEAP, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees who will be conducting work in the Project area.

MM-BIO-6 Construction Monitoring Notebook. The designated biologist shall maintain a construction-monitoring notebook on site throughout the construction period that shall include a copy of the biological resources mitigation measures with attachments and a list of signatures of all personnel who have successfully completed the education program. The permittee shall ensure that a copy of the construction monitoring notebook is available for review at the Project site upon request by the Town ~~the California Department of Fish and Wildlife~~.

MM-BIO-10 Pre-construction Clearance Surveys for Mojave Desert Tortoise and Avoidance. One pre-construction clearance survey in accordance with the current U.S. Fish and Wildlife Service (USFWS) protocol shall be conducted to reevaluate locations of potential Mojave desert tortoise burrows within the Project limits so take of Mojave desert tortoise can be avoided. The ~~first~~ pre-construction clearance survey shall be conducted on the Project site ~~no more than 14 to 21 days prior to the start of construction activities; or alternatively, pre-construction clearance surveys may be conducted~~ at any time following the installation of ~~a~~ desert tortoise exclusionary fencing encompassing the Project site that would ensure that tortoises cannot enter the Project after clearance surveys are completed. Should there be any faults following the installation of the desert tortoise exclusionary fence that would compromise the efficacy, an additional pre-construction clearance survey shall be conducted throughout the Project site. If no Mojave desert tortoises are found during the surveys, desert tortoise exclusionary fencing encompassing the Project site shall remain in place until Project construction is completed and shall be monitored by a qualified biologist in compliance with current USFWS protocol.

Should Mojave desert tortoise be located during the clearance survey, all methods used for handling desert tortoises during the clearance surveys must be in accordance with the USFWS Desert Tortoise Field Manual or Project-specific guidance contained in a biological opinion or Incidental Take Permit (ITP). No take of Mojave desert tortoise shall occur without prior authorization in the form of an ITP pursuant to California Fish and Game Code Section 2081 and a ~~biological~~

~~opinion or~~ Habitat Conservation Plan. The Project applicant shall adhere to measures and conditions set forth within the ITP. Anyone who handles desert tortoises during clearance activities must have the appropriate authorizations from USFWS and CDFW. The area cleared and number of Mojave desert tortoises found within that area shall be reported to the local USFWS and appropriate state wildlife agency. Notification shall be made in accordance with the conditions of the ITP and Habitat Conservation Plan.

Should Mojave desert tortoise be located during the clearance survey, the Project would result in the loss of 165.4 acres of suitable habitat for Mojave desert tortoise. Mitigation for direct impacts to 165.4 acres shall be fulfilled through conservation of suitable Mojave desert tortoise habitat through the purchase of credits at a minimum of 1:1 in-kind habitat replacement of equal or better functions and values to those impacted by the Project, for a total of 165.4 acres or as otherwise determined through coordination with the USFWS and/or California Department of Fish and Wildlife.

MM-BIO-11 Pre-construction Surveys for Burrowing Owl and Avoidance.

MM-BIO-11.1 Focused Non-Breeding Season Surveys. Focused non-breeding season surveys for burrowing owl shall be conducted in accordance with protocols established in the California Department of Fish and Wildlife (CDFW; then California Department of Fish and Game) 2012 Staff Report or the most recent guidance. As outlined in the 2012 Staff Report, non-breeding season surveys will occur from September 1 to January 31. If burrowing owl are not detected, a pre-construction survey shall be completed, as described in 11.2. If burrowing owls are detected during these surveys, avoidance and preparation of a Burrowing Owl Plan will occur as outlined in MM-BIO-11.3 and MM-BIO-11.4.

MM-BIO-11.2 Pre-Construction Survey. One pre-construction burrowing owl survey shall be completed no more than 14 days before initiation of site preparation or grading activities, and a second survey shall be completed within 24 hours of the start of site preparation or grading activities. If ground-disturbing activities are delayed or suspended for more than 30 days after the pre-construction surveys, the Project site and off-site improvement areas shall be resurveyed prior to recommencement of site preparation or grading activities. Surveys for burrowing owl shall be conducted in accordance with protocols established in the ~~California Department of Fish and Wildlife's~~ 2012 ~~(or most recent version)~~ Staff Report ~~on Burrowing Owl Mitigation~~. Evidence of owl activity may include presence of owls themselves, burrows, and owl sign at burrow entrances such as pellets, whitewash or other "ornamentation," feathers, prey remains, etc. If it is evident that the burrows are actively being used by burrowing owl, avoidance and preparation of a Burrowing Owl Plan will occur as outlined in MM-BIO-11.3 and MM-BIO-11.4.

MM-BIO-11.3 Avoidance. ~~If burrowing owls are detected, the Burrowing Owl Relocation Plan shall be implemented in consultation with the California Department of Fish and Wildlife (CDFW), with the Plan to be approved by the Town.~~

~~As required by the Burrowing Owl Relocation Plan, disturbance to~~ occupied ~~burrows shall be avoided during the nesting season (February 1 through August 31).~~ The Project proponent shall clearly delineate no-disturbance ~~bB~~uffers of 250 feet radius around all ~~shall be established around~~ occupied burrows within the Project site and approximately 400 feet of the Project site, where legally accessible, with posted signs demarcating the avoidance area and by using stakes, flags, and/or rope or cord to minimize the disturbance of burrowing owl habitat~~in accordance with guidance provided in CDFW's Staff Report on Burrowing Owl Mitigation~~. The Project proponent shall delineate occupied burrows with different materials than those used to delineate the Project site. No Project activities shall be allowed to encroach into established buffers without the consent of a monitoring biologist. The buffer shall remain in place until it is determined that occupied burrows have been vacated ~~or the nesting season has completed~~. The Project proponent shall remove and properly dispose of all materials used for delineation immediately upon completion of the Project.

MM-BIO-11.4 Burrowing Owl Plan. ~~Outside of the nesting season, passive owl relocation techniques approved by CDFW shall be implemented. Owls shall be excluded from burrows in the immediate Project area and within a buffer zone by installing one-way doors in burrow entrances. These doors shall be in place at least 72 hours prior to ground disturbing activities. The Project site shall be monitored daily for 1 week to confirm owl departure from burrows prior to any ground-disturbing activities. Compensatory mitigation for permanent loss of owl habitat, if the site is occupied by burrowing owl, shall be provided following the guidance in CDFW's Staff Report on Burrowing Owl Mitigation.~~

~~Where possible, burrows shall be excavated using hand tools and refilled to prevent reoccupation. Sections of flexible plastic pipe shall be inserted into the tunnels during excavation to maintain an escape route for any wildlife inside the burrow. An endoscope (fiber optic camera) should also be used to scope the burrow in front of the excavation. Occupied burrows that are excavated need to be replaced at a 2:1 ratio if there are already suitable burrows present nearby.~~

If burrowing owls are detected on the Project site, the Project proponent shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval at least 30 days prior to initiation of ground-disturbing activities. If burrowing owls are detected after ground-disturbing activities have been initiated, a Burrowing Owl Plan shall be submitted to CDFW for review and approval within two weeks of detection. Project activities shall not occur within 400 feet of an active burrow until CDFW approves the Burrowing Owl Plan. The Burrowing Owl Plan shall include but is not limited to 1) impact assessment that details the number and location of occupied burrow sites, and acres of burrowing owl habitat with a qualitative description of the habitat vegetation characteristics that will be impacted; 2) details on avoidance actions and monitoring such as proposed buffers, visual barriers and other actions; 3) site monitoring; and 4)minimization and compensatory mitigation actions that will be implemented.

Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method, may be a potentially significant impact under CEQA, and has the possibility to result in take. The Burrowing Owl Plan shall identify compensatory mitigation for the loss of occupied burrow(s) and habitat consistent with the "Mitigation Impacts" section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of ground disturbing activities, as outlined in MM-BIO-11.5 below. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, 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 Project proponent shall implement the Burrowing Owl Plan following CDFW review and approval.

**MM-BIO-11.5 Compensatory Mitigation.** No take of burrowing owl shall occur without prior authorization in the form of an Incidental Take Permit (ITP) pursuant to California Fish and Game Code Section 2081. The Project Applicant shall adhere to measures and conditions set forth within the ITP. Anyone who handles burrowing owl during clearance activities must have the appropriate authorizations from CDFW. Notification shall be made in accordance with the conditions of the ITP. Should burrowing owl be located during the non-breeding season or clearance surveys, the Project would result in the loss of 165.4 acres of suitable habitat for burrowing owl. Mitigation for direct impacts to 165.4 acres shall be fulfilled through conservation of suitable burrowing owl habitat through the purchase of credits at a minimum of 1:1 in-kind habitat replacement of equal or better functions and values to those impacted by the Project, for a total of 165.4 acres.**MM-BIO-11.6 Burrowing Owls Observed During Construction.** If burrowing owls are observed within the Project site during Project implementation and construction, the Project proponent shall notify CDFW immediately in writing.

MM-BIO-12 Pre-construction Nesting Bird Surveys and Avoidance. Special-status bird species that have a moderate potential to occur within the Project include burrowing owl, LeConte's thrasher, and loggerhead shrike. The Project also contains trees, shrubs, and other vegetation that provide opportunities for other non-sensitive birds and raptors to nest on site. Construction activities shall avoid the migratory bird nesting season (typically February 1 through August 31) to reduce any potential significant impact to birds that may be nesting in the survey area. Regardless of the time of year, ~~If construction activities must occur during the migratory bird nesting season,~~ ~~an~~ pre-construction avian nesting clearance survey of the Project site and within 500 feet of all impact areas must be conducted to determine the presence/absence of protected migratory birds and active nests. The avian nesting survey shall be performed by a qualified wildlife biologist within 72 hours prior to the start of construction in accordance with the Migratory Bird Treaty Act and California Fish and Game Code Sections 3503,

3503.5, and 3513. If an active bird nest is found within the Project area or within 500 feet of the Project area, the nest shall be flagged and mapped on the construction plans, along with an appropriate buffer established around the nest, which shall be determined by the biologist based on the species' sensitivity to disturbance ~~(typically 300 feet for passerines and 500 feet for raptors and special-status species)~~. The nest area and buffers shall be monitored daily by the qualified biologist and avoided until the qualified biologist has determined that the nest is vacated and the juveniles have fledged. The nest area shall be demarcated in the field with flagging and stakes or construction fencing. On-site construction monitoring shall be conducted when construction occurs in close proximately to an active nest buffer. ~~No Project activities shall encroach into established buffers without the consent of a monitoring biologist.~~ The buffer shall remain in place until is determined by the qualified biologist that the nestlings have fledged and the nest is no longer active. If an active nest is encountered during the Project construction, construction shall stop immediately until a qualified biologist can determined (1) that status of the nest, and (2) when work can proceed without risking violation to state or federal laws.

## Chapter 4.4 Cultural, Tribal Cultural and Paleontological Resources

p. 4.4-22 Revise MM-CUL-1 and MM-CUL-2 as follows:

MM-CUL-1 Workers Environmental Awareness Program (WEAP) Training. All construction personnel and monitors who are not trained archaeologists shall be briefed regarding unanticipated discoveries prior to the start of any ground disturbing ~~construction activities~~. A basic presentation shall be prepared and presented by a qualified archaeologist and retained tribal monitor to inform all personnel working on the Project about the archaeological sensitivity of the area. The purpose of the WEAP training is to provide specific details on the kinds of archaeological materials that may be identified during construction of the Project and explain the importance of and legal basis for the protection of significant archaeological resources. Each worker shall also learn the proper procedures to follow in the event that cultural resources or human remains are uncovered during ground-disturbing activities. These procedures include work curtailment or redirection, and the immediate contact of the on-call archaeologist and if appropriate, Tribal representative. The requirement for mandatory training and attendance by all construction personnel ~~Necessity of training attendance~~ shall be stated on all construction plans.

MM-CUL-2 On-Call Archaeological Construction Monitoring. In consideration of the general sensitivity of the Project site for cultural resources, a qualified archaeologist shall be retained prior to ground disturbing activities ~~to conduct spot monitoring as well as on call response in the case of an inadvertent discovery of archaeological resources~~. A qualified archaeologist, meeting the Secretary of the Interior's Professional Qualification Standards, shall oversee and adjust monitoring efforts as needed (increase, decrease, or discontinue monitoring frequency) based on the observed potential for construction activities to encounter cultural deposits. The archaeologist shall be responsible for maintaining monitoring logs. Following the completion of construction, the qualified archaeologist shall

provide an archaeological monitoring report to the lead agency and the SCCIC with the results of the cultural monitoring program.

The project Archaeologist shall develop a Cultural Resource Management Plan (CRMP) and/or Archaeological Monitoring and Treatment Plan (AMTP) to address the details, timing, and responsibilities of all archaeological and cultural resource activities that occur on the project site. This Plan shall be written in consultation with the consulting Tribe[s] and shall include approved Mitigation Measures (MM) and Conditions of Approval (COA), contact information for all pertinent parties, parties' responsibilities, procedures for each MM or COA, and an overview of the project schedule.

Additionally, the applicant shall enter into a Tribal Monitoring Services Agreement with the Morongo Band of Mission Indians (MBMI) for the Project. The Tribal Monitor shall be on-site during all ground-disturbing activities (including, but not limited to, clearing, grubbing, tree and bush removal, grading, trenching, fence post placement and removal, construction excavation, excavation for all utility and irrigation lines, and landscaping phases of any kind). The Tribal Monitor shall have the authority to temporarily divert, redirect, or halt the ground disturbing activities in the immediate vicinity of a suspected find to allow time for the Project archaeologist and Tribal Monitor to identify, evaluate and determine the potential for recovery of cultural resources.

p. 4.4-24 Revise MM-TCR-2 as follows:

MM-TCR-2 Discovery of Human Remains. If human remains or funerary objects are encountered during any ground disturbing activities associated with the Project, work in the immediate vicinity (within a 100-foot buffer of the find) shall cease, and the discoveries shall be treated in accordance with state and local regulations, including California Health and Safety Code Section 7050.5, California Public Resources Code Section 5097.98, and the California Code of Regulations Section 15064.5(e). No photographs are to be taken except by the coroner, with written approval by the consulting Tribe[s].

## Section 4.6, Greenhouse Gas Emissions

pp. 4.6-35-36 Revise MM-GHG-1 and MM-GHG-2 as follows:

MM-GHG-1 The Project Applicant shall implement the following measure in order to reduce operational energy source greenhouse gas (GHG) emissions to the extent feasible:

- Design the Project to meet, at minimum, U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Silver certification or otherwise design the Project to reach equivalent reductions in GHG emissions. Prior to the issue of building permits, documentation demonstrating that the Project has been designed to achieve, at minimum, LEED Silver certification or has otherwise been designed to result in equivalent GHG emission reductions will be submitted to the Town's Planning Department. Design features that will be implemented to achieve, at minimum, LEED Silver certification include the following:

- Install Energy Star–rated heating, cooling, lighting, and appliances. All light bulbs shall be CFL or LED.
- The Project electrical infrastructure shall be designed to accommodate the required number of electric vehicle charging stations, the anticipated number charging stations for electric cargo handling equipment, and the potential installation of additional automobile and truck electric vehicle charging stations per Title 24, Part 11 (California Green Building Standards (CALGreen).
- Electrical conduit shall be installed in specified Project locations (e.g., parking areas, at or near dock doors) at the time of building construction to satisfy CALGreen standards. The Project's electrical rooms shall be of sufficient size to accommodate the upsizing of electrical equipment to accommodate potential future electrical loads.
- Prior to issuance of a Certificate of Occupancy from the Town of Apple Valley, level 2 (or faster) electric vehicle charging stations shall be installed on-site for employees for the percentage of employee parking spaces in accordance with Title 24, Part 11 (CALGreen) requirements in effect at the time of building permit issuance plus additional charging stations equal to 5% of the total employee parking spaces in the building permit, whichever is greater. By January 1, 2030, Level 2 (or faster) electric vehicle charging stations shall be installed for 25% of the employee parking spaces required.
- Structures shall be equipped with outdoor electric outlets in the front and rear of the structures to facilitate use of electrical lawn and garden equipment.
- The Project shall comply with the mandatory solar requirements outlined in Title 24. In addition, future tenants of the Project shall be required to subscribe to the Apple Valley Choice Energy 100% Renewable Energy Plan, which is 100% renewable and 100% carbon-free, for the duration of occupancy as part of the entitlement agreement. At each lease or change of building ownership, the new lessee or owner shall also be automatically enrolled in the Apple Valley Choice Energy 100% Renewable Energy Plan.
- Prior to tenant occupancy, the Project Applicant or successor in interest shall provide documentation to the Town of Apple Valley demonstrating that occupants/tenants of the Project site have been provided informational documentation regarding energy efficiency, energy-efficient lighting and lighting control systems, energy management, cleaning products that are water-based or containing low quantities of volatile organic compounds, electric or alternatively fueled sweepers with HEPA filters, on-site meal options such as food trucks, and existing energy incentive programs to future tenants of the Project.
- Provision of Information Regarding Programs to Reduce Emissions from Trucks. Prior to tenant occupancy, the Project Applicant or successor in interest shall provide documentation to the Town of Apple Valley demonstrating that occupants/tenants of the Project site have been provided informational documentation regarding:
- Funding opportunities that provide incentives for using cleaner-than-required engines and equipment, such as the Carl Moyer Program and Voucher Incentive Program.
- The U.S. EPA SmartWay Program, which assists freight shippers, carriers, logistics companies, and other stakeholder partner with the U.S. EPA to measure, benchmark, and improve logistics operations and reduce air pollutant emissions from the transport of cargo.
- The following measures shall be implemented to reduce air pollutant emissions from idling:

- Signage. Legible, durable, weather-proof signs shall be placed at truck access gates, loading docks, and truck parking areas that identify the Project's three-minute idling restriction. At a minimum, each sign shall include: (1) instructions for truck drivers to shut off engines when not in use; (2) instructions for drivers of diesel trucks to restrict idling to no more than 3 minutes once the vehicle is stopped, the transmission is set to "neutral" or "park," and the parking brake is engaged; (3) telephone numbers of the building facilities manager and CARB to report violations; and (4) that penalties apply for violations. Prior to the issuance of an occupancy permit, the Town of Apple Valley shall conduct a site inspection to ensure that the signs are in place.
- Efficient Load Management. The facility operator(s) shall be required to train managers and employees on efficient scheduling and load management to eliminate unnecessary queuing and idling of trucks.

- Anti-Idling Training. Tenants and operators on the Project site shall ensure that site enforcement staff in charge of keeping the daily log and monitoring for excess idling will be trained/certified in diesel health effects and technologies, for example, by requiring attendance at CARB-approved courses (such as the free, one-day Course #512).
- The following measure shall be implemented during all ongoing business operations and shall be included as part of contractual lease agreement language to ensure that tenants and operators of the Project are informed of the following operational responsibility:
- Upon commencement of operations, the tenant/operator of the Project shall be required to restrict truck idling on site to a maximum of 3 minutes, subject to exceptions defined by the CARB's commercial vehicle idling requirements. The building manager or their designee shall be responsible for enforcing this requirement.
- For occupants with more than 250 employees, a Transportation Demand Management (TDM) program to reduce employee commute vehicle emissions shall be established, subject to review and approval by the Town of Apple Valley. The TDM plan shall apply to Project tenants through tenant leases. The TDM plan shall discourage single-occupancy vehicle trips and encourage alternative modes of transportation such as carpooling, taking transit, walking, and biking. Examples of trip reduction measures may include, but are not limited to transit passes, car-sharing programs, and ride sharing programs.

MM-GHG-2 To reduce water demands and associated energy use, subsequent development proposals within the Project site would be required to implement a Water Conservation Strategy and demonstrate a minimum 20% reduction in indoor and outdoor water usage when compared to baseline water demand (total expected water demand without implementation of the Water Conservation Strategy). The Town shall approve the Water Conservation Strategy prior to the issuance of building permits for the Project. Included in the Water Conservation Strategy, the Project Applicant shall provide building plans that include the following water conservation measures:

- Install low-water use appliances and fixtures
- Restrict the use of water for cleaning outdoor surfaces and prohibit systems that apply water to non-vegetated surfaces

- Implement water-sensitive urban design practices in new construction
- Install rainwater collection systems where feasible
- Consider the use of artificial turf where feasible
- The Project's landscape plan shall emphasize drought-tolerant plants and use water-efficient irrigation techniques.
- All fixtures installed in restrooms and employee break areas shall be U.S. Environmental Protection Agency (EPA) WaterSense certified or equivalent.

## Section 4.14, Utilities and Service Systems

p. 4.14-3 Revised text as follows:

### Water Infrastructure

Liberty Utilities' existing water distribution system includes approximately 475 miles of underground pipelines. The Project site is proposed to be annexed into Liberty Utilities service area to supply water for all phases of the Project. Potable water would be conveyed to the Project site via pipelines that would be extended from existing 8-inch pipelines located at Ohna Road and Saugus Road~~. A new~~ via a 16-inch main that would be installed along Apple Valley Road as approved for the Apple Valley 143 Project[2], and new 8-inch pipelines would be installed along Falchion Road and Norco Road with points of connection to the buildings. Backflow valves and meters would be installed at the points of connection. Fire water would be provided to the Project site via the 8-inch mains along Norco Road, Apple Valley Road and Falchion Road along the Project frontage.

[2] Apple Valley 143 Project EIR (SCH No. 2022070019) was considered and certified and Project entitlements with conditions of approval were approved by the Apple Valley Planning Commission on November 15, 2023. The Apple Valley 143 Project EIR fully analyzed the environmental effects of "off-site improvements" inclusive of utility improvements. The Apple Valley 143 Project EIR can be found at https://www.applevalley.org/services/planning-division/environmental.

INTENTIONALLY LEFT BLANK

# 3 Response to Comments

This chapter includes a summary of the comment letters that were submitted during the public review period for the Inland Empire North Logistics Center Apple Valley (IENLC) Draft EIR, along with written responses to all comments in accordance with California Public Resources Code Sections 21091, 21092.5 and CEQA Guidelines Section 15088. Copies of all comment letters that were submitted during the public review period for the Draft EIR are in Appendix A[1].

The 45-day review period for the Draft EIR began on September 30, 2024, and ended on November 13, 2024. An electronic copy of the Draft EIR was submitted to the State Clearinghouse. A Notice of Availability of the Draft EIR was sent to all requesting agencies and interested parties. The Draft EIR was made available and accessible for public review on the Town's website and at the Apple Valley Town Hall, Planning Department (14955 Dale Evans Parkway, Apple Valley, California 92307). Hard copies of the Draft EIR were also available at the San Bernardino County Library (14901 Dale Evans Parkway, Apple Valley, California 92307).

The responses amplify or clarify information provided in the Draft EIR and/or refer the reader to the appropriate place in the Draft EIR where the requested information can be found. Comments that are not directly related to environmental issues (e.g., opinions on the merits of the Project unrelated to its environmental impacts) are noted for the record. Where text changes in the Draft EIR are warranted based on comments received, updated Project information, or other information provided by Town staff, those changes are noted in the response to comment and the reader is directed to Chapter 2, Changes to the Draft EIR, of this Final EIR.

Any changes to the analysis contained in the Draft EIR represent only minor clarifications/amplifications and do not constitute significant new information. In accordance with California Public Resources Code Section 21092.1 and CEQA Guidelines Section 15088.5, recirculation of the Draft EIR is not required.

## 3.1 List of Comment Letters Received

All written comments on the Draft EIR are listed in Table 3-1. All comment letters received on the Draft EIR have been coded with a number to facilitate identification and tracking. The comment letters were reviewed and divided into individual comments, with each comment containing a single theme, issue, or concern. Individual comments and the responses to them were assigned corresponding numbers (e.g., 01-1, 01-2, 01-3). To aid readers and commenters, electronically bracketed comment letters have been reproduced in this document and are included as Appendix A; the corresponding responses are provided below in Section 3.2, Comments and Responses. Due to regulations regarding tribal cultural resources, comment letters received from tribes are included in Confidential Appendix B.

During the public review period, the Town received twelve timely comment letters on the Draft EIR; two comment letters were received after the close of the public review period. One comment letter was received from a state agency, one letter from a regional agency, one letter from a local agency, five letters were received from Native

[1] There were two letters received after the expiration of the 45-day review period. Those letters are noted in Table 3-1. California Public Resources Code Section 21091(d)(1) only requires a written response to comments received during the public review period. However, as a courtesy to the commenters, responses to these late comments are provided.

American Tribes and the remaining six letters were received from the public (please see **Error! Reference source not found.**).

### Table 3-1. Comments Received on the Draft EIR

| Comment Letter | Commenter | Date |
|---|---|---|
| 1 | Agua Caliente Band of Cahuilla Indians (Confidential) | September 30, 2024 |
| 2 | Gabrielino Tongva Indians of California (Confidential) | September 30, 2024 |
| 3 | Ft. Yuma Quechan Indian Tribe (Confidential) | October 3, 2024 |
| 4 | San Bernardino County Department of Public Works | October 10, 2024[1] |
| 5 | Adams Broadwell Joseph and Cardozo on behalf of Californians Allied for a Responsible Economy (CARE CA) | October 11, 2024 |
| 6 | Advocates for the Environment | October 14, 2024 |
| 7 | Agua Caliente Band of Cahuilla Indians (Confidential) | October 16, 2024 |
| 8 | Blum, Collins & Ho LLP on behalf of Golden State Environmental Justice Alliance | November 11, 2024 |
| 9 | California Department of Fish and Wildlife (CDFW) | November 12, 2024 |
| 10 | Adams Broadwell Josephy and Cardozo on behalf of CARE CA | November 13, 2024 |
| 11 | Morongo Band of Mission Indians (Confidential) | November 22, 2024[2] |
| 12 | Mojave Desert Air Quality Management District (MDAQMD) | November 6, 2024[3] |
| 13 | Adams Broadwell Josephy and Cardozo on behalf of CARE CA | October 10, 2024 |
| 14 | Adams Broadwell Josephy and Cardozo on behalf of CARE CA | October 10, 2024 |

**Notes:**

1 Non-substantive acknowledgements and pleasantries were removed from this emailed comment.

2 Comment letter was received by the Town after the public response period end date of November 13, 2024, however, a response is included in the response to comments as a courtesy to the commenter.

3 This comment letter was dated November 6th but was not received by the Town until November 25th.

## 3.2 Comments and Responses

Each comment letter is included in Appendix A, Public Comment Letters, of this Final EIR. This section includes responses to the comments. As indicated above, California Public Resources Code Section 21091 and CEQA Guidelines Section 15088(a) require a lead agency to evaluate comments on environmental issues and provide written responses to those comments that raise significant environmental issues. Therefore, the focus of these written responses to comments is to review, discuss and provide a disposition on those comments raising significant environmental issues (CEQA Guidelines section 15204[a]). Changes that have been made to the Draft EIR text based on these comments and responses are provided in Chapter 2, Changes to the Draft Environmental Impact Report, of this document.

# Response to Comment Letter 1

**Agua Caliente Band of Cahuilla Indians**
**September 30, 2024**

**01-1** The Town received five distinct comments from tribal governments, however, to maintain tribal confidentiality of tribal cultural resources, the following summary includes the comments received from all tribes with the intent of providing a full and complete record as required by CEQA. Of the five comment letters received from tribal governments, four asserted the project was either not within the tribe's historical use area or they had no comment, and three comment letters deferred comments to other tribes. One tribe requested revisions to the mitigation measures related to cultural resources and tribal cultural resources. Revisions have been made to certain mitigation measures to incorporate provisions not previously included, however no new mitigation measures were incorporated as similar mitigation measures to those requested were already incorporated into the Draft EIR. The Town acknowledges the comments and notes that they do not raise new or additional environmental issues concerning the adequacy of the Draft EIR. No further response is required or provided.

# Response to Comment Letter 2

**Gabrielino Tongva Indians of California**
**September 30, 2024**

**02-1** The Town received five distinct comments from tribal governments, however, to maintain tribal confidentiality of tribal cultural resources, the following summary includes the comments received from all tribes with the intent of providing a full and complete record as required by CEQA._Of the five comment letters received from tribal governments, four asserted the project was either not within the tribe's historical use area or they had no comment, and three comment letters deferred comments to other tribes. One tribe requested revisions to the mitigation measures related to cultural resources and tribal cultural resources. Revisions have been made to certain mitigation measures to incorporate provisions not previously included, however no new mitigation measures were incorporated as similar mitigation measures to those requested were already incorporated into the Draft EIR. The Town acknowledges the comments and notes that they do not raise new or additional environmental issues concerning the adequacy of the Draft EIR. No further response is required or provided.

# Response to Comment Letter 3

**Ft. Yuma Quechan Indian Tribe**
**October 3, 2024**

**03-1** The Town received five distinct comments from tribal governments, however, to maintain tribal confidentiality of tribal cultural resources, the following summary includes the comments received from all tribes with the intent of providing a full and complete record as required by CEQA. Of the five comment letters received from tribal governments, four asserted the project was either not within the tribe's historical use area or they had no comment, and three comment letters deferred comments to other tribes. One tribe requested revisions to the mitigation measures related to cultural resources and tribal cultural resources. Revisions have been made to certain mitigation measures to incorporate provisions not previously included, however no new mitigation measures were incorporated as similar mitigation measures to those requested were already incorporated into the Draft EIR. The Town acknowledges the comments and notes that they do not raise new or additional environmental issues concerning the adequacy of the Draft EIR. No further response is required or provided.

# Response to Comment Letter 4

**San Bernardino County Department of Public Works[2]**
**October 10, 2024**

**04-1** The comment requests that the Draft EIR's traffic study to be submitted to the San Bernardino County (County). The comment provides submittal information.

The comment restates that the Draft EIR's traffic study shows an impact on Stoddard Wells Road and Victorville Quarry Road and informs the Town that the roads impacted are both San Bernardino County maintained roads. Additionally, the comment states that Victorville Quarry Road at Interstate-15 (I-15) Southbound Ramps are also San Bernardino County and Caltrans maintained roads. The comment states that the County requires a review of the traffic study, and payment of review fees, to determine the impacts to County maintained intersections. The project proponent has submitted the traffic impact study to the County of San Bernardino Public works and has paid the necessary fees for the County's review of the study.

**04-2** The County has reviewed and accepted the project traffic impact study and has recommended the Town include a Condition of Approval, as described below, to address LOS impacts at the Stoddard Wells Road and Quarry Road intersection.

Engineering COA Prior to issuance of Certificate of Occupancy, Project Applicant shall coordinate with the San Bernardino County Public Works Department to facilitate the following:

1. Improvements

   The applicant shall design their street improvement plans to include the following as recommended per the traffic study:

   - Stoddard Wells Road at Quarry Road
     - A traffic signal is required at the intersection of Stoddard Wells Road and Quarry Road.
     - Road Dedication: Provide adequate dedication for the installation of the traffic signal
     - Reconfigure Intersection:
       - Eastbound approach: widen and configure Stoddard Wells Road to add left turn lane from Stoddard Wells Road to Quarry Road (250 feet long + a 120-foot transition) and maintain the existing lane as a through lane. Provide eastbound left turn protected phasing.
       - Westbound approach: widen and configure Stoddard Wells Road to add a right turn lane from Stoddard Wells Road to Quarry Road with a receiving lane and maintain the existing lane as a through lane.
       - Southbound approach: widen and configure Quarry Road to add a right turn lane (250-feet long + 120-foot transition) and maintain the existing lane as a left lane. Provide southbound left turn protected phasing.

[2] Non-substantive acknowledgements and pleasantries were removed from this emailed comment.

2. The applicant shall construct, at 100% cost to the applicant all roadway improvements as shown on their approved street improvement plans. This shall include any software and/or hardware to implement the approved signal coordination plan.

   The Draft EIR's traffic impact study correctly identifies the Stoddard Wells Road and Victorville Quarry Road intersection would be impacted in a cumulative plus project scenario (please see Draft EIR Appendix J, pp, 4-7). The traffic impact study identifies as a "project specific mitigation" to install a traffic signal and widen the eastbound, westbound, and southbound approaches to accommodate new turn lanes at this intersection. However, the Draft EIR did not identify any significant transportation-related impacts requiring mitigation. Pursuant to SB 743 and CEQA Guidelines Section 15064.3, congestion-based LOS effects may no longer be used to evaluate a Project's transportation impact. Accordingly, the Draft EIR relies on VMT as the basis for evaluating transportation impacts under CEQA. Under SB 743, local agencies were allowed to retain their congestion-based LOS standards in general plans and for project planning purposes. The Transportation Impact Analysis (TIA) (please see Appendix J of the Draft EIR) was not prepared solely for the purposes of environmental review under CEQA (although portions of the reports were used to assist in the environmental review of the Project). Rather, the TIA was also prepared to evaluate congestion-based LOS effects as required by the Town's Development Title standards.

   Off-site roadway improvements recommended in the reports have been made part of the Town's conditions of approval for the Project and therefore would be required to be implemented as part of the Project. To ensure improvements are made as indicated in the traffic impact study, the following condition of approval (COA) will be applied by the Town.

   The project proponent is coordinating with the County to ensure that impacts to the County's roadways do not result in a significant adverse effect. The comment does not raise new or additional environmental issues concerning the adequacy of the Draft EIR. No further response is required or provided.

# Response to Comment Letter 5

**Sheila M. Sannadan**
**Adams Broadwell Joseph and Cardozo**
**on behalf of**
**Californians Allied for a Responsible Economy (CARE CA)**
**October 11, 2024**

**05-1** The comment states that the letter is provided on behalf of CARE CA. The comment requests access to the referenced documents included in the Draft EIR. The comment also restates information contained in the Draft EIR and does not raise an issue related to the adequacy of any specific section or analysis of the Draft EIR.

**05-2** The comment restates their requests for access to all referenced documents included in the Draft EIR. A response to the request for documents was sent on October 17, 2024, and the response included a Sharefile link for the commenter to access the documents.

**05-3** The Town acknowledges the comment and notes it provides concluding remarks and contact information that do not raise new or additional environmental issues concerning the adequacy of the Draft EIR. Therefore, no further response is required or provided.

# Response to Comment Letter 6

**Advocates for the Environment**
**October 14, 2024**

**06-1** The comment summarizes the Project and states that the comments are being submitted regarding the sufficiency of the Draft EIR's greenhouse gas (GHG) analysis. The Town acknowledges the comment as an introduction to comments that follow and restates the Draft EIR's project description. No further response is required.

**06-2** The comment states that the Town should adopt a net-zero GHG significance threshold for the Project. The comment references two large housing projects (Newhall Ranch and Centennial) in which net-zero thresholds were applied and urges the Town adopt a net-zero GHG threshold.

As described in the Draft EIR (please see pp. 4.6-20 through 4.6-21), while the Town has not yet adopted a numeric significance threshold for determining significant impacts associated with GHG emissions, it relied on use of the 3,000 MT $CO_2e$ per year threshold to evaluate the potential for the Project to result in a significant GHG impact under CEQA because it has been recommended by the South Coast Air quality Management District (SCAQMD) (SCAQMD 2008). SCAQMD is the expert agency for the Southern California region for air quality and GHG issues, and the SCAQMD threshold is more stringent than the Mojave Desert Air Quality Management District (MDAQMD) GHG threshold (SCAQMD 2008, MDAQMD 2020). Further, the SCAQMD provides substantial evidence that the thresholds are consistent with policy goals and 2050 GHG emissions reduction targets set by the state. Specifically, the thresholds were set at levels that capture 90% of the GHG emissions form the above-described uses, consistent with Executive Order S-3-05 target of reducing GHGs to 80% below 1990 levels by 2050.

The Town rejects the comment's suggestion to apply a net-zero threshold for this Project because it finds that its use of SCAQMD's threshold is appropriate and supported by substantial evidence. While application of a net-zero threshold may be appropriate for residential projects, it is not appropriate to apply such a threshold to warehouse projects where the vast majority of operational GHG emissions result from mobile-source emissions, as discussed in more detail below. The Town finds it is not currently feasible to entirely mitigate the Project's mobile-source GHG emissions due to current jurisdictional and technological constraints. Nonetheless, the Town will impose Project conditions of approval and require all feasible mitigation measures to reduce the Project's GHG emissions to the maximum extent practicable and anticipates that the Project's GHG emissions will reduce over time as more stringent regulations come into effect and technology improves and becomes more widespread. Specifically, mitigation measure MM-AQ-1 requires the inclusion of additional electrical infrastructure (conduits, upsized electric room, construct roof to support maximum solar coverages, etc.) for future electrical upgrades to ensure the Project is able to support future technological and regulatory requirements.

With regards to the residential projects referenced by the comment (Newhall Ranch and Tejon Ranch projects) the 2022 California Air Resources Board (CARB) Scoping Plan notes that ". . . 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 . . .". Further, the 2017 CARB Scoping Plan and the 2022 CARB Scoping Plan both caution against using net-zero targets for all projects. According to the 2017 Scoping Plan (CARB 2017):

> "Achieving net zero increases in GHG emissions, resulting in no contribution to GHG impacts, may not be feasible or appropriate for every project, however, and the inability of a project to mitigate its GHG emissions to net zero does not imply the project results in a substantial contribution to the cumulatively significant environmental impact of climate change under CEQA."

The 2022 Scoping Plan also 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 of the 2022 Scoping Plan states (CARB 2022):

> "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."

For these reasons, along with others, net-zero is not legally required and is not technologically or financially feasible for this project given supply and technical constraints.

**06-3** The comment states that the Draft EIR does not provide evidence that there are no further feasible mitigation measures available to reduce GHG emissions other than the identified MM-GHG-1, MM-GHG-2, and MM-AQ-2, and that more mitigation measures to reduce GHG emissions should have been included. Please see response 08-40, response 10-14 through 10-17, and response 10-32 which evaluate additional suggested mitigation measures for feasibility to determine if any would be applicable for the Project to implement, including measures that pertain to on-road vehicles. The Town has carefully reviewed the comments and information suggesting additional mitigation measures, and the Town has clarified and provided additional modifications to Project mitigation measures MM-AQ-1, MM-GHG-1 and MM-GHG-2 (please see Chapter 2, Changes to the Draft Environment Impact Report, of this Final EIR).

**06-4** The comment states that the Draft EIR improperly defers mitigation measures. Please see response 08-40 and response 10-14 through 10-17 regarding feasibility of additional mitigation measures and updates to existing mitigation measures, including MM-GHG-1, which the comment references as lacking performance standards and enforceable benefits.

**06-5** The comment states MM-GHG-1 is ineffective and insufficient as mitigation for the Project's impacts to GHG emissions. The comment states that MM-GHG-1 lacks performance standards, and states that the provision of information on energy efficiency, energy-efficient lighting and lighting control systems, energy management, and existing energy incentive programs is unlikely to contribute to emissions reductions. The Project has been designed to meet the Town's development standards and current state building requirements under Title 24 which are intended to reduce energy consumption. Please see response 08-7 for an evaluation of Title 24 compliance. Please see also response 08-40, response10-14 through 10-17, and response 10-32, which evaluate additional suggested mitigation

measures for feasibility to determine if any would be applicable for the Project to implement, including measures that pertain to non-mobile sources.

> It should also be noted that the emissions reported in Section 4.6 of the Draft EIR are considered conservative because they rely on limited energy consumption and emissions rates and do not account for all the benefits derived from the latest technological advancements or regulations. The CalEEMod emission factors incorporate compliance with some but not all applicable rules and regulations regarding energy efficiency and other GHG reduction policies as described in the CalEEMod User's Guide (CAPCOA 2022).

06-6 The comment states that the conclusion that the Project will not be able to achieve any mitigation beyond the proposed mitigation measures is not supported with substantial evidence by citing the absence of mobile source mitigation measures in the Draft EIR. The comment states there are options available to mitigate the full extent of Project emissions, noting several mitigation measures addressing mobile sources of GHG emissions are available, such as the Town requiring vehicle fleets to use alternative fuels that emit fewer GHGs, include provisions in lease agreements limiting the use of non-diesel fuels, and requiring the Applicant to enter a contract with future tenants to use zero-emission commercial vehicles whenever reasonably available.

CEQA defines the term feasible, in the context of mitigation measures, as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors." Please see California Public Resources Code Section 21061.1. The CEQA Guidelines expand on the concept of feasible by, notably, including the term "legal" as one of the required factors for consideration. Please see CEQA Guidelines Section 15364. For the responses discussed herein, many of the suggested mitigation measures put forth in this comment letter are not, for various reasons, remotely or otherwise feasible for this project. CEQA Guidelines Section 15091 includes language authorizing a lead agency to certify an EIR which identifies one or more significant environmental effects if the lead agency finds that "specific economic, legal, social, technological, or other considerations . . . make infeasible the mitigation measures or project alternatives identified in the [Final Environmental Impact Report]." Please see CEQA Guidelines Section 15091(a)(3).

Although alternative fuel trucks such as all-electric trucks may be physically available, albeit not in sufficient quantity, there are further economic and infrastructure related constraints that make including such a requirement proposed by the commenter—mandating the Applicant use alternative fuel vehicles, the most common of which is electricity for heavy-duty trucks, and to require the Applicant to enter a contract constricting future tenants to solely electric vehicles—wholly infeasible today, and likely well into the future. Based on current conditions the following make this requirement infeasible: (1) insufficient electric grid capacity, (2) logistics barriers, (3) alternative fuel trucks and particularly zero-emission trucks are cost prohibitive due to limited supplies, and (4) sourcing material is scarce and causes environmental effects. These factors are discussed in greater detail below.

The first major issue that makes requiring all trucks accessing the Project site to be zero-emissions infeasible, is that there is not enough electrical grid power to sustainably charge heavy-duty trucks. For example, one trucking company tried to electrify 30 trucks at a terminal in Joliet, Illinois. Shortly after this plan began, local officials shut it down, commenting that it would draw more electricity than is needed to power the entire city (ATA 2023). In a May 2023 report by Resources for the Future, titled Medium- and Heavy-Duty Vehicle Electrification: Challenges, Policy Solutions, and Open Research

Questions, the report states that medium- and heavy-duty electric vehicle (MHDEV) charging (which may exceed several megawatts [MWs] of electricity demand for large fleets) could destabilize electricity distribution systems (RFF 2023). Therefore, significant investments into the grid, transmission system, and generation capacity are required (RFF 2023). If the Town were to mandate every truck entering the facility to be zero-emissions, and momentarily forgetting the issue of if the power grid can even feasibly supply the necessary power for those trucks, such a requirement would, at a minimum, put a significant strain on California's power grid; one the grid cannot handle in the short-term, much less sustain in the long run.

Not only can local and state electrical infrastructure not sustain fully electric trucks, the logistical and operational barriers of using such trucks is also extremely prohibitive. To gain widespread use, MHDEVs must be comparable to diesel vehicles in model options, range, recharge time, payloads, and maintenance (RFF 2023). However, MHDEVs generally have ranges below 200 miles, versus more than 1,000 miles for diesel vehicles (RFF 2023). Additionally recharge times are substantially longer than diesel refueling. For example, a diesel truck can spend 15 minutes fueling anywhere in the country and then travel about 1,200 miles before fueling again (ATA 2023). In contrast, today's long-haul battery electric trucks have a range of about 150–330 miles and can take up to 10 hours to charge (ATA 2023).

Moreover, fleets without a charging depot will need to rely on public charging stations with heavy duty truck charging capacity, which are not widely available at this time. For all practical intents and purposes, a significant investment must first be made before widespread public charging of long-haul battery powered trucks is feasible (RFF 2023). Lastly, the weight of MHDEVs is also a significant issue that will lead to increased operational barriers. Battery-electric trucks, which run on two approximately 8,000-pound lithium-ion batteries, are far heavier than diesel trucks (ATA 2023). Because trucks are subject to strict federal and state weight limits, as seen by weighing stations throughout California and the United States, requiring zero-emission battery electric trucks will significantly decrease the payload of each truck, thus requiring more trucks to be on the road leading to increased wear and tear on roads, additional impacts to circulation infrastructure, traffic congestion and tailpipe emissions (ATA 2023).

In addition to the barriers described above, zero-emission trucks are currently cost prohibitive for most fleet owners. A new, clean-diesel long-haul truck typically costs between $180,000 to $200,000 (ATA 2023). Meanwhile, a comparable battery-electric truck with a quarter of the range and thus requiring frequent and long hours of charging—costs upwards of $480,000 (ATA 2023). This $300,000 upcharge is cost prohibitive for the overwhelming majority of truck operators/companies and as more than 95% of trucking companies are small businesses operating ten (10) trucks or fewer (ATA 2023). Enacting the agreement requested by the comment would push many truck carriers out of business, tighten capacity, and potentially cause severe price inflation for all goods (ATA 2023). As stated previously, many small trucking businesses would be required to seek out and use, if it is possible to use them, public charging stations which are not widely available (CCJ 2023). The additional time and mileage required to locate a suitable public charging station (again, assuming one exists) would add additional commute miles to a haul route, causing additional impacts in terms of time, miles traveled, and potentially accelerating the degradation of streets, highways and other critical infrastructure.

Finally, there is a significant constraint in identifying and utilizing known sources to supply the needed raw minerals to produce the lithium-ion batteries used in zero-emission trucks[3]. For example, tens of millions of tons of cobalt, graphite, lithium, and nickel would need to be produced (ATA 2023). It is estimated that it could take up to 35 years to acquire all the minerals needed to generate enough truck batteries for current levels of global production (ATA 2023). Additionally, expanding capacity and sourcing this amount of material creates its own set of potentially significant environmental effects, that in some respects could exceed the emissions of current clean-diesel trucks (ATA 2023).

Although no one is certain, it is estimated that it would take several decades to reach a point where zero-emission trucks are fully feasible. This is illustrated by CARB's own lofty goals, to require all trucks entering a California port to be zero-emission by 2035, and for 'last-mile' delivery trucks and vans to be zero-emission by 2040 (CARB 2020). By setting these dates, which are 12 and 17 years in the future, CARB is acknowledging that current infrastructure and costs make requiring exclusively zero-emission trucks infeasible in the next decade. Even then, without immediate and significant investments in public charging, modifications to and improvements in battery size, improvements to battery material sourcing, increases in battery range, and upgrades and improvements to electric grid capacity meeting the goals set by CARB is both aspirational and questionable from a feasibility standpoint.

Based on the response above, all feasible mitigation has been incorporated into the Project as it pertains to heavy-duty trucks. Please see also response 08-40, responses 10-14 through 10-17, and response 10-32, which evaluate additional suggested mitigation measures for feasibility to determine if any would be applicable for the Project to implement, including measures that pertain to non-mobile sources. This comment is noted and forwarded to the decision-makers for their consideration; however, the EIR's analysis is adequate as provided and no further response is required.

06-7 The comment states that the Project is required by CEQA to include fair-share mitigation for all significant cumulative impacts, and the Draft EIR does not provide substantial evidence to support the conclusion that additional feasible mitigation measures are not available.

The comment further states that the lifespan of the Project is approximately 30 years as indicated by the amortization of construction emissions and the Project would likely contribute over 2 million MT $CO_2e$ during its lifespan and suggests subtracting the effect of additional non-offset mitigation measures before implementing offset purchases. The potential lifetime GHG emissions of the Project provides factual information but does not raise an environmental issue within the meaning of CEQA. Please see also response 08-40, response 10-14 through 10-17, and response 10-32 regarding feasibility of additional mitigation measures.

Finally, it is important to note that an individual land use project's fair-share does not necessarily include everything that will need to happen in order to achieve the state's long-term goals, but rather that "projects should focus on aspects within the scope of their design and control that contribute [the Project's] 'fair-share' of what is needed to attain state goals" (BAAQMD 2022). The Project already includes a robust suite of measures within its design and control that would reduce Project-specific GHGs, and with revisions to Project mitigation measures described in response 08-40, the Town has

[3] By way of example, projects like the Rhyolite Ridge lithium mine in Nevada, the Thacker Pass mine in Nevada, the Big Sandy River lithium project in Arizona and the Green River lithium mine project in Utah are all currently facing litigation or other legal challenges to the exploration for and mining of lithium.

determined that all feasible measures have been incorporated into the Final EIR and that the Project is doing its fair-share to minimize Project-generated GHGs.

06-8 The comment states the Town could also require the Applicant to purchase offsets for the Project's remaining GHG emissions, after requiring operational emissions reductions to the maximum extent feasible. The comment asserts there is no evidence is provided for why offsets would be infeasible.

Although it is possible to purchase carbon offsets, recent Court of Appeal decisions have cast considerable doubt on the use of such offsets to mitigate GHG impacts from development projects. In *Golden Door Properties, LLC v. County of San Diego* (2020) (*Golden Door*) 50 Cal.App.5th 467, the Court of Appeal invalidated a mitigation measure that required the purchase of offsets from a "CARB-approved registry, such as the Climate Action Reserve, the American Carbon Registry, and the Verified Carbon Standard." (Id. at 510.) Although the court insisted its decision "should not be construed as blanket prohibition on using carbon offsets" to mitigate GHG emissions under CEQA, it found numerous flaws with the measure at issue and failed to provide a clear roadmap for how to craft a similar valid measure. The court also declined to express an opinion on a number of issues, including whether offsets could potentially be used to mitigate more than 8% of a project's emissions and the extent to which out-of-county offsets could be used. (Id. at 503, 513, n. 27.) Subsequent to *Golden Door* (and within the last year), another measure requiring the purchase of offsets was similarly found to be invalid in an unpublished Court of Appeal decision, with the court finding the measure's inclusion of additional standards for offsets did "not cure the defects found in *Golden Door*." (*Sierra Club v. County of San Diego* (Dec. 21, 2021, No. D077548) 2021 WL 6050624, at *11.) In light of such uncertainty, the Town finds that carbon offsets are not an effective, legally sufficient and feasible method for mitigating the Project's GHG emissions.

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[4]. They may also purchase certain approved offsets to fulfill up to 8% of their compliance obligation. (please see *Golden Door* at 485.) Given that more than 95% of the emissions attributable to the Project are covered under the Cap-and-Trade program and thus are already subject to a regulatory program that includes offsets, the Town finds it would be inappropriate and infeasible to use offsets to mitigate such emissions. Rather, the Town is focusing on those feasible mitigation measures that are designed to reduce the Project-specific emissions.

Indeed, the court's decision in *Golden Door* and other cases make clear that the purchase of offsets is not a substitute for avoiding emissions and that measures that result in actual reductions in emissions from a development project are preferable to attempting to offset emissions via offsets. Thus, the Draft EIR requires the Project implement feasible mitigation measures designed to specifically address, and, where feasible and possible, reduce the Project's GHG emissions. Furthermore, the Town has carefully reviewed the comments and information suggesting additional mitigation measures, and the Town has

[4] FAQ for Fuel Purchasers: https://ww2.arb.ca.gov/sites/default/files/cap-and-trade/guidance/faq_fuel_purchasers.pdf

clarified and provided additional modifications to Project mitigation measures MM-AQ-1, MM-GHG-1 and MM-GHG-2(please see Chapter 2, Changes to the Draft Environment Impact Report, of this Final EIR).

With the revisions to existing Project mitigation measures described above, the Town has determined that all feasible measures have been incorporated into the Final EIR. While the modified mitigation measures will affect the Project emissions, quantification of reductions due to modified mitigation measures is not currently feasible, Nevertheless the Project would still result in a net increase in GHG emissions as compared to existing conditions, and the Project's contribution to cumulative GHG impacts remains significant and unavoidable.

06-9 The comment provides concluding remarks and reiterates comments made earlier (please see responses 06-2 through 06-8) that the Draft EIR does not include all feasible mitigation measures to reduce GHG emissions and has not demonstrated why other measures are infeasible. The comment also requests to receive notices of Project updates pursuant to Public Resources Code Section 21092.2. The commenter has been added to the distribution list for the Project to receive notices regarding hearings and/or actions related to the Project.

# Response to Comment Letter 7

**Agua Caliente Band of Cahuilla Indians**
**October 16, 2024**

**07-1** The Town received five distinct comments from tribal governments, however, to maintain tribal confidentiality of tribal cultural resources, the following summary includes the comments received from all tribes with the intent of providing a full and complete record as required by CEQA. Of the five comment letters received from tribal governments, four asserted the project was either not within the tribe's historical use area or they had no comment, and three comment letters deferred comments to other tribes. One tribe requested revisions to the mitigation measures related to cultural resources and tribal cultural resources. Revisions have been made to certain mitigation measures to incorporate provisions not previously included, however no new mitigation measures were incorporated as similar mitigation measures to those requested were already incorporated into the Draft EIR. The Town acknowledges the comments and notes that they do not raise new or additional environmental issues concerning the adequacy of the Draft EIR. No further response is required or provided.

# Response to Comment Letter 8

**Blum, Collins & Ho LLP on behalf of**
**Golden State Environmental Justice Alliance**
**November 11, 2024**

**08-1** The comment notes that the comment letter has been submitted on behalf of Golden State Environmental Justice Alliance. Additionally, the comment requests that Golden State Environmental Justice Alliance be added to the public interest list for the Project. The Town has added the commenter to the public interest list for the Project and the commenter shall receive copies of environmental documents and public notices for the Project. This comment does not raise any substantive issues with the adequacy of the EIR or raise any other CEQA issues; therefore, no further response is required or provided.

**08-2** This comment summarizes the proposed Project and does not identify specific areas where the EIR is inadequate or raise any other CEQA issues; therefore, no response is required.

**08-3** This comment summarizes the discretionary actions required to implement the proposed Project and does not identify specific areas where the EIR is inadequate or raise any other CEQA issues; therefore, no response is required.

**08-4** The comment expresses concern that detailed plans were not provided as part of the Draft EIR and states that there is no way for the public to verify information concerning grading plans and proposed earthwork quantities.

The Draft EIR included an appropriate level of detail based on then-available data and plans. As required under the CEQA Guidelines Section 15124, an EIR must provide a "general description of the project's technical, economic, and environmental characteristics." CEQA Guidelines Section 15124 further states that a project description "should not supply extensive detail beyond that needed for evaluation and review of the environmental impact" of a proposed project. Importantly, there is no affirmative requirement or mandate in CEQA that a project reach a particular level of design before the CEQA review process begins. As long as the requirements set forth in CEQA Guidelines Section 15124 are met, the Project Description may allow for the flexibility needed to respond to changing conditions that could impact the Project's final design.

Information on the content of the site plan, floor plan and grading plans is provided within the Project Description of the Draft EIR in compliance with CEQA. (please see *South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321, 333 [holding that design renderings were not required to be included as part of EIR for purposes of providing an adequate project description]).

The Draft EIR evaluates direct and indirect environmental impacts associated with the total Project area of disturbance in addition to impacts attributed to future Project construction and operation. The details required for understanding and evaluation of the Project's potential impacts are identified in Chapter 3, Project Description and include site plans, building heights, landscaping, lighting, building materials, and construction assumptions provided by the Project Applicant and its team of expert advisors. All plans are available at the Town for public review. The Town staff will verify all Project details (i.e., earthwork quantities, floor area ratio and compliance with development standards) as part of the plan check process

prior to issuing any development permits. The comment does not provide any substantial evidence concerning the adequacy of the analysis. Therefore, no further response is required.

Additionally, the comment expresses concern regarding the proposed Project's off-site improvements for utilities, including water and sewer. The comment restates the Project's off-site improvement plan and states that the off-site improvement plan is not shown on Figure 3-2. The utility infrastructure improvements described in the Draft EIR Section 4.14 are inclusive of improvements approved for and conditioned for the development of the Apple Valley 143 Project. The Apple Valley 143 Project is located approximately 1 mile north of the proposed Project site at Stoddard Wells Road and I-15, and is conditioned to install water and sewer infrastructure as well as make specific road improvements that would be accessed by the proposed Project. Construction of the Apple Valley 143 Project commenced in 2024. The environmental effects of off-site utility improvements were fully analyzed in the Apple Valley 143 Project EIR[5] (Town of Apple Valley 2023). As discussed in the Draft EIR, Section 4.13, Utilities and Service Systems p. 4.13-3, upon annexation into the Liberty Utilities service district the Project will connect to water and sewer infrastructure within the disturbance area identified in Figure 3-8.

**08-5** The comment expresses concern that transportation impacts are providing inaccurate modeling in regards to the Draft EIR stating the end user has not been identified and would not be a high cube fulfillment facility. As stated in the Draft EIR, in order to evaluate a realistic future use and to ensure a representative range of the potential warehouse types an average of all warehouse types excluding "high-cube – sort" was utilized. High-cube sort is the most intensive type of warehouse and is not anticipated as a future use of the Project. The average rate covers other warehouse types including general warehouse, high-cube non-sort, high-cube parcel hub and short-term storage which represent two-thirds of warehouse types with Institute of Transportation Engineers (ITE) classifications and a broad range of tenant types. If approved, the Project would be prohibited from being used for a different or more intensive use without further environmental review in compliance with CEQA Guidelines Section 15162. Overall, the comment has not provided any substantial evidence to demonstrate that the analyzed mix of warehouse types is either inappropriate or inaccurate. Therefore, no revisions are required, and no further response is necessary.

**08-6** The comment states that the EIR does not include meaningful analysis of relevant environmental justice issues in evaluating potential air quality impacts, including cumulative impacts. The comment states this is particularly important due to the Project site's location in an area that is burdened by existing levels of air pollution, as indicated by CalEnviroScreen.

There is no affirmative requirement under CEQA to consider issues of environmental justice. Moreover, there are no measures or benchmarks that can be utilized to quantitatively assess a single project's impacts on an area's CalEnviroScreen score. Neither the Town, the MDAQMD, nor the CEQA Guidelines include thresholds that consider environmental justice such as the CalEnviroScreen results, but rather account for the potential health effects of a project with project-level thresholds. There is currently no air quality guidance or thresholds to analyze areas with higher pollution levels differently from areas with lower pollution. While CalEnviroScreen is a useful tool in assessing a community's risk, it is not an appropriate tool for evaluating a project's impact on the environment as required under CEQA.

[5] Apple Valley 143 Project EIR (SCH No. 2022070019) was considered and certified and Project entitlements with conditions of approval were approved by the Apple Valley Planning Commission on November 15, 2023.

To assess the quantifiable and measurable potential for the Project to create a health risk, construction and operation health risk assessments were prepared for the Project and incorporated into the EIR (as described in Section 4.2 of the Draft EIR; Draft EIR Appendix B2, Heath Risk Assessment. The Project's health risk assessments determined that the incremental increase in potential cancer and non-cancer health risk impacts with regard to sensitive receptors in the vicinity of the Project and haul routes was less than significant (Draft EIR pp. 4.2-38 to 4.2-39). As described in Chapter 3, Project Description (p. 3-7), operational trucks would utilize designated Truck Routes, also called Haul Routes, which largely avoid residential and commercial areas as shown in Draft EIR Figure 4.13-2, Designated Truck Routes.

The comment states that the Project is located in a census tract that has a high percentage of solid waste facilities that can expose people to hazardous chemicals. These existing sources of potential pollutants are not relevant to the analysis of this Project's impacts nor are they related to the Project. As discussed in Section 4.7 of the Draft EIR, Hazards and Hazardous Materials a Phase I Environmental Site Assessment was completed for the Project and did not identify the Project site as being listed on any government databases (i.e., Historic Cortese List, State/Tribal Voluntary Cleanup Sites, etc.) pertaining to the storage and disposal of petroleum products and presence of existing hazardous materials/hazardous waste that could pose a risk to off-site residences. It is important to note that the Project does not include any residential uses where people typically spend more time and is actually located in an area of the Town that is specifically planned for industrial uses given its proximity to I-15, the existing nearby access to I-15 and its distance from the Town's existing residential neighborhoods[6]. Surrounding land uses included vacant land designated for regional commercial and industrial warehouse uses, a CalPortland gypsum mine, and I-15.

The comment states that the Project census tract community is diverse and includes 22% Hispanic, 10% African American, and 2% Asian American residents, and has a high rate of poverty, making the community especially vulnerable to the impacts of pollution. This comment is noted and forwarded to the decision-makers for their consideration; however, the comment does not provide any substantial evidence concerning the adequacy of the analysis and no further response is required.

08-7 The comment states that there are three state-approved compliance modeling software programs for non-residential building to show compliance with Title 24, and that the California Emissions Estimator Model (CalEEMod) is not listed as approved software. Of importance, the Project would be required to comply with Title 24 by law and the CalEEMod modeling is not intended to demonstrate compliance with Title 24, but rather, to provide a reasonable estimate of potential energy demand (including petroleum, which the compliance modeling software mentioned in the comment does not include) for public disclosure and informational purposes under CEQA.

The comment conflates the concepts of disclosure and analysis with the concept of compliance. The purpose of CEQA is to set forth a process by which a project's environmental impacts are disclosed, analyzed, evaluated and, to the extent feasible, mitigated. CEQA is a procedural law, not a regulatory one. Issues of compliance with design or building regulations, including compliance with Title 24 requirements necessarily come later during the final design and construction of the Project.

Compliance with Title 24 requires the use of approved software programs as listed by the comment as these programs are designed to ensure buildings meet specific energy efficiency criteria. This is not the

[6] The nearest sensitive receptor to the Project site is a residence approximately 4,700 feet to the southwest.

purpose of an EIR. Rather, an EIR is intended to provide environmental impact analysis and CalEEMod is specifically tailored for this purpose. Title 24 compliance software, on the other hand, focuses on building energy efficiency and does not provide the comprehensive environmental impact analysis required for an EIR. In summary, while Title 24 compliance software ensures buildings meet energy efficiency standards, CalEEMod is used for assessing broader environmental impacts, making it suitable for EIRs.

The comment also states that the CalEEMod modeling does not comply with the 2022 Building Energy Efficiency Standards, and under-reports energy impacts, but the comment does not provide evidence of this statement. In fact, CalEEMod 2022.1 bases the default energy use from nonresidential land uses on 2019 consumption estimates from the California Energy Commission's 2018-2030 Uncalibrated Commercial Sector Forecast (Commercial Forecast) and the energy use estimates are based on existing buildings and are not representative of those constructed in compliance with energy efficiency requirements of the latest Title 24 Building Energy Efficiency Standards. Therefore, the default energy consumption estimates provided in CalEEMod are very conservative, and actually results in overestimations of expected energy use compared to what would be expected for new buildings subject to the latest Energy Code and the most recent technological advancements. Thus, the estimated electricity demand for the Project likely over-reported (rather than under reported) energy impacts and provided a conservative analysis.

Overall, the comment has not provided any substantial evidence to demonstrate that the use of CalEEMod to estimate energy demand is either inappropriate or inaccurate. Moreover, the comment is incorrect in its assertions of the appropriate use of the CalEEMod and its application pursuant to CEQA. Disclosure is what CEQA requires; compliance is with the purview of other enforcement laws, codes and regulations. Therefore, no revisions are required, and no further response is necessary.

**08-8** The comment reinstates concerns regarding the project's transportation impacts as the Draft EIR assumes the development would be a blend of industrial uses. Please refer to response 08-5, above.

**08-9** The comment states that the Draft EIR does not demonstrate that the proposed Project is within the General Plan buildout scenario. The comment also states that the Draft EIR does not provide a consistency analysis with all land use plans, policies, or regulations. As stated in the comments the General Plan anticipated 12,486,488 total square feet of development in the Regional Commercial (C-R) District. And as stated in the comment, the IENLC project at 2,604,446 square feet is approximately 20% of the anticipated development in the C-R District. The Project proposes to construct two industrial warehouses which is an allowed use within the C-R) Warehouse Distribution Regional Commercial Overlay (I-N). Further the comment correctly states that other projects in the CR District that have been approved by the Town include the Apple Valley I-15 Travel Center and the Apple Valley Commercial. The comment incorrectly states the building area of the Apple Valley I-15 Travel Center as 1,165,738 square feet and correctly states the building area of the Apple Valley Commercial Project as 49,995 square feet. The Apple Valley I-15 Travel Center includes a 9,659 square-foot convenience store; a 3,043 fast food restaurant; a 13,786 SF truck maintenance building; and a 3,250 square-foot main building with a convenience store, laundry room, bathrooms, and showers for a total building area of 29,738 square feet of building area.

Taking the Project, along with the I-15 Travel Center and Apple Valley Commercial projects into account, these developments constitute approximately 21.5% of the total anticipated development within the C-

R District. The General Plan did not identify an expected number of projects to be built out under the C-R District nor did set time limits or thresholds for how many of these developments may be considered by the Town or developed at any one given time. Given the reality that the C-R District designation allows for large scale uses that serve a regional population (i.e., auto malls, regional malls, business parks, factory stores and outlets, entertainment commercial, hotels and motels, restaurants, institutional and public uses,) it is logical and foreseeable to anticipate the build out of the C-R District would consist of a fewer number of large developments rather than many small ones. As the Project, along with the other cited developments, is well within the build out scenario anticipated in the General Plan, the analysis in the Draft EIR is adequate, and nothing further is required.

Draft EIR Table 4.9-1 (please see pages 4.9-5 through 4.9-21) provides a land use consistency matrix which details the Project's consistency with the Town's adopted General Plan policies, goals, and programs adopted for the purpose of facilitating avoidance of or mitigation of an environmental effects. As not all general plan policies, goals, and programs are intended to address environmental effects, and because not all of the general plan policies and goals are applicable to this particular Project, an analysis of the consistency will all policies, goals and programs is not warranted nor required by CEQA. As such, the analysis in the Draft EIR is adequate, and nothing further is required.

**08-10** The comment states that the Draft EIR erroneously concludes that the Project would not conflict with the Air Quality Element Policy 1.D and Air Quality Element Program 1.D.1 because the EIR does not include mitigation measures that would reduce impacts related to emissions to less-than-significant levels. This is a fundamentally incorrect view of what CEQA requires. CEQA does not require all impacts be reduced to a level of less than significant. The fact that CEQA permits a statement of overriding considerations is clear proof that CEQA was designed with the possibility of unmitigable impacts being a reality. What CEQA does require is disclosure, evaluation and analysis of environmental impacts and the imposition of identified feasible mitigation measures to the extent that those same are available and applicable to a particular project's impacts.

In accordance with the Town's General Plan Air Quality Element Policy 1.D and Program 1.D.1, the Town required the preparation of an EIR to analyze the Project's potential impacts on local and regional air quality. The Draft EIR evaluates and quantifies air quality impacts of the Project in Section 4.2, Air Quality. The Project includes all feasible mitigation measures to reduce impacts to below significance thresholds; however, for some impacts, this is not possible. The lead agency (i.e., the Town) will decide if the benefits of the Project outweigh the impacts. If the lead agency decides to approve a Project that has significant and unavoidable impacts, a Statement of Overriding Considerations will be prepared pursuant to CEQA that explains why the lead agency believes the benefits of the Project outweigh its impacts.

**08-11** This comment states that the Draft EIR is inconsistent with the Circulation Element Policy 1.A as recommended in the Town's Circulation Map. The comment also states concerns regarding the proposed modifications on Apple Valley Road. General Plan Circulation Element Policy 1.A requires that the recommended street system in the Town's Circulation Map be strictly implemented.

Programs adopted to implement Policy 1.A include street right of way widths, and LOS goals for intersections. When Policy 1.A is viewed in consideration with the implementing programs, it is clear that the Project as designed would be consistent with Circulation Element Policy 1.A. Neither modifications to the alignment of Apple Valley Road, nor reclassification of Norco Street, are

inconsistent with the implementing programs for Policy 1.A. As discussed in Draft EIR Chapter 3, Project Description and Chapter 4.13, Traffic and Transportation, improvements to Falchion Road, Norco Street, Outer Highway 15, and Apple Valley Road comply with the Town's road design standards and would include a 12-foot median, shoulder, bike lanes, or street parking, and a 12-foot parkway/sidewalk as required. Consistency with programs, ordinances and policies addressing the circulation system are analyzed in Draft EIR section 4.13.4 Threshold A. Therefore, no further analysis is required.

Further, the Town has initiated a General Plan Circulation Element Update to address re-alignment of Apple Valley Road as well as numerous other roadway designations and alignments. This Project includes a project-specific General Plan Amendment (GPA) to allow for requested changes to the alignment of Apple Valley Road through the site, as well as to allow for the reclassification of Norco Street from a "Major Roadway" to a "Local Collector". In the event that the Town-initiated General Plan Circulation Element Update is adopted prior to consideration of this Project, the Project will not require its own project-level General Plan Amendment. The Project, as designed, is consistent with the Town's General Plan Circulation Element Update.

**08-12** The comment expresses a concern that the Project is inconsistent with the Southern California Association of Governments (SCAG) 2020-2045 RTP/SCS due to errors in the modeling done for the Draft EIR and significant and unavoidable air quality and GHG impacts. Specifically, the comment states that the Project is inconsistent with Goal 5 to reduce GHG emissions and improve air quality, Goal 6 to support healthy and equitable communities, and Goal 7 to adapt to a changing climate.

An analysis of the Project's consistence with the SCAG 2020-2045 RTP/SCS is discussed in Draft EIR Section 4.6, Greenhouse Gas Emissions, and Section 4.9, Land Use and Planning. Table 4.9-2 of the Land Use and Planning section of the Draft EIR (Draft EIR pp. 4.9-7 through 4.9-9) specifically discusses the Project's potential to conflict with Goals 5, 6, and 7 on pages 4.9-22 and 4.9-24. There is no substantial evidence to support an assertion that the Draft EIR analysis found in Sections 4.6 and 4.9 is or may be inaccurate. Table 4.9-2 acknowledges that the "Project would involve development of an industrial use that would inherently involve emissions of GHGs, criteria air pollutants, and other contaminants" but nonetheless analyzes the Project's furtherance of the broader goals of the RTP/SCS, such as reducing commute distances and providing efficient goods movement in the region. Additional consistency analysis with the SCAG 2020-2045 RTP/SCS relative to GHG emissions is also provided in Draft EIR Section 4.6, Greenhouse Gas Emissions (please see Draft EIR pp. 4.6-34 to 4.6-35), which determined that the Project would be consistent with the SCAG 2020-2045 RTP/SCS with implementation of MM GHG-1 and MM-GHG-2. The analysis in the Draft EIR is adequate and nothing further is required.

**08-13** The comment expresses a concern that the proposed Project is inconsistent with the Circulation Element Policy 1.A and recommends that the proposed Project does not incorporate the modifications on Apple Valley Road. Please see response 08-11.

**08-14** The comment also expresses concern regarding the proposed Project's development of a "blend" of industrial uses. Please see response 08-5.

**08-15** The comment expresses concern that the assessment of fees, with regard to LOS deficiencies identified in the Focused Traffic Impact Analysis Reports (TIA) prepared for the Project (please see Appendix C of

the Draft EIR) at Stoddard Wells Rd / Outer Highway 15 (#1), Outer Highway 15 / I-15 Northbound (NB) Ramps (#2), Stoddard Wells Road/Outer Highway 15/I-15 Northbound Ramps (#6), Quarry Rd / I-15 SB Ramps (#8) and Falchion Rd / Outer Hwy 15 (#10), is not adequate as there is no evidence mitigation will actually occur since some of these intersections are under the jurisdiction of the City of Victorville and California Department of Transportation (Caltrans).

The comment is erroneous in that Intersections #1, #2, and #10 are under the jurisdiction of the Town. Intersections #8 is under the jurisdiction of the County of San Bernardino. However, the Draft EIR did not identify any significant transportation-related impacts requiring mitigation. Pursuant to SB 743 and CEQA Guidelines Section 15064.3, congestion-based LOS effects may no longer be used to evaluate a Project's transportation impact. Accordingly, the Draft EIR relies on VMT as the basis for evaluating transportation impacts under CEQA. Under SB 743, local agencies were allowed to retain their congestion-based LOS standards in general plans and for project planning purposes. The TIA was not prepared solely for the purposes of environmental review under CEQA (although portions of the reports were used to assist in the environmental review of the Project). Rather, the TIA was also prepared to evaluate congestion-based LOS effects as required by the Town's Development Title standards.

Off-site roadway improvements recommended in the reports have been made part of the Town's conditions of approval for the Project and therefore would be required to be implemented as part of the Project. Mitigation that is outside of the Project area or outside of the control of the lead agency can be feasible and is appropriate. Mitigation that is the responsibility of another agency to implement is not, in and of itself, considered infeasible. Please see *City of San Diego v. Board of Trustees of California State University* (2015) 61 Cal.4th 945, 957. Further, this mitigation must be concrete and capable of being carried out. Please see *Sierra Watch v. County of Placer* (2021) 69 CA5th 86, 8110. The "one project, one document" maxim for CEQA compliance necessarily anticipated an EIR will include mitigation measures that will be imposed and implemented by multiple agencies. For example, this Project's Draft EIR includes mitigation measures for biological resources that are imposed by and will be enforced by environmental regulatory agencies like the CDFW. It is a fundamental component of CEQA and an EIR that mitigation measures man and will necessarily be imposed by and enforced by more than just the lead agency.

The comment also states that the EIR must be revised and recirculated to include the LOS analysis as cumulatively considerable significant land use impact as the project conflicts with Transportation Impact Thresholds A and E and Land Use and Planning Impact Thresholds B and C because it is not consistent with the following General Plan policy:

1. Circulation Element Program 1.A.4: The Town shall require that all intersections maintain a Level of Service D during both the morning and evening peak hour.

Pursuant to the Town of Apple Valley General Plan EIR (Town of Apple Valley 2009b) Mitigation Measure No. 1, it is the responsibility of the Town (not an individual project applicant) to "establish and maintain a master plan of roadways… [which]… shall ensure that roadway segments and intersections generally operate at level[sic] of Service C or better, wherever feasible, and that all intersections maintain a Level of Service D or better during both morning and evening peak hours." Likewise, the Town is required to "review traffic volumes resulting from General Plan build out to coordinate, program and if necessary, revise road improvements. This review shall take place every five years." (General Plan EIR Mitigation Measure No. 17). The General Plan EIR included Mitigation Measure No. 18, which states that "all new

development shall be required to pay a "fair share" of improvements to surrounding roadways, bridges and signals that are impacted by and are located within and surrounding the development project."

The Project would pay its fair share towards the cost of improvements for the identified intersections consistent with the General Plan/General Plan EIR Mitigation Measure No. 18; therefore, no significant land use impact would occur. The Town has determined that the TIA meets the requirements of the Town's Development Title, and the Project's transportation-related impacts (i.e., those that require analysis under CEQA) have been adequately evaluated in the Draft EIR. Therefore, the Town has determined that no further transportation-related analysis is necessary and the Draft EIR is adequate as provided.

**08-16** The comment states that the Draft EIR underreported the number of VMT generated by Project operations (truck, delivery vehicles). The comment requests VMT of all trucks and delivery vehicles be included in the Project's VMT assessment.

As discussed in the Draft EIR, section 4.13.1, Existing Conditions (p. 4.13-4) and section 4.13.4, Impact Analysis, Threshold B (pp. 4.13-11 through 4.13-3) the Project's VMT impacts were evaluated in compliance with the Town's VMT Guidelines (Town of Apple Valley 2021). The Project's Origin/Destination (O/D) VMT per service population was used to evaluate the Project's potential town-wide impact on VMT. Per the Town's Guidelines, the O/D methodology is to be used at the project level because it provides a more complete capture of all travel (car and truck trips) within the study area, including trips that may begin or end outside of the study area. The O/D method accounts for external truck trips and therefore provides a more complete estimate of all VMT within the study area (Town of Apple Valley 2021).

Further, section 15064.3, subdivision (a), of the CEQA Guidelines also states, "For the purposes of this section, 'vehicle miles traveled' refers to the amount and distance of *automobile travel* attributable to a project." Additionally, the Governor's Office of Planning and Research (OPR) issued a Technical Advisory (TA) (OPR 2018) that provides technical details on calculating VMT and assessing transportation impacts for various types of projects. The OPR Technical Advisory states that "automobile" refers to on-road passenger vehicles, specifically cars and light trucks. It does not include heavy-duty trucks, semi-trailers, construction equipment, or other commercial-type vehicles, and does not require heavy-duty truck VMT to be calculated. The project-level VMT analysis was conducted consistent with Town policy and state guidance and sufficiently estimates Project impacts related to VMT; therefore, no further analysis is required.

**08-17** The comment states that 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 comment notes that there are no exhibits adequately depicting the turning radius available for trucks/trailers maneuvering on site and at the intersection of Project driveways and adjacent streets. The comment further notes that the driveway providing access to the truck/trailer parking stalls on the Project site is only 40 feet wide.

The Project's potential to substantially increase hazards due to a geometric design feature is analyzed in the Draft EIR in within Section 4.13, Transportation, under Threshold C (please see Draft EIR pp. 4.13-13 to 4.13-15). This analysis determined there were no hazardous design features that would

occur as part of the Project's roadway improvements or site access. Final review of the Project's driveways and street design will be conducted by the Town of Apple Valley Public Works Department and Fire Department to ensure all driveways and road designs are consistent with the Towns development code. It should be noted, no variances to the Town's driveway and street design standards are being requested as part of the Project approvals.

**08-18** The comment states that language in the EIR states that roadway improvements would continue to be developed in coordination with the Town and qualified traffic engineers through design review, and that continued coordination is deferred mitigation.

Town planning staff including fire and police department staff, and engineering staff review project site plans when they are submitted to ensure proposed development is compliant with zoning and building requirements and that there are no major design issues. It is one of the first steps in the review process but is not final approval of the project or site plan.

If the Project is approved, preparation of a detailed grading, improvement and engineering plans will be submitted to the Town for final review during the construction permitting phase. Final review will ensure the Project design is consistent with the Project analyzed in the Final EIR and with all Town design and construction standards, requisite performance standards, applicable mitigation measures, and regulation. Final review of construction documents does not constitute deferred mitigation and therefore, no further analysis is required.

**08-19** The comment notes that there are no exhibits adequately depicting emergency vehicle access and asserts that review and approval of final design plans by the by the Town and their qualified traffic engineers constitutes deferred mitigation.

As shown in Figure 3-4 of the Draft EIR, the Project would provide nine separate access points to the Project site, allowing emergency access at each of the site access points. The access points and Project intersection geometries are detailed in Appendix J, Traffic Impact Analysis of the Draft EIR (Appendix J pp. 1 -2) and analyzed in the Draft EIR Section 4.13, Transportation, under Threshold C (please see Draft EIR pp. 4.13-13 to 4.13-15). This analysis determined there were no hazardous design features that would occur as part of the Project's roadway improvements or site access. Therefore, no further analysis is required. Please see response 08-18

**08-20** The comment states that the Draft EIR fails to discuss or analyze the Proposed project's requested GPA to revise the Circulation Map to remove the portion of the Apple Valley Road that bisects the Project site and realigns it to the eastern boundary of the Project site. The comment contends that the realignment would create a confusing roadway which is discontinuous. Discussion of the realignment of Apple Valley Road is discussed and analyzed throughout the Draft EIR respective to each resource topic. Analysis with respect to impacts on substantial hazards due to a geometric design are analyzed in Draft EIR section 4.13.4 Threshold C. Road sections, intersections and frontage improvements would be built to the Town's design standards ensuring no increase in hazards would occur due to the Project development. The analysis in the Draft EIR with respect to hazardous roadway design and incompatible uses is sufficient and no further analysis is required. Please see response 08-18 and response 08-11.

**08-21** This comment raises issue with the conclusions in the Draft EIR related to population and housing with regard to the labor force that would be needed for construction of the Project. Specifically, the comment

states that the EIR has not provided evidence that the local labor force is large enough to accommodate the Project or is qualified for, or interested in, jobs in the construction and/or industrial sector. The comment also cites to recent unemployment data for San Bernardino County. The comment concludes stating the Project will need to rely on labor from the greater SCAG region that would increase vehicle miles traveled and emissions.

The number of construction workers needed during any given period would largely depend on the specific stage of construction but would likely fluctuate between a few and several dozen workers on a daily basis. Based on information provided by the Project Applicant, the plan is to construct the Project using a licensed general contractor with full-time staff that are assigned to construction projects on a rotating basis, depending on the nature of the construction phase and the required worker skillsets.

Additionally, as stated in Chapter 3, Project Description, of the Draft EIR (Draft EIR p. 3-4), the High Desert/Victor Valley region has long been identified as an area having a low jobs–housing ratio (i.e., an area that has more potential workers living in a community than there are jobs for them),[7] resulting in high numbers of residents commuting out of the region for work (SCAG 2001a, SCAG 2021b; APA 2003). The Town of Apple Valley had a reported job-housing ratio of 0.69, well below the SCAG mean of 1.25, which represents a "balanced" jobs-housing ratio (SCAG 2001b). Recognizing these trends, community leaders and officials have long sought to stimulate economic development within the High Desert region and provide residents with local employment opportunities (Town of Apple Valley 2009a). One strategy that community leaders and planners have used is to attract development of warehousing and distribution centers, which can provide hundreds of jobs per million square feet of development (SCAG 2001a). This Project will help meet the needs of the growing logistics sector while producing approximately 870 construction jobs (please see Draft EIR pp. 4.2-23) and approximately 2,179 operational jobs (please see Draft EIR pp. 5-6 and pp. 6-1) in a region that is typically viewed as housing rich and jobs poor.

Lastly, as described in the Draft EIR's VMT analysis (Draft EIR pp. 4.13-11 through 4.13-13), Project-generated VMT was estimated for both baseline (2016) and horizon-year (2040) scenarios using the San Bernardino Countywide Traffic Analysis Model (SBTAM). The analysis found that in both the baseline and horizon-year scenarios, the VMT-per-service-population metric for the Project is less than the Apple Valley General Plan buildout significance threshold (please see Draft EIR Table 4.13-2 on p. 4.13-12). The SBTAM model was used to estimate the VMT on all roadways within the Town limits for the baseline and horizon-year scenarios with and without the Project. The VMT-per-service-population metric under the "with Project" conditions compared to the "without Project" conditions in both baseline (2016) and horizon year (2040) scenarios would not increase and therefore does not meet the Town's significance threshold (please see Draft EIR Table 4.13-3 on p. 4.13-13). This is due to employment opportunities generated within the Town that were not there before implementation of the Project. The Project will provide an option for local employment to employees who currently commute outside of the Town to nearby cities such as Victorville or Barstow. Given the foregoing, the Draft EIR found that Project impacts related to VMT would be less than significant.

[7] A jobs–housing ratio is a commonly used economic metric used to determine whether or not a community or region provides a sufficient number of jobs for its residents. The metric is calculated by finding the relationship between where people work ("jobs") and where they live ("housing"). As of 2021, the Town had a jobs/housing ratio of 1.07, which is below regional targets ranging from 1.25–1.50 (SCAG 2021; SCAG 2021b, APA 2003).

08-22 The comment states that the Project would represent a significant amount of employment growth assuming the Project would add 2,179 employees and requests the EIR include a cumulative analysis to determine if the Project would exceed growth forecasts.

As discussed in Chapter 3, Project Description, of the Draft EIR, for purposes of analyses, employment estimates were calculated using median employment density factors reported by the Southern California Association of Governments. SCAG reports that the median employment density for warehouse space in San Bernardino County is 1 employee for every 1,195 square feet (SCAG 2001). The Project would include up to a total of 2,604,466 square feet of industrial/warehouse space. Therefore, the estimated number of employees required for Project operation would be approximately 2,179. Also please see response 08-21 regarding the number of employees assumed for Project operation.

According to data from the U.S. Census Bureau, the population of the Town was approximately 75,867 residents as of July 1, 2022 (U.S. Census Bureau 2022). According to the Town's General Plan, the Town could support a population of 185,858 residents (Town of Apple Valley 2009a). The Project-related increase of approximately 2,179 employees would represent a nominal percentage of the Town's projected future population (less than 1%) upon General Plan buildout, even under the most conservative scenario assuming that all future employees will relocate to the Town as a result of the Project as opposed to the Project, along with other referenced area projects, drawing from the existing pool of Town residents and employees. Current data suggests a larger than average number of residents commute out of the Town for work. With the Project, it is logical to assume that some of those existing employees will look for opportunities to work closer to home, thus shortening their commute.

Cumulative projects are properly included in Chapter 3 of the Draft EIR (please see Draft EIR p. 3-3) and accounted for throughout the analyses in the Draft EIR. As explained on page 3-3, "[t]he cumulative impacts analysis in this EIR uses a combined "list" and "projections" method, pursuant to CEQA Guidelines Section 15130(b)(1). The list incorporates available information about existing and reasonably foreseeable development in the vicinity of the Project site, including implementation of the North Apple Valley Industrial Specific Plan." Future buildout through 2040 is assumed for the purposes of evaluating the Project's cumulative contribution. All previously constructed projects within the Town are considered part of the environmental baseline and have therefore been accounted for as part of the existing conditions for purposes of employment and population growth forecasts. Therefore, no further analysis is required.

08-23 The comment expresses concern that the Project's environmental impacts related to infrastructure development and unplanned population growth have not been addressed in the Draft EIR. As discussed in Chapter 3 of the Draft EIR (please see Draft EIR p. 3-1), infrastructure to serve the Project would be installed along with improvements to Falchion Road, Norco Street and Apple Valley Road along the Project frontage. Future improvements to water and sewer infrastructure were analyzed and approved in conjunction with the Town's review and consideration of the Apple Valley 143 Project[8] (please see also response 08-4). Annexation of the Project site into the Liberty Utility District is the result of a Liberty Utility District initiated annexation to provide service to areas of the Town planned for development in the Town's General Plan and would not expand the district's service area into areas not planned for development in the General Plan. The General Plan identifies the Project site for development of

[8] Apple Valley 143 Project EIR (SCH No. 2022070019) was considered and certified and Project entitlements with conditions of approval were approved by the Apple Valley Planning Commission on November 15, 2023.

regional commercial and e-commerce warehouse development under the C-R I-N District designation. Annexation of the Project site into the Liberty Utility Service District is necessary for implementation of the General Plan. Any growth inducing impacts would be attributable to Liberty Utility District and not the Project who is the beneficiary of the Liberty initiated annexation.

Growth inducing effects attributable to the Project have been analyzed in Chapter 6, section 6.1 Growth Inducing Impacts. The Draft EIR concluded that although the Project could cause an increase in population through new job opportunities, the projected growth falls within the Town and regional growth forecasts and therefore the Project would not cause unplanned population growth (SCAG 2021, Town of Apple Valley 2009). Further, the Project would involve installation of new water and sewer lines in the Project vicinity. The purpose of these new utility connections is to serve the needs of the Project, and not to provide capacity for future projects or growth. ımprovements approved as part of the Apple Valley 143 Project[9] include a tie in to an existing 12-inch main from the Walmart Distribution Center which would extend westward under Johnson Road and Stoddard Wells Road to the Apple Valley 143 Project site. The Apple Valley 143 Project will construct a 16-inch diameter water line within Stoddard Wells Road and a 16-inch diameter water line within Outer I-15 Road.

A looped utility connection would be constructed to serve the Project (IENLC Apple Valley Warehouse Project), the connection would be sized to serve the Project only. The Project proposes to install an 8-inch diameter main water line looping from Norco Street and Outer Highway 15 to Apple Valley Road then north to Falchion Road, then west along Norco Street to Outer Highway 15. Four 3-inch water lines will extend from the main line into the Project site. Although new roadway construction is planned as part of the Project (i.e., construction of listed circulation improvements ), the circulation improvements are planned only for the Project frontage and are necessary to provide for adequate circulation in the Project area per the Town's General Plan; thus, the Project would not result in indirect population growth by providing vehicular access to an area presently lacking such access. Therefore, no further analysis is required.

**08-24** The comment states that utility development necessary to accommodate the proposed Project is extensive. The proposed Project will install infrastructure at the Project frontage, which will connect to the larger water and sewer systems planned, analyzed and approved as part of the area in conjunction with the approved Apple Valley 143 Project (Final EIR – Draft EIR, Chapter 3, Project Description p. 3-7). The Applicant has requested a Development Agreement to establish a reimbursement mechanism for the installation of infrastructure that would serve the proposed Project. This agreement would allow the proposed Project developer to partially reimburse the Apple Valley 143 Project developer for shared infrastructure that would serve both the proposed Project and the Apple Valley 143 Project. Please see response 08-23.

The request for a Development Agreement as a financial tool does not indicate a new or increased environmental impact not analyzed in the Draft EIR. All impacts related to infrastructure installation for the Project have been analyzed in the Apple Valley 143 Final EIR (SCH No. 2022070019) and the IENLC Apple Valley Warehouse Project Draft EIR , and no additional analysis is required.

9 Apple Valley 143 Project EIR (SCH No. 2022070019) was considered and certified and Project entitlements with conditions of approval were approved by the Apple Valley Planning Commission on November 15, 2023. The Apple Valley 143 Project EIR fully analyzed the environmental effects of "off-site improvements" inclusive of utility improvements. The Apple Valley 143 Project EIR can be found at https://www.applevalley.org/services/planning-division/environmental.

**08-25** The comment states the Draft EIR does not analyze annexation of the Project site into the Liberty Utility District. Please see response 08-23.

**08-26** The comment expresses concern that the Draft EIR does not contain analysis related to the Project's construction of new roadways and changes to the Town's circulation system. Please see response 08-23 and response 08-11. The Draft EIR fully analyzed environmental impacts to the Town's roadway system resulting from the requested GPA and the construction of roadways along the Project frontage (please see Draft EIR p. 4.13-10 through 4.13-11). Changes to road classifications would update the currently adopted General Plan Circulation Element, to ensure that planned development patterns in the Project vicinity are implemented. Construction of Falchion Road, Norco Street and Outer Highway 15 would occur within those roadways' existing rights-of-way and would conform to the existing General Plan Circulation Element's pattern of alignments. The realignment of Apple Valley Road would allow for the efficient and contiguous development of the Project site, while providing a more efficient and safe connection between portions of the Town south and north of the Project site. Please see response 08-11. The Project's direct and indirect growth inducing impacts have been fully analyzed in Draft EIR Chapter 6. No further analysis is required.

**08-27** The comment states that the EIR does not provide a meaningful discussion or analysis of significant and unavoidable cumulatively considerable air quality, GHG impacts, and significant and irreversible environmental changes. Please see response 08-6 for concerns regarding cumulative GHG impacts. A discussion of the cumulative air quality impacts resulting from planned and foreseeable area developments including the Project is included in the Draft EIR (Draft EIR pp. 4.2-38 to 4.2-39).

Draft EIR Chapter 5, Other CEQA Considerations, includes a discussion of significant and unavoidable impacts and significant irreversible environmental changes, including land use change that commits future generations to similar uses, irreversible damage from environmental accidents, and commitment of nonrenewable resources.

A list of the identified cumulative projects is included in Chapter 3 the Draft EIR (please see Draft EIR p. 3-3) and accounted for throughout the analyses in the Draft EIR. As explained on page 3-3, "[t]he cumulative impacts analysis in this EIR uses a combined "list" and "projections" method, pursuant to CEQA Guidelines Section 15130(b)(1). The list incorporates available information about existing and reasonably foreseeable development in the vicinity of the Project site, including implementation of the North Apple Valley Industrial Specific Plan." While the comment states that the discussion in the EIR is not meaningful, the comment does not raise a specific issue with the adequacy of the analysis. Therefore, no further response can be provided or is required.

**08-28** The comment expresses concern that the Draft EIR utilizes uncertain language and does not provide meaningful analysis to support the conclusion that there will be no significant impacts to population and housing. Please see response 08-21 and response 08-22.

**08-29** The comment expresses concern that the Draft EIR does not adequately discuss or analyze that the commitment of resources is not consistent with regional or local growth forecasts such as the General Plan's Land Use Buildout Scenario. Please see response 08-21 and response 08-22.

08-30 The comment states that the Project would represent a significant amount of employment growth assuming the Project would add 2,179 employees and requests the EIR include a cumulative analysis to determine if the Project would exceed growth forecasts. Please see response 08-21.

08-31 The comment states that the EIR has not provided an accurate analysis of the Project's infrastructure development and ability to remove obstacles to population growth or require the construction of new or expanded facilities outside of the Project site. Please see response 08-23.

08-32 The comment expresses concern that the utility development necessary to accommodate the proposed Project is extensive, an available sewer tie-in is located on the opposite side of I-15, within the City of Victorville, and therefore beyond the control of the Lead Agency and may further spur growth within the City of Victorville. Please see response 08-23.

As discussed in the Project description, the Project would install water and sewer infrastructure along the Project frontage. Construction or improvement to Project servicing infrastructure is not required in the City of Victorville. No infrastructure to serve the Project would be installed within the City of Victorville.

08-33 The comment expresses concern that the proposed water and sewer tie-ins may be used by other future developments therefore spurring growth in the area even though the EIR concludes that the Project will not remove obstacles to population growth. Please see response 08-23.

08-34 The comment states that the EIR does not identify that the Project will require site annexation into the Liberty Utilities service area to supply water for all phases of the Project. Please see response 08-23.

08-35 The comment provides concluding remarks and states that the Draft EIR is flawed and that a revised EIR be prepared for circulation. The comment also requests to receive notices of Project updates pursuant to Public Resources Code Section 21092.2.

For the reasons stated in this FEIR, recirculation is not warranted or required. The comment has been added to the distribution list for the Project to receive notices regarding hearings and/or actions related to the Project.

08-36 The comment serves as an introduction to the attached letter from SWAPE, introduces the Project, and summarizes the conclusions of the letter.

The comment states that the EIR fails to adequately evaluate the Project's air quality, health risk, and GHG impacts, and that a revised EIR should be prepared. The comment does not raise a specific issue regarding the adequacy of the Draft EIR's analysis; therefore, no further response can be provided or is required.

08-37 The comment states that the Draft EIR's significant and unavoidable impact assessment is unsupported, because there are additional feasible mitigation measures that could be included. Please see Response 08-40, which evaluates the additional suggested mitigation measures by SWAPE for adequacy and feasibility to determine if any would be applicable for the Project.

08-38 The comment speculates that the Draft EIR's health risk analysis "may" underestimate health risk impacts, but does not make this statement with any degree of certainty. The comment further

speculates the accuracy of the Draft EIR's health risk analysis cannot be verified because (1) the Draft EIR does not disclose the exposure assumptions for the analysis, (2) the Draft EIR does not include a dose and risk equation to calculate the Project's construction cancer risks, and (3) the Draft EIR account for a closer sensitive receptor to the Project site, which the authors provide a screenshot with what they claim is an additional sensitive receptor closer to the Project site.

It is important to note here that the term "substantial evidence" as applied to comments on environmental impact reports has been defined in case law as evidence that is "of ponderable legal significance, reasonable in nature, credible, and of solid value." *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144. CEQA includes guidance of what is and is not considered "substantial evidence" in California Public Resources Code Section 21082.2(c), which provides:

> Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

The comment states that the Draft EIR fails to provide exposure assumptions and dose and risk equations, which should have been based on the Office of Environmental Health Hazard Assessment (OEHHA) guidance. Notably, OEHHA guidance and equations were used as the basis of the Project's health risk estimates (OEHHA 2015). As described in the Draft EIR (please see p. 4.2-26 – 4.2-28), the construction and operational HRA health risk calculations were performed using the Hotspots Analysis and Reporting Program Version 2 (HARP2) Air Dispersion and Risk Tool (ADMRT, Version 22118). Of import, the risk analysis algorithms and default values used in HARP2 are based on the OEHHA guidelines (OEHHA 2015), including age sensitivity factors and fraction of time at home parameters, and assumptions and results of the modeling were included in Appendix B-2 of the Draft EIR.

Furthermore, the Draft EIR (please see p. 4.2-27) provides the exposure parameters used in the analysis for the maximally exposed individual resident (MEIR): for residential receptors during Project construction and operation, toxic air contaminant (TAC) exposure was assumed to begin in the 3rd trimester of pregnancy (assumed to be the worst-case scenario for cancer risk) for a duration of 21 months (construction) and 30 years (operations). OEHHA describes cancer risk evaluations for 9-, 30-, and 70-year exposure durations in the 2015 Risk Assessment Guidelines Manual and identifies that the 9- and 30-year durations correspond to the average and high-end of residency time recommended by the EPA, with the 30-year exposure duration recommended for use as the basis for estimating cancer risk at the MEIR in all HRAs (OEHHA 2015). The Draft EIR adequately evaluates the Project's potential health risk, and no further response is required.

Finally, the figure the comment provides as evidence for the Draft EIR's HRA incorrectly measuring the distance to the nearest sensitive receptor is accurate. In Section 4.2.4, the Draft EIR stated the nearest sensitive receptor was approximately 4,700 feet to the southwest from the Project. The distance between the property boundary of the project and the nearest receptor is actually approximately 3,910 feet. This error in the Draft EIR is only in the text of the document. The air pollutant dispersion modeling used in the health risk assessment placed receptors at all the nearest sensitive receptors the Project site and haul route as discussed in Table 4.2-8 of the Draft EIR. The distance between the nearest

sensitive receptor and the Project boundary noted on page 4.2-37 has been updated to 3,910 feet. However, because the health risk assessment did place a receptor at that location the Draft EIR adequately evaluated the Project's potential health risk and no other revisions are required (please see Appendix B2, Health Risk Assessment, p. 410).

**08-39** The comment states that the Draft EIR's significant and unavoidable impact assessment is unsupported, because there are additional feasible mitigation measures that could be included. Please see response 08-40, which evaluates additional suggested mitigation measures by SWAPE for feasibility to determine if any would be applicable for the Project to implement.

**08-40** The comment states that the comment agrees with the Draft EIR's conclusion that the Project would have a significant impact related to GHG emissions but notes that additional feasible mitigation measures should be incorporated. The comment follows with a list of 4 suggested additional mitigation measures. The comment concludes that a revised EIR should be prepared to include all feasible mitigation measures, as well as updated air quality, health risk, and GHG analyses, and demonstrate a commitment to the implementation of these measures prior to Project approval.

In preparing these responses to comments, the Town has reviewed and evaluated the each of the suggested mitigation measures for feasibility and to determine applicability to the Project.

Mitigation Measures (MM-AQ-1, MM-AQ-2, MM-AQ-3, MM-GHG-1, and MM-GHG-2) have been updated to incorporate the feasible portions of the 18 mitigation measures suggested in comments 08-40 and 08-41. To ensure that they are implemented during construction and operation, the MMs would be tracked within the Project's Mitigation Monitoring and Reporting Program (please see Draft EIR p. 310 and the Project's Mitigation Monitoring and Reporting Program). Compliance with the Mitigation Monitoring and Reporting Program is also required by Project Condition of Approval __. The revision to the Project's mitigation measures does not rise to the level of significant new information as the resulting impact analysis and alternatives considered remain essentially unchanged. California Public Resources Code Section 21092.1 and CEQA Guidelines Section 15088.5.

The revisions to the Project mitigation measures incorporate the following feasible measures:

- 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-GHG-1)
- Running conduit to designated locations for future electric truck charging stations. (MM-GHG-1)
- Constructing and maintaining electric light-duty vehicle charging stations proportional to the number of employee parking spaces (for example, requiring at least 10% of all employee parking spaces to be equipped with electric vehicle charging stations of at least Level 2 charging performance). (MM-GHG-1)
- Running conduit to an additional proportion of employee parking spaces for a future increase in the number of electric light-duty charging stations. (MM-GHG-1)
- Oversizing electrical rooms by 25% or providing a secondary electrical room to accommodate future expansion of electric vehicle charging capability. (MM-GHG-1)
- Implement preferential parking permit program. (MM-GHG-1)

- Constructing zero-emission truck charging/fueling stations proportional to the number of dock doors at the project. (MM-GHG-1)
- Including contractual language in tenant lease agreements restricting trucks and support equipment from idling longer than two minutes while on site. (MM-GHG-1)
- 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-1, but see MM-AQ-3 for information on cold and or refrigerated storage)
- Requiring facility operators to train managers and employees on efficient scheduling and load management to eliminate unnecessary queuing and idling of trucks. (MM-GHG-1)
- Posting signs at every truck exit driveway providing directional information to the truck route. (MM-GHG-1)
- 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. (MM-GHG-1)
- Providing tenants with information on incentive programs, such as the Carl Moyer Program and Voucher Incentive Program, to upgrade their fleets. (MM-GHG-1)
- If paints and coatings with VOC content of 0 grams/liter to less than 10 grams/liter cannot be utilized, the developer shall avoid application of architectural coatings during the peak smog season: July, August, and September. (MM-AQ-1)

With regard to the remaining eight measures suggested in the comment that were not already included within the Project, the feasibility of each measure is analyzed below.

## Table 8-1. Analysis of Applicability and Feasibility of Suggested Mitigation Measures

| Suggested Measure | Applicable/Feasible to Include? |
|---|---|
| Require the installation of vegetative walls or other effective barriers that separate loading docks and people living or working nearby | **Inapplicable**. The distance from the property line of the Project to the property line of the nearest sensitive receptors is approximately 3,910 feet to the southwest of the Project site. The Project would exceed thresholds for $NO_x$ and $PM_{10}$; however, installation of a vegetative wall or other barrier to separate the loading docks from the nearby sensitive receptors would not be feasible or appropriate based on the Project location. According to the Sacramento Metropolitan Air Quality Management District, to be effective, vegetative barriers should extend 164 feet or more beyond the area to be protected and once mature, foliage should be a minimum of 33 feet thick and 16 feet high (SMAQMD 2017), which would require substantial water and would not be feasible in the high desert. Further, as the Project's mitigation includes MM-GHG-1 which limits truck idling time to a maximum of 3 minutes, the majority of the Project's estimated $PM_{10}$ emissions are generated by vehicle traffic on the roadway network rather than from idling at loading docks (Appendix B pp. 15-18). Therefore, the benefit of this measure would be minimal. |
| Requiring future tenants to exclusively use zero-emission light | **Infeasible.** This measure is infeasible to include as the end user/tenant of the Project is not yet known, and it cannot be determined whether such vehicles would be appropriate for future tenant's operational needs and at what percentage of overall vehicle fleet to allow for meaningful |

## Table 8-1. Analysis of Applicability and Feasibility of Suggested Mitigation Measures

| Suggested Measure | Applicable/Feasible to Include? |
|---|---|
| and medium-duty delivery trucks and vans. | analysis or quantification of emissions reductions. The Project includes MM-GHG-1 which requires providing information to future tenants regarding funding opportunities that provide incentives to use cleaner engines/vehicles and on the U.S. Environmental Protection Agency SmartWay Program that assists shipping companies in reducing air pollutants from transporting cargo. Please see response 06-6. |
| Require all heavy-duty trucks entering or on the project site to be zero-emission vehicles, and be fully zero-emission. A list of commercially available zero-emission trucks can be obtained from the Hybrid and Zero-emission Truck and Bus Voucher Incentive Project (HVIP). Additional incentive funds can be obtained from the Carl Moyer Program and Voucher Incentive Program | **Infeasible.** The measure is infeasible to include as mitigation as there are a number of factors that make the procurement and operation of a large-scale electric or zero emission heavy-duty truck fleet infeasible. Please see response 06-6 for a more detailed discussion of these barriers. MM-GHG-1 addresses the Carl Moyer Incentive Program that allows operators to upgrade their fleets, and MM-GHG-1 would also involve the construction of an electric vehicle charging station that would increase the capacity for a future fleet of electric vehicles when infrastructure, cost, and scaling constraints are lessened. |
| 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. | **Feasible** This measure would only apply to diesel-powered construction equipment and would only reduce emissions for construction related air quality impacts which were already determined to be less than significant after requiring low VOC architectural coatings as part of MM-AQ-1. ; operational emissions for the Project would remain significant and unavoidable. However, MM-AQ-1 has been expanded to include requirements for tier 4 diesel powered construction equipment. With the implementation of MM-AQ-1, construction emissions would continue to be below MDAQMD thresholds. |
| Installing solar photovoltaic systems on the project site of a specified electrical generation capacity that is equal to or greater than the building's projected energy needs, including all electrical chargers. | **Already Included.** The Project is designed to include a rooftop PV solar system with a battery backup sufficient to power the total office space to offset the demand for electricity in compliance with this Title 24 standards (Title 24, Part 6, Section 140.10 – Prescriptive Requirements for Photovoltaic and Battery Storage Systems). A combined total of 731,304 kWh per year was included in the CalEEMod modeling of the Draft EIR to account for these systems. Any excess energy needs will be met through renewable sources through the Apple Valley Choice Energy 100% Renewable Energy Plan as required by MM GHG-1. Through this program, all energy received from Southern California Edison is derived from renewable sources. |
| Designing all project building roofs to accommodate the maximum future coverage of solar panels and installing the maximum solar power generation capacity feasible. | **Inapplicable.** The Project would include an on-site solar system with a battery backup sufficient to power the total office space, and Project tenants are required to subscribe to the Apple Valley Choice Energy 100% Renewable Energy Plan, which is 100% renewable and 100% carbon-free, for the duration of occupancy, pursuant to MM-GHG-1. |

## Table 8-1. Analysis of Applicability and Feasibility of Suggested Mitigation Measures

| Suggested Measure | Applicable/Feasible to Include? |
|---|---|
| Requiring all stand-by emergency generators to be powered by a non-diesel fuel | **Inapplicable.** No diesel stand-by emergency generators are proposed as part of the Project. |
| Providing meal options on site or shuttles between the facility and nearby meal destinations. | **Feasible.** Each warehouse would contain a break room for employees with standard amenities such as a coffee maker, microwave, and refrigerator, as well as tables and seating to enable employees to eat meals on site. The project description has been revised to clarify this. In addition, MM-GHG-1 has been updated to include provisions for providing information to employees regarding other on-site meal options, such as food trucks (please see Chapter 2, Changes to the Draft Environmental Impact Report, of this Final EIR for details). |
| 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. | **Inapplicable**. The Project is a warehouse that would not include its own fleet of trucks or other diesel-powered vehicle. Per MM-AQ-2, all equipment and appliances operating on the Project site shall be zero-emission equipment including forklifts, handheld landscaping equipment, yard equipment, office appliances, and requires construction logs be kept during construction and be available to any agency conducting site visits. |

08-41 This comment is a supplement to comment 08-40 and provides a list of mitigation measures from relevant guidance produced by the California DOJ. It also states that GHG offsets should be considered as additional mitigation. Please see response 08-40 for a discussion of the listed measures as they pertain to the Project. Please see response 06-8 for a discussion of GHG offsets.

08-42 This comment is a disclaimer for the SWAPE report. The comment does not raise a specific issue regarding the adequacy of the Draft EIR's analysis; therefore, no further response can be provided or is required.

# Response to Comment Letter 9

**California Department of Fish and Wildlife (CDFW)**
**November 12, 2024**

**09-1** The comment serves as an introduction and gives thanks to the Town for allowing CDFW to provide comments and recommendations in regards to the Draft EIR. The comment does not raise a specific issue regarding the adequacy of the Draft EIR's analysis; therefore, no further response can be provided or is required.

**09-2** This comment summarizes the role of CDFW as a California Trustee Agency and notes that the following comments are being submitted by CDFW as a Responsible Agency under CEQA. The comment does not raise a specific issue regarding the adequacy of the Draft EIR's analysis; therefore, no further response can be provided or is required.

**09-3** The comment summarizes the Project's applicant, objective, location, and timeframe. The comment does not raise a specific issue regarding the adequacy of the Draft EIR's analysis; therefore, no further response can be provided or is required.

**09-4** The comment serves as an introduction to the comments and recommendations that follow. The comment summarizes that the following comments are to provide the Town with adequate mitigations regarding direct and indirect impacts on biological resources. However, the comment does not raise a specific issue regarding the adequacy of the Draft EIR's analysis; therefore, no further response can be provided or is required.

**09-5** The comment restates information contained in the Draft EIR regarding the Project's impact the western Joshua Tree (*Yucca brevifolia*), a candidate species pursuant to the CESA, in the form of direct impacts (i.e., mortality as a result of killing mature, emergent, or relocated individuals) and indirect impacts (i.e., reducing or degrading habitat, and/or damaging the seed bank). The comment acknowledges that the Draft EIR includes mitigation for the Project's impacts to western Joshua tree, recommends an additional western Joshua tree census survey and expresses concern that MM-BIO-1 will not appropriately mitigate for additional western Joshua Tree sprouts that may emerge after the time of the December 2023 census survey and prior to project construction. Finally, CDFW recommends that MM-BIO-1 be updated to include an option of obtaining an Incidental Take Permit (ITP) through the California Endangered Species Act (CESA).

As stated in Appendix C-1 (Biological Existing Conditions Report) of the Draft EIR, a western Joshua tree census survey was conducted in compliance with the Western Joshua Tree Conservation Act (WJTCA) in December 2023, and therefore additional census surveys are not required for the Project[10] (CDFW 2024). Biological monitoring during the removal of western Joshua trees, as required by BIO-MM-4, would be sufficient to detect any new western Joshua tree individuals and if new individuals are identified, then their removal would require additional mitigation under the WJTCA. Per the suggestion

[10] Pursuant to the Western Joshua Tree Conservation Act (WJTCA), submittal of one Western Joshua Tree Census is required to be included with each WJTCA Incidental Take Permit application. The protocol for Wester Joshua Tree Census does not require multiple surveys.

of CDFW, language in MM-BIO-1 has been updated to include the option of obtaining an ITP through either the WJTCA or Section 2081 of CESA.

09-6 The comment restates information contained in the Draft EIR regarding the potential for Mojave desert tortoise (*Gopherus agassizii*), a CESA-listed threatened and candidate endangered species, to occur on the Project site in the future. Prior survey(s) of the Project site conducted on April 11, 2023, April 13, 2023, April 27, 2023, May 2, 2023, and June 6, 2023 have been negative for the presence of the Mojave desert tortoise (*Gopherus agassizii*). The comment also warns of the potential for Project implementation to result in significant impacts to this species in the form of direct impacts (i.e., mortality) and indirect impacts (i.e., loss of habitat and species movement). The comment acknowledges that the Draft EIR includes mitigation to minimize the Project's impacts to Mojave desert tortoise and recommends that MM-BIO-10 be updated to include a condition that the Project obtain an Incidental Take Permit (ITP) through the California Endangered Species Act (CESA), as well as additional edits to MM-BIO-10 related to fencing requirements.

As noted by CDFW, Section 4.3.4 of the Draft EIR acknowledges that Mojave desert tortoise is a mobile species that has the potential to enter the Project site prior to construction despite its absence during 2023 protocol surveys; in which case, impacts would be considered significant absent mitigation. Consistent with this comment's suggestion, the Final EIR has been revised to clarify that pre-construction clearance surveys for desert tortoise shall be repeated should there be any faults following the installation of the desert tortoise exclusionary fence that could compromise the fence's efficacy.

The Town appreciates the recommendation to condition the Project to obtain an ITP for take of Mojave desert tortoise. It is important to note that CESA prohibits the take of all CESA-listed species, including Mojave desert tortoise, under California Fish and Game Code Section 2080. An ITP is required only when an identified take[11] would occur (CDFW 2025). Appendix C1, Biological Existing Conditions Report of the Draft EIR includes information from the Project survey(s) conducted on April 11, 2023, April 13, 2023, April 27, 2023, May 2, 2023, and June 6, 2023. As stated in the Draft EIR prior protocol surveys for desert tortoise were negative. For this reason, take of this species is not anticipated. Should the species be observed on site prior to or during construction and if it is determined that take would occur, the Project will comply with all applicable laws, regulations, processes and permitting requirements.

09-7 The comment restates information contained in the Draft EIR regarding the potential for burrowing owl (Athene cunicularia), a CESA-listed candidate species, to occur on the Project site in the future, despite negative survey results, and for the potential for Project implementation to result in significant impacts to this species in the form of direct or indirect impacts through loss of nesting and foraging habitat. Prior survey(s) of the Project site conducted on June 17, 2022, June 23, 2022, April 4, 2023, April 6, 2023, April 11, 2023, April 12, 2023, May 12, 2023, May 18, 2023, June 5, 2023, and June 30, 2023. As stated in the Draft EIR, prior protocol surveys for burrowing owls were negative. For this reason, take of this species is not anticipated.

The comment acknowledges that the Draft EIR includes mitigation to minimize the Project's impacts to burrowing owl and recommends that MM-BIO-11 be replaced with a measure that

[11] The term "take" is defined by Fish and Game Code section 86 as hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill (CDFW 2025).

includes a condition that the Project obtain an ITP through CESA, as well as various sub-measures that describe avoidance, additional survey needs, and preparation of a Burrowing Owl Plan.

As noted by CDFW, Section 4.3.4 of the Draft EIR acknowledges that burrowing owl is a transient species that has the potential to enter the Project site prior to construction despite its absence during 2023 protocol surveys, in which case impacts would be considered significant absent mitigation. Consistent with this comment's suggestion, the Final EIR has been revised to include additional burrowing owl avoidance measures including focused non-breeding season surveys and preparation of a Burrowing Owl Plan if burrowing owl is detected on the Project site. Pursuant to all applicable laws, rules, regulations and permitting requirements, if a take is required then the Project applicant will seek take authorization if take of burrowing owl cannot be avoided. The Final EIR has also been updated to reflect that burrowing owl became a candidate species under CESA after the circulation of the Draft EIR on September 30, 2024. In one minor divergence from the suggested MM-BIO-11.2, the existing language which requires one pre-construction survey within 14 days and a second pre-construction survey within 24 hours of site preparation activities was retained as the more conservative option, The measure was not updated to include an additional burrowing owl habitat assessment because, as stated in Section 4.3.1.5 of the Draft EIR, a habitat assessment and breeding season surveys consistent with CDFW's 2012 Staff Report in 2023 was performed and the assessment concluded that the Project site includes potentially suitable habitat for the burrowing owl.

The Town appreciates the recommendation to condition the Project to obtain an ITP for take of burrowing owl. It is important to note that CESA prohibits the take of all CESA-listed species, including burrowing owl as a candidate species, under Section 2080. An ITP is required only when an identified take would occur. As stated in Section 4.3.1.5 of the Draft EIR, prior protocol surveys for burrowing owl, conducted in 2023, were negative. For this reason, take of this species is not anticipated. Should the species be observed on site prior to or during construction and if it is determined that take would occur, the Project will comply with all applicable laws, regulations, processes and permitting requirements.

09-8 The comment restates that three special-status bird species, burrowing owl, LeConte's thrasher (*Toxostoma lecontei*), loggerhead shrike (*Lanius ludovicianus*), and numerous non-sensitive birds and raptors have the potential to nest within the Project site. The comment acknowledges that the Draft EIR includes mitigation to minimize the Project's impacts to these species and recommends that two special-status bat species, pallid bat (*Antrozous pallidus*) and Townsend's big-eared bat (*Corynorhinus townsendii*), be included as target species within MM-BIO-12, which requires the Project conduct pre-construction avian nesting clearance surveys. The comment makes further suggested revisions to MM-BIO-12 relating to the timing of the pre-construction survey and procedures following identification of an active nest.

Pallid bat and Townsend's big-eared bat are not anticipated to roost on site due to a lack of roosting habitat, and therefore are not appropriate to include as target species for avian nesting surveys within MM-BIO-12. As stated in section 4.3.1.5, Special Status Wildlife of the Draft EIR (p. 4.3-9), the pallid bat and Townsend's big-eared bat would only be expected to forage across the Project site, and loss of potential bat foraging habitat would be considered less than significant with mitigation. Mitigation for impacts to western Joshua tree would also mitigate for loss of potential bat foraging habitat including the pallid bat and Townsend's big-eared bat, which use similar habitat. Thus, implementation of MM-BIO-1 would reduce impacts to foraging bats, including the pallid bat and Townsend's big-eared bat, to less than significant.

09-9 The comment states that the Project has the potential to result in impacts to Mohave ground squirrel (*Xerospermophilus mohavensis*), a CESA listed threatened species, in the form of direct or indirect impacts through loss or degradation of habitat. CDFW recommends that adoption of MM-BIO-16, which required a pre-construction clearance survey for Mohave ground squirrel.

As summarized in Appendix D (Mohave Ground Squirrel Survey Report) of Appendix C-1 of the Draft EIR, the Project site is located within the southernmost portion of the known geographic range for Mohave ground squirrel and located outside of known core population areas, peripheral population areas, and linkage areas as described in the 2019 CDFW Mohave Ground Squirrel Conservation Strategy. Furthermore, documented occurrences suggest that Mohave ground squirrel is extirpated from the region of the Project site, with the nearest occurrence from 1977 (CDFW 2023b). According to California Natural Diversity Database (CNDDB), a more recent documented occurrence from2011 is located southwest of the Project site and across the Mojave River, which forms a significant barrier for Mohave ground squirrel dispersal (CDFW 2023b). Based on known information regarding the geographic range of the current population, the Project site has very low potential for supporting Mohave ground squirrel. However, out of an abundance of caution, protocol surveys were conducted and as summarized in section 4.3.1.5 of the Draft EIR, Mohave ground squirrel was considered absent during these surveys and therefore impacts are considered less than significant. While there are no identified significant impacts to Mohave ground squirrel, implementation of MM-BIO-4 could provide benefit through the presence of a daily designated biologist who would be able to identify Mohave ground squirrel, if present, within the Project site.

09-10 The comment states that the Project has the potential to result in impacts to Crotch's bumble bee (*Bombus crotchii*), a CESA candidate species, in the form of direct or indirect impacts through loss or degradation of habitat. The comment contests the determination presented in the Draft EIR that Crotch's bumble bee does not have a potential to occur on site due to a lack of suitable floral resources and nearby current or historical CNDDB occurrences and recommends the adoption of MM-BIO-17, which requires protocol surveys for Crotch's bumble bee.

As summarized in Appendix C-1 of the Draft EIR, a habitat assessment for Crotch's bumble bee was conducted in 2023 and it was determined that the Project site does not support sufficient floral resources to support the life-cycle of this species including grassland and scrub communities that contain *Phacelia, Clarkia, Eriogonum, Eschscholzia and Antirrhinum* species, which have been identified as genera with preferred nectar sources. Although the Project site contains scrub communities that could theoretically support floral resources for this species, suitable floral resources were not detected during the habitat assessment, which was conducted in the spring during peak phenological bloom of many annual species in the region. The only CNDDB occurrence of Crotch's bumble bee within the nine U. S. Geological Survey 7.5-minute quadrangle area containing the Project site is located approximately 4 miles northeast of the Project site from 1944 (CDFW 2023b). A more recent occurrence (2019) is located approximately 12 miles northeast of the Project site at higher elevation within a remote desert wash, a microhabitat distinctly different than the Project site. Furthermore, protocol surveys for Crotch's bumble bee conducted within a site immediately across I-15 were negative. Based on this known information, Crotch's bumble bee is not anticipated to forage, nest, or overwinter within the Project site, and therefore protocol surveys are not warranted.

09-11 The comment states that the Project has potential to result in impacts to wildlife corridors and recommends and recommends the adoption of MM-BIO-18 (noted as a duplicate MM-BIO-17 in the

comment letter), which requires the reporting of all collision-related mortalities to the California Roadkill Observation System, and the reporting of any identifiable plant species that emerges within the Project site during Project construction.

As summarized in Section 4.3.4 of the Draft EIR (pp. 4.3-10 and 4.3-11) , the Project is situated outside of essential connectivity areas, natural landscape blocks, and linkages for the California Desert Linkage Network, none of which are impacted by the construction and operation of the Project. Furthermore, the Project site falls within lands mapped as Rank 1, defined by CDFW as areas where land use may limit options for providing connectivity (e.g., agriculture, urban), or no connectivity importance has been identified in models (CDFW 2019). While there are opportunities for wildlife to move through the Project site while migrating/dispersing or foraging/hunting, the project would not create a significant impediment to wildlife movement. Therefore, the Project would have a less than significant impact on wildlife movement, wildlife corridors, and wildlife nurseries. While the Draft EIR concludes no significant impacts to wildlife corridors would occur as a result of the Project, mitigation measure MM-BIO-4 has been revised to include species connectivity reporting (roadkill observations and newly sprouted plant species) as part of the construction biological compliance monitoring**.** The revised mitigation measure can be found in Final EIR, Chapter 2, Changes to the Draft EIR

09-12 The comment states that the Project proponent will not be able to mitigate for four species of special concern, LeConte's thrasher, loggerhead shrike, pallid bat, and Townsend's big-eared bat, as proposed through the WJTCA, since this mitigation approach is only applicable to the western Joshua tree. The comment restates the commenter's recommendation of the adoption of revised language to MM-BIO-12 to feasibly avoid any significant impacts to native bird and bat species.

The Town acknowledges that mitigation through the WJCTA cannot be used to mitigate for the loss of habitat occupied by special-status species, as it is intended to mitigate for the loss of western Joshua tree. MM-BIO-12 has been updated to include CDFW-recommended revised language regarding nesting birds. As previously discussed, pallid bat and Townsend's big-eared bat are not anticipated to roost on site due to a lack of roosting habitat, and therefore are not appropriate to include as target species for avian nesting surveys.

Although the Project site contains potentially suitable habitat for LeConte's thrasher, loggerhead shrike, pallid bat, and Townsend's big-eared bat, these species were not observed during the numerous[12] general and focused surveys of the Project site conducted in the winter, spring, and summer (June 2022 through December 2023) . The absence of these species during numerous site visits indicates that there is a low likelihood that these species are present in the region in substantive numbers and would be impacted by the construction of the Project. As stated in Draft EIR Section 4.2, Biological Resources p. 4.3-29, the Project site is surrounded by an abundance of similar habitat that can continue to support these species if they are present in the region. Thus, potential impacts to LeConte's thrasher, loggerhead shrike, and foraging bats, including pallid bat and Townsend's big-eared bat, are less than significant. Furthermore, impacts to potentially suitable habitat within the region would be further minimized through conservation of Joshua tree habitat as required by MM-BIO-1.

[12] As described in Draft EIR Appendix C1, a total of 26 biological surveys were conducted for the Project between June 17, 2022, and December 8, 2023.

**09-13** The comment acknowledges the education program required by MM-BIO-5 and suggests incorporating details from MM-BIO-14 in order to educate employees about the spread of invasive species associated with the Project. The comment elaborates on their suggestion that the education program should include a discussion of the invasive species currently present within the Project site as well as those that may pose a threat to or have the potential to invade the Project site through the implementation of ground disturbing activities.

MM-BIO-5 has been updated to include a discussion of invasive plant species.

**09-14** The comment provides links to a reporting database where any special status species and natural communities can be reported if they are detected during the Project surveys. The comment also notes that the Project would have an impact on fish and/or wildlife, and an assessment of environmental document filings fees are necessary.

The Town acknowledges the document filing fees, which are due at the time of filing the Notice of Determination and will be paid by the Project Proponent. However, the comment does not raise a specific issue regarding the adequacy of the Draft EIR's analysis; therefore, no further response can be provided or is required.

**09-15** The comment provides concluding remarks and contact information for any questions regarding the comment letter. The comment does not raise new or additional environmental issues concerning the adequacy of the Draft EIR. No further response is required or provided.

# Response to Comment Letter 10

**Adams Broadwell Joseph and Cardozo on behalf of**
**Californians Allied for a Responsible Economy (CARE)**
**November 12, 2024**

**10-1** This comment states that the letter is provided on behalf of CARE CA. The comment does not raise a specific issue regarding the adequacy of the Draft EIR's analysis; therefore, no further response can be provided or is required.

**10-2** The comment provides a brief description of the Project and states that technical comments should be responded to separately. Responses to technical comments are provided below in responses 10-25 to 10-41. The comment does not raise a specific issue regarding the adequacy of the Draft EIR's analysis; therefore, no further response can be provided or is required.

**10-3** The comment summarizes the primary arguments the comment asserts based on their review of the Draft EIR. In summary, the comment asserts that based on their review, the Draft EIR does not analyze impacts from all "reasonably foreseeable" uses for the Project and does not include impacts from stationary sources such as backup generators in the air quality and GHG analyses. The comment further states that the project does not adequately analyze the cumulative health risk imposed by the Project due to the community's existing pollution burden, the Draft EIR does not identify all feasible mitigation measures, does not analyze and mitigate health risks from Valley Fever cocci, and does not analyze the impacts associated with the construction of infrastructure improvements. The comment notes that CARE CA reserves the right to provide supplemental comments at later proceedings relating to the Project.

As this comment summarizes the arguments contained in the balance of the letter, please refer to the following comments for specific responses: see responses 10-10 and 10-12 regarding the statements on backup generators and stationary equipment, responses 10-33 and 10-34 regarding Valley Fever, and responses 10-12 and 10-31 regarding off-site infrastructure improvements. responses 08-7, 08-38 and 10-20 explain how the Project's health risk assessment methodology adequately addresses the Project's potential health risk impact on the surrounding community using Office of Environmental Health Hazard Assessment (OEHHA) guidance.

**10-4** The comment provides background information about CARE CA and include their qualifications as advocates for protecting the environment and the health of their communities' workforces. The comment also expresses their concerns regarding the enforcement of environmental laws that encourage sustainable development and ensure a safe working environment for the CARE CA members.

The comment does not raise a specific issue regarding the adequacy of the Draft EIR's analysis; therefore, no further response can be provided or is required.

**10-5** The comment summarizes the commenter's interpretation of the requirements of CEQA, the purposes of an environmental impact report and the need for analysis of project-specific alternatives and mitigation measures.

The comment does not raise a specific issue regarding the adequacy of the Draft EIR's analysis; therefore, no further response can be provided or is required.

10-6 The comment expresses concern that the Draft EIR's project description is inadequate and states that there is no way for the decision-makers to make an informed decision.

Please see response 08-4.

10-7 The comment expresses concern about the Draft EIR trip generation rate not analyzing a reasonably foreseeable end use. Please see Response 08-5.

10-8 The comment states that the Draft EIR lacks evidence to support the assumption that the Project will not be used as a fulfillment warehouse with sorting and explains that the trip generation rate should reflect the uncertainty of what warehouse type the Project will ultimately be used as.

Please see response 08-5.

10-9 The comment raises a concern with the lack of an identified user or tenant for the Project and contends that the Draft EIR's approach improperly limits the Draft EIR's analysis to subset of end users expected for the Project.

The California Court of Appeal in the case of *Maintain Our Desert Environment v. Town of Apple Valley* (2004) 124 Cal.App.4th 430 specifically analyzed this issue and found "that the identification of an end user is not so significant under CEQA that it must be done in order to comply with the law." Please see *Maintain Our Desert Environment* at 443. The court further reasoned that because land use entitlements run with the land, not the owner or applicant, no additional CEQA review is required for tenant-specific uses so long as those uses are consistent with the project that has already been analyzed and approved. *Id.* at 444. Although the Project's end user is speculative, the proposed Project description was developed using range of end user's requirements and therefore represents reasonably foreseeable future users of the Project.

10-10 The comment states that the Draft EIR fails to disclose that the Project is likely to include back-up generators, and therefore fails to include emissions from back-up generators. The comment argues that back-up generators are likely for the Project despite the fact that backup generators are specifically excluded from the Project description and site plan. The omission of backup generators from analysis is logically and reasonably due to their specific absence from the Draft EIR Chapter 3, Project Description and site plans included in Draft EIR Figure 3-4.

The facts of the *East* Oakland case are important to note: The project evaluated in that case actually assumed and included the construction of 17 backup generators and proposed an annual run time of 50 hours. *Id.* at 1251. The court, in finding that the petitioners arguments on the emissions calculations held no merit, noted that CEQA requires an environmental impact report to "be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences." *Id.* internal citations omitted. An environmental impact report need only study the reasonably foreseeable consequences of a project as "CEQA does not require an agency to assume an unlikely worst-case scenario in its environmental analysis." *Id.* internal citations omitted.

*The Project, unlike the one evaluated in the East Oakland Stadium Alliance* case specifically excludes the assumed installation of, or use of backup generators. Therefore, evaluation of emissions from generators is not required and no further comment on this is required..

**10-11** The comment states that the Project's mitigation is not feasible, however the Project includes all feasible mitigation measures to reduce impacts to below significance thresholds. Please see response 08-40 for a discussion of feasible mitigation.

For certain impacts, a less than significant impact, even with the inclusion of all feasible mitigation measures, is not achievable. Prior to taking action to certify an environmental impact report that includes significant and unavoidable impacts, the lead agency must make findings in accordance and compliance with California Public Resources Code Section 21081 and CEQA Guidelines Section 15091. A public agency may only approve or carry out a project for which an EIR has been completed that identifies any significant environmental effects if the agency makes one or more of the following written finding(s) for each of those significant effects accompanied by a brief explanation of the rationale for each finding:

1. Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.
2. Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
3. Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

The Town will prepare a Statement of Overriding Consideration, pursuant to California Public Resources Code Section 21081 and CEQA Guidelines Section 15093 as part of the consideration of the Project. A statement of overriding considerations must set forth the specific reasons why the agency finds that the project's "specific economic, legal, social, technological, or other benefits" render "acceptable" its "unavoidable adverse environmental effects." (CEQA Guidelines, §§ 15093, subd. (a), 15043, subd. (b); see also Pub. Resources Code, § 21081, subd. (b).)

**10-12** The comment states that the Draft EIR underestimates the Project's emissions of criteria air pollutants during operations by failing to include emissions from stationary equipment such as fire pumps and backup generators in its operational emissions assessment.

Regarding back-up generators and fire pumps, none were modeled as part of the Project because the Project's site plan does not include a backup generator or fire pump. Please see response 10-11.

A discussion of a diesel fire pump was erroneously included Chapter 4, Section 4.2.3 of the Draft EIR. This error has been corrected in the Errata.

The Project's Mitigation Measures have been revised to include an update to MM-AQ-2, operational mitigation measures, that state any potential future fire pumps must be electrically powered. Please see response 08-40 for additional discussion of the feasibility of the proposed additional mitigation measures

**10-13** The comment summarizes the significance findings of the Draft EIR, which exceed MDAQMD thresholds for $NO_x$ and $PM_{10}$. The comment states that while the Draft EIR acknowledges GHG emissions exceed the interim thresholds set by the SCAQMD of 3,000 MT of $CO_2e$ per year, the Draft EIR does not consider all feasible mitigation measures in its analysis, and does not demonstrate that certain mitigation measures were infeasible. As the comment serves as an introduction for specific mitigation measures and arguments raised in comments 10-14 to 10-17, please see those comments for responses to specific criticisms.

**10-14** The comment states that the Draft EIR does not include feasible mitigation measures from the Town's Climate Action Plan (CAP) and lists seven policies that the commenter considers feasible but not adequately considered by the Draft EIR.

1. ND-12: This measure requires that project energy efficiencies are in compliance with Title 24 Energy Efficiency Standards.

   The Project is designed to be energy efficient, and MM-GHG-1 stipulates that the Project achieve LEED Silver certification, which includes energy efficiency policies commensurate with those outlined in Policy ND-12 of the Town's CAP. Therefore, the Project would not conflict with this measure.

2. ND-14: This measure encourages the use of passive solar design. The Project is designed to be energy efficient and take advantage of the desert climate.

   As noted in response 08-40, the Project would include an on-site solar system with a battery backup. The Project would also be designed to achieve Leadership in Energy and Environmental Design (LEED) Silver certification. Therefore, the Project would not conflict with this measure.

3. ND-15: This measure encourages the reduction in energy demand from potable water conveyance.

   The Project's landscape plan is outlined in Chapter 3 of the Draft EIR (Project Description), and MM-GHG-2 includes policies to reduce water demand and associated energy use that are compatible with Policy ND-15. Furthermore, as the Project is not a residential land use, the measures contained in Policy ND-15 pertaining to turf areas are not relevant to the Draft EIR's analysis. Therefore, the Project would not conflict with this measure.

4. ND-17: This measure requires CFL or LED light bulbs.

   This measure is feasible; MM-GHG-1 would ensure that all heating, cooling, lighting, and appliances are Energy Star-rated as part of the Project's LEED design but has been updated to specify that all light bulbs shall be CFL or LED. The Project would not conflict with this measure.

5. ND-18: This measure encourages the installation of common area electric vehicle charging stations and secure bike racks.

   This measure is feasible and MM-GHG-1 has been updated to include the recommendations of this policy. Therefore, the Project would not conflict with this measure. Please see response 08-40 for an expanded discussion of the feasibility of suggested mitigation measures.

6. ND-19: This measure would reduce a project's grid energy use by encouraging the installation of on-site solar or other clean energy systems sufficient to provide electric power for the project.

The Project would be required to include the installation of an on-site solar system and battery storage array per Title 24, part 6 requirements. This measure is feasible, and MM-GHG-1 has been updated to meet this requirement; please see response 08-40 for a discussion of the feasibility of suggested mitigation measures.

7. ND-20: This measure requires solar panels or photovoltaic systems on new roofs. Plans for the Project already include an on-site solar system and battery storage array; therefore, the Project would not need to implement mitigation to fulfill this requirement. Please see response 08-40 for a discussion of the feasibility of suggested mitigation measures.

The comment states that the Project fails to implement measures such as ND-12, ND-19, and ND-20 because the Project does not exceed Title 24 requirements. Policy ND-12 specifies that meeting Title 24 requirements is sufficient to satisfy the policy. Please see also response 08-7 for a discussion of the Project's Title 24 compliance. Policy ND-19 states that the installation of a solar system sufficient to provide electric power and heat water within the project is necessary; however, as explained in response 08-40, MM-GHG-1 has been updated to go beyond this requirement, and commits to requiring future tenants of the Project to subscribe to the Apple Valley Choice Energy 100% Renewable Energy Plan for the duration of occupancy, committing Project tenants to satisfying 100% of the Project's electricity demand through renewable and carbon free energy. Policy ND-20 requirements of solar panel installation on new roofs is already met by the initial Project design and is therefore not additional mitigation. Please see response 08-40 for an expanded discussion of the feasibility of additional mitigation measures.

10-15 The comment states that the Draft EIR does not consider feasible mitigation measures from the Attorney General's Warehouse Guidance and provides a list of measures that should be considered for implementation.

The measure requiring operators establish and promote a rideshare program that discourages single-occupancy vehicle trips and provides financial incentives for alternative transportation modes has been incorporated into the Project's mitigation measure for operations (MM-GHG-1), which includes the requirement that future occupants develop a Transportation Demand Management (TDM) program, specific to their proposed use and operations, to reduce employee commute vehicle emissions by discouraging single-occupancy vehicle trips and encouraging alternative modes of transportation such as carpooling, taking transit, walking, and biking. Examples of trip reduction measures may include, but are not limited to transit passes, car-sharing programs, and ride sharing programs.

All other measures from the Attorney General's Warehouse Guidance listed by the comment are discussed in response 08-40, which considers the feasibility of additional mitigation measures.

10-16 The comment states that the Draft EIR does not consider feasible mitigation measures from the "Good Neighbor" Policy for Logistics and Warehouse/Distribution Uses from the Riverside County Board of Supervisors Policy F-3.

The comment fails to demonstrate how a project located in the Town, which is located in the County of San Bernardino is somehow required to comply with a policy that applies to the County of Riverside,

Notwithstanding the lack of legal justification for enforcement of the Riverside County policy, please see response 08-40, which considers the feasibility of additional mitigation measures, for Policies 2.1, 2.2, and 4.1. Please also see response 10-15 which considers the feasibility of additional mitigation for Policy 4.8.

Policy 2.3, which limit the maximum daily disturbance area to 10 acres per day for grading activity during construction, is inapplicable to the Project, as Project construction thresholds are already reduced below significant levels after the implementation of existing construction mitigation measure (MM-AQ-1) which reduces VOC levels from architectural coatings.

Again, notwithstanding the fact that the policy is not applicable to the Project, this Final EIR considers all feasible mitigation measures introduced by the comment.

**10-17** The comment states that the Draft EIR does not consider feasible mitigation measures consistent with the Town's General Plan policies. The comment states that the Draft EIR fails to demonstrate consistency with the following fire policies:

> Policy 1.E: This policy encourages the use of clean or renewable energy sources for transportation, heating, cooling, and construction.
>
> **Consistent**. Please see response 08-40 for a discussion of the feasibility of mitigation measures relevant to this policy.
>
> Policy 1.F: This policy encourages Projects to implement alternate modes of transportation, pedestrian-oriented retail and activity centers, and multi-use trails.
>
> **No conflict**. The Project is an industrial land use adjacent to an interstate highway and does not involve retail or activity centers. Please see response 10-15 for a discussion of the feasibility of mitigation measures relevant to this policy.
>
> Policy 1.G: This policy states Projects shall strive to exceed Title 24 standards by 15%, and/or achieve LEED certification or similar performance standards for buildings.
>
> **No conflict**. Please see response 08-40 for a discussion of the feasibility of mitigation measures relevant to this policy.
>
> Policy 1.H: This policy encourages projects that reduce vehicle miles traveled (VMT) by providing alternative transportation options, home office and live/work spaces, and/or promote employees living close to work.
>
> **No conflict**. Please see response 08-40 and response 10-15 for discussion of the feasibility of mitigation measures relevant to this policy.
>
> Policy 1.J: This policy states the Town shall give priority to projects that include the use of solar cells and other alternative energy sources in their designs.
>
> **No conflict**. Please see response 08-40 for a discussion of the feasibility of mitigation measures relevant to this policy.

10-18 The comment states that the Draft EIR does not contain a sufficient explanation of the Project's energy impacts, citing the Draft EIR's reference to Title 24 compliance as insufficient evidence that the Project will comply with CEQA guidelines to "reduce the wasteful, inefficient, and unnecessary consumption of energy." Specifically, the comment identifies the Project's discussion of the implementation of **on-site** renewable energy resources and EV charging infrastructure that go beyond regulatory compliance as lacking in depth.

Please see response 08-40, which discusses the feasibility of additional mitigation measures, including the fulfillment of 100% of the Project's energy demand through renewable energy and the installation of additional **on-site** EV charging infrastructure as feasible mitigation measures, as the comment suggests.

10-19 This comment states the Draft EIR fails to analyze and properly mitigate cumulative impacts of the Project when combined with the effects of other current projects, and the effects of probable future projects.

Cumulative projects are discussed included in Chapter 3 of the Draft EIR (please see Draft EIR p. 3-3) and accounted for throughout the analyses in the Draft EIR. As explained on page 3-3, "[t]he cumulative impacts analysis in this EIR uses a combined "list" and "projections" method, pursuant to CEQA Guidelines Section 15130(b)(1). The list incorporates available information about existing and reasonably foreseeable development in the vicinity of the Project site, including implementation of the North Apple Valley Industrial Specific Plan." Future buildout through 2040 is assumed for the purposes of evaluating the Project's cumulative contribution. All previously constructed projects within the Town are considered part of the environmental baseline and have therefore been accounted for as part of the existing conditions for purposes of population and housing impacts. Therefore, no further analysis is required.

10-20 The comment states that the Draft EIR did not analyze the cumulative impacts of the Project's air quality emissions. The comment states that the Draft EIR's approach to determining the significance of health risk impacts is inadequate because it does not consider the Project's cumulative effects with the existing and proposed warehouses surrounding the site.

> Please see response 08-6 for a discussion of the Project's approach to health risk and cumulative impacts. Please also see response 08-40, responses 10-14-10-17, and response 10-32 regarding the feasibility of additional mitigation measures.

10-21 The comment states the Project may result in potentially significant public utilities impacts.

Project impacts related to public utilities were analyzed in the Draft EIR (please see pages 4.12-1 through 4.12-7). The Draft EIR concludes that the installation of new utility infrastructure for the Project does not cause any significant environmental effects under CEQA. Utility infrastructure to serve the Project will be installed along the Project frontage within existing road right of ways for Norco Street, Falchion Road Outer Highway 15. The environmental effects of installation of utility infrastructure were analyzed throughout the Draft EIR. The comment also identifies a concern related the adequacy of fire flows for the Project. Fire flow data was incorporated into the design of the water infrastructure and current analysis includes sufficient infrastructure to support the required fire flows for the Project. The Town of Apple Valley Fire Department has reviewed the Project site plan and design documents to ensure adequate fire flows to the Project. Therefore, no further analysis is required.

10-22 The comment states the Draft EIR fails to disclose, analyze, and mitigate potentially significant valley fever impacts wand cites to a 2022 study that included cases for San Bernardino County generally.

As a threshold matter, it is important to note that the County of San Bernardino encompasses over 20,000 square miles and is the largest county in the United States. The figures cited by the comment only mention the County of San Bernardino without providing any specifics concerning the location of reported cases. It is not readily apparent from the data provided if any of the reported cases occurred within the Town or the immediate region around the Town. The comment also notes that San Bernardino County had the eighth-highest number of total Valley Fever cases rose from 1.8 per 100,000 people in 2016 to 10.5 in 2022, which is correct. However, they neglected to state that San Bernadino County's rate of Valley Fever cases of 10.5 per 100,000 people is well below the California average of 19.1 per 100,000.

While dust exposure is a primary risk factor for contracting Valley Fever, the comment contends that meeting dust control rules (MDAQMD Rule 403) would not be sufficient to control the potential impacts of Valley Fever exposure at the Project site.

The comment states that construction workers are at highest risk of direct exposure, citing a journal article on occupational exposure that notes "work involv[ing] dusty digging operations" puts workers at highest risk. The comment fails to mention that the journal article they are referencing, while an accurate description of the dangers of Valley Fever exposure, was published in 1968, nine years before the passage of the first version of Rule 403, the relevant legislation that protects those workers from exposure by controlling fugitive dust. In light of this fact, it is not unreasonable to doubt whether this journal article contains all of the current and relevant risk information regarding fugitive dust exposure and Valley Fever risk.

The comment argues that Valley Fever presents a health risk to sensitive receptors by claiming that mitigation included in MDAQMD Rule 403, aimed at $PM_{10}$ particles, is not applicable to smaller particles because of their slower airborne settling rate. $PM_{10}$ is defined by the Environmental Protection Agency (EPA) as "inhalable particles, with diameters that are generally 10 micrometers and smaller" (EPA 2023). Therefore, as $PM_{10}$ is inclusive of all particles smaller than 10 micrometers, Rule 403 would by definition apply to all particles smaller than 10 micrometers. Furthermore, Rule 403 includes soil watering as part of its Dust Control Plan requirements. Soil watering would lower the likelihood of the suspension of particles, thus making the speed of their settling rate a nonfactor: "Watering increases the moisture content, which conglomerates particles and reduces their likelihood to become suspended" (EPA 2006).

The comment presents a figure with information on the acres of Antelope Valley disturbed from renewable energy projects and agricultural management practices and the incidence rate of Valley Fever, before arguing that "the mass disturbance of soils anticipated by the proposed Project will create the same conditions that were detailed in the study by Colson." This is speculative, given that the Project is not a renewable energy project or agricultural operation, whose difference in scale presents different challenges for the management of fugitive dust. Furthermore, the study does not have the level of certainty the commenter presents in their argument: the data are from 1999-2014, the primary study system is renewable energy and agricultural projects, and critically, the study does not show a significant correlation between increased Valley Fever risk and the most relevant metric to the Project analyzed in the Draft EIR, new buildings completed. It is also of not that only a single $R^2$ value of the 20

correlations between Valley Fever incidence and development presented in the figure was over 0.5 (for solar energy projects), denoting statistically weak correlations.

The comment also presents information on the health impacts of individuals who contract Valley Fever. This does not have direct bearing on the analysis conducted in the EIR; therefore, no further response is required.

**10-23** This comment serves as a conclusion for the comment letter, it reiterates the comments above and states that the Draft EIR's analysis and mitigations are inadequate. The comment recommends that the Draft EIR is revised and recirculated. However, for the reasons discussed in this response to comments document, the issues raised are addressed in the Draft EIR. As this comment does not raise a specific issue regarding the adequacy of the Draft EIR's analysis, no further response can be provided or is required.

**10-24** The comment provides concluding remarks and requests to be included in the future notices regarding hearings and/or actions related to the Project. The Town acknowledges the comment, and the commenter has been added to the distribution list. The comment does not raise a specific issue regarding the adequacy of the Draft EIR's analysis; therefore, no further response can be provided or is required.

**10-25** The comment serves as an introduction to exhibit A of the comment letter and introduces Clark and Associates who were asked to review the Draft EIR on behalf of Adams Broadwell Joseph and Cardozo. The comment does not raise a specific issue regarding the adequacy of the Draft EIR's analysis; therefore, no further response can be provided or is required.

**10-26** The comment provides a summary of the Project description. No response is required.

**10-27** The comment provides a summary of the Project description, and while it summarily states there are flaws in the Draft EIR's analysis it does not raise any specific flaws or issues that must be addressed in this response.

**10-28** The comment states that the Project site is located near other existing warehouse projects, and the Town is reviewing five new warehouse projects in the region of the Project site, in addition to the Project. The comment presents information on the PM and $NO_x$ emissions of daily truck trips that would result from the Project, and claims that the Project would exacerbate regional issues with ozone and PM, constituting an increase in toxic air contaminants in an area that is already impacted by such pollutants.

Section 3.2 of the Draft EIR discusses the cumulative setting for the Project (pp. 3-2 and 3-3). The cumulative analysis in this Draft EIR utilizes a combined "list" and "projections" method, pursuant to State CEQA Guidelines Section 15130(b)(1). The list incorporates available information about existing and reasonably foreseeable development in the vicinity of the Project site, including implementation of the North Apple Valley Industrial Specific Plan within the surrounding area under the jurisdiction of the Town as well as the Desert Gateway Specific Plan, located east of the Project site across I-15 within the jurisdiction of the City of Victorville. Proposed and approved projects within the North Apple Valley Industrial Specific Plan and the Desert Gateway Specific Plan and surrounding region consist of the travel center and RV park, known as the Apple Valley I-15 Travel Center Project, located northwest the Project site; the Cordova Complex and Quarry at Pawnee Warehouse Project and the Inland Empire

North Logistics Center – Victorville, located directly across I- 15 in the City of Victorville; and the recently approved Apple Valley 143 Warehouse Project, located north of the Project site. However, air quality impacts, and the CEQA thresholds the Draft EIR uses to measure them, are inherently cumulative by design. The addition of nearby warehouses to the modeling of Project air pollutant and GHG emissions is therefore not necessary to assess the Project's cumulative impacts on the region. Please see response 08-6 and 08-27 for more discussion regarding the analysis of cumulative impacts in the Draft EIR. Projections are regional projections regarding anticipated changes in population and employment

10-29 The comment highlights out the difference in building square footage in the executive summary of the Draft EIR and in the CalEEMod output file, noting the 0.01% discrepancy, before stating that the building area for warehouse building 2 is not captured in the CalEEMod analysis, pointing out the lower square footage of "unrefrigerated warehouse-no rail" and "unrefrigerated warehouse-rail" land use types in the modeling file.

It bears mentioning that the comment neglects to disclose that the total square footage analyzed in the Air Quality analysis was 2,604,795 which is .01% higher than what is included in the Project description. The slight discrepancy in building square footage between the executive summary and CalEEMod output file and the apparent absence of one of the warehouse buildings are both explained by the Draft EIR's modeling approach of capturing passenger vehicles and trucks separately within CalEEMod, to allow for a more granular analysis of mobile source emissions. To accomplish this in CalEEMod, the total building square footage was split between the "—rail" and "—no rail" warehouse land use types, which have the same energy, solid waste, and water demand defaults, making them effectively identical for modeling purposes. The split in land use was performed to keep track of truck and passenger vehicle emissions within the constraints imposed by CalEEMod. The slight difference in square footage is the result of rounding when calculating the split in passenger vehicle and truck land use, the percentages of which correspond with the fleet mix and traffic data reported in the Draft EIR (Appendix B, Appendix J). In summary, the minute difference in the square footage would not have a material or significant effect on the analysis and the total building square footage of the project is captured in the modeling data. Therefore, no further analysis is required.

10-30 The comment states that the Draft EIR failed to include the Project's stationary source of emission, a 300-horsepower diesel-fueled fire pump, in the air quality and GHG CalEEMod analysis. The comment states that while the stationary source was included in the Project's health risk assessment, the omission of the fire pump and back-up generators from the CalEEMod analysis means that operational emissions are underestimated in the Draft EIR.

The Project description did not include a discussion of a generator or fire pump because neither are planned for this project. Please see response 10-12 for a discussion and revisions to EIR regarding fire pumps and emergency generators.

10-31 The comment states that the air quality analysis does not include emissions from off-site improvements that would be made during the construction phase of the Project and is therefore incomplete.

As more fully detailed and analyzed in the Draft EIR Chapter 3, Section 3.4.2 Project Construction (p. 3-8) the off-site street and utility improvements were captured in the construction scenario developed for the project and length of construction and intensity of worker, vendor and equipment assumptions

in the construction schedule capture the adjacent off-site work required to construction the project; therefore, no further analysis is required.

10-32 The comment states that the Draft EIR does not consider feasible mitigation measures to reduce operational $NO_x$, PM, and GHG emissions, and lists 11 mitigation measures that should be considered. While the majority of the mentioned measures have been addressed in response 08-40, the remaining measures are discussed below:

> 8. Limit the daily number of trucks allowed at the Proposed Project to levels analyzed in the CEQA document. If higher daily truck volumes are anticipated to visit the site, the Port as the Lead Agency should commit to re-evaluating the Proposed Project through CEQA prior to allowing this land use or higher activity level.

**Inapplicable**. The comment lists an unknown and unidentified Port, not the Town, as the Lead Agency: Therefore, the relevance of this suggested measure is questionable. A mitigation measure based on speculation of potential land uses outside the scope of the analysis presented in this Draft EIR is not within the purview of this document; however, if a more intense land use is proposed later than what is analyzed in this Draft EIR, it will have to be re-evaluated consistent with CEQA prior to approval.

> 10. Establish overnight parking within the industrial building where trucks can rest overnight.

**Addressed**, as truck parking is already planned. Please see the Project Description (Chapter 3, p. 3-7)

> 11. Establish area(s) within the Proposed Project site for repair needs.

**Inapplicable**. The project is a warehouse facility. Heavy truck maintenance or repair is not part of the Project description and not contemplated for the Project.

The remaining eight measures are discussed earlier in this response to comments. Please see response 08-40 for a discussion of the feasibility of additional mitigation measures.

10-33 The comment expresses concern that the Draft EIR does not adequately address the risk of *Coccidiodes Immitis* (Valley Fever fungus) in the vicinity of the Project site. Please see response 10-22.

10-34 This comment provides a list of Valley Fever mitigation measures that the commenter argues should be inserted into the FEIR.

As the Draft EIR did not identify a significant impact regarding potential health impacts from Valley Fever (Draft EIR pp. 4.2-39-4.2-40), the Project is not required to mitigate for what can only be described as a speculative risk.

Notwithstanding the speculative risk, MM-AQ-1 has been revised to require Valley Fever training which will be included as an enforceable COA. Please see response 10-33 regarding the severity of Valley Fever impacts.

10-35 The comment includes concluding remarks and recommends that the Draft EIR be revised and recirculated. However, the comment does not raise a specific issue regarding the adequacy of the Draft EIR's analysis; therefore, no further response can be provided or is required.

10-36 The comment summarizes the statements presented in the following four comments and introduces the attached letter from Norman L. Marshall, President of Smart Mobility a company based in Vermont.. Please see response 10-37 to 10-40.

10-37 The comment states that the Draft EIR lacks substantial evidence to support the estimated trip generation because the Draft EIR excludes Fulfillment Center Warehouse – Sort from analysis without sufficient justification. The comment also states that the EIR should use the highest trip rate, 6.44 trips per 1000 sq ft. per day, or enact a COA that requires the actual trip generation not exceed the rate assumed in the Draft EIR.

Please see response 08-5 for an explanation of the Project's trip generation calculation and the justification of the Draft EIR's determination of warehouse type in that calculation.

10-38 The comment states that the Draft EIR's traffic analysis forecasts traffic impacts from the Project using the trip generation estimates, which it argues are flawed and therefore affect the results of the traffic analysis (Appendix J).

Please see response 08-5 for a discussion of the Draft EIR's trip generation estimates.

10-39 The comment states that the Draft EIR's air pollution and GHG estimates are also based on the trip generation estimate discussed above, arguing that because the trip generation estimates are flawed, air quality and GHG emissions are underestimated.

Please see response 08-5 for a discussion of the Draft EIR's trip generation estimates.

10-40 The comment states that the SBTAM ability to accurately estimate VMT at the project location is limited due to the Project's location at the edge of an urbanized area. The Draft EIR relies on VMT as the basis for evaluating transportation impacts under CEQA. Consistent with the Town's VMT Guidelines, the Project's Origin/Destination (O/D) VMT per service population was used to evaluate the Project's potential impact on VMT. Per the Town's Guidelines, the O/D methodology is used at the project level because it provides a more complete capture of all travel (car and truck trips) within the study area, including trips that may begin or end outside of the study area. The O/D method accounts for external truck trips and therefore provides a more complete estimate of all VMT within the study area. The project-level VMT analysis was conducted consistent with the Town policy; therefore, no further analysis is required.

# Response to Comment Letter 11

**Morongo Band of Mission Indians**
**November 22, 2024**

**11-1** The Town received five distinct comments from tribal governments, however, to maintain tribal confidentiality of tribal cultural resources, the following summary includes the comments received from all tribes with the intent of providing a full and complete record as required by CEQA. Of the five comment letters received from tribal governments, four asserted the project was either not within the tribe's historical use area or they had no comment, and three comment letters deferred comments to other tribes. One tribe requested revisions to the mitigation measures related to cultural resources and tribal cultural resources. Revisions have been made to certain mitigation measures to incorporate provisions not previously included, however no new mitigation measures were incorporated as similar mitigation measures to those requested were already incorporated into the Draft EIR. The Town acknowledges the comments and notes that they do not raise new or additional environmental issues concerning the adequacy of the Draft EIR. No further response is required or provided.

# Response to Comment Letter 12

**Mojave Desert Air Quality Management District (MDAQMD)**
**November 6, 2024**

**12-1** This comment states that the MDAQMD has reviewed the EIR and provides a brief summary of the Project. This comment serves as an introduction to comments that follow.

**12-2** The comment states that the MDAQMD agrees with the findings of the EIR that even with the implementation of all feasible mitigation measures, Project operations would still exceed MDAQMD thresholds for $NO_x$ and PM10, resulting in a significant and unavoidable impact. The comment also recommends the City require the Project to develop an electric vehicle charging station to further mitigate emissions and incentivize battery electric zero-emission truck use.

Please see response 08-40, which includes a discussion on the proposed mitigation measure for the development an electric vehicle charging station at the Project site.

**12-3** The comment serves as a conclusion and provides contact information for questions about the letter. This comment does not raise a specific concern related to the adequacy of the EIR; therefore, no further response is required.

# Response to Comment Letter 13

**Adam Browell Joseph and Cardozo**
**on behalf of**
**Californians Allied for a Responsible Economy (CARE CA)**
**October 10, 2024**

**13-1** The comment states that the letter is provided on behalf of CARE CA. The commenter is requesting to be added to the distribution list for the Project to receive notices regarding hearings and/or actions related to the Project.

The Town acknowledges the comment, and the commenter has been added to the distribution list. The comment does not raise a specific issue regarding the adequacy of the Draft EIR's analysis; therefore, no further response can be provided or is required.

# Response to Comment Letter 14

**Adam Browell Joseph & Cardozo**
**on behalf of**
**Californians Allied for a Responsible Economy (CARE CA)**
**October 10, 2024**

**14-1** The comment states that the letter is provided on behalf of CARE CA and requests immediate access to any and all public records related to the Project.

The Town acknowledges the comment, and the documents were provided to the commenter on October 16, 2024, via a sharefile link. The comment does not raise a specific issue regarding the adequacy of the Draft EIR's analysis; therefore, no further response can be provided or is required.

# 3.3 References

APA (American Planning Association). 2003. Planning advisory Service Report Number 516: Jobs-Housing Balance. November 2003. https://planning-org-uploaded-media.s3.amazonaws.com/publication/download_pdf/PAS-Report-516.pdf

ATA (American Trucking Associations). 2023. "A heavy dose of reality for electric-truck mandates." April 19, 2023. Accessed August 5, 2024, at https://www.trucking.org/news-insights/heavy-dose-reality-electric-truck-mandates.

BAAQMD (Bay Area Air Quality Management District). 2022. *Justification Report: CEQA Thresholds for Evaluating the Significance of Climate Impacts from Land Use Projects and Plans.* Accessed September 11, 2024, at https://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa-thresholds-2022/justification-report-pdf.pdf?la=en.

CAPCOA (California Air Pollution Control Officers Association). 2022. CalEEMod User Guide. Version 2022.1. Accessed July 30, 2024, at https://caleemod.com/documents/user-guide/01_User%20Guide.pdf.

CARB (California Air Resources Board). 2017. California's 2017 Climate Change Scoping Plan: The Strategy for Achieving California's 2030 Greenhouse Gas Target. November 2017. Accessed December 20, 2023, at https://www.arb.ca.gov/cc/scopingplan/scoping_plan_2017.pdf.

CARB. 2020. "California takes bold step to reduce truck pollution." June 25, 2020. Accessed August 5, 2024, at https://ww2.arb.ca.gov/news/california-takes-bold-step-reduce-truck-pollution.

CARB. 2022. 2022 Scoping Plan for Achieving Carbon Neutrality. November 2022. Accessed December 20, 2023, at https://ww2.arb.ca.gov/sites/default/files/2022-12/2022-sp.pdf.

CCJ (Commercial Carrier Journal). 2023. "Charging forward with electric truck charging stations." August 29, 2023. Accessed August 5, 2024, at https://www.ccjdigital.com/alternative-power/battery-electric/article/15545697/charging-forward-with-electric-truck-charging-stations.

CDFW. 2019. "ACE Dataset Fact Sheet: Terrestrial Connectivity." August 21, 2019. Accessed 2023. https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=150835&inline.

CDFW (California Department of Fish and Wildlife). 2023a. California Natural Diversity Database Rarefind. July 14, 2023.

CDFW. 2023b. RareFind 5, Version 5.2.14. California Natural Diversity Database. Sacramento, California: CDFW, Biogeographic Data Branch. Accessed 2023. https://map.dfg.ca.gov/rarefind/view/ RareFind.aspx.

CDFW. 2024. Western Joshua Tree Conservation Act Incidental Take Permit. https://wildlife.ca.gov/Conservation/Environmental-Review/WJT/Permitting/WJTCA-ITP.

CDFW. 2025. Incidental Take Permits. https://wildlife.ca.gov/Conservation/CESA/Permitting/Incidental-Take-Permits

CDPH (California Department of Public Health) 2022. Epidemiologic Summary of Valley Fever (*Coccidioidomycosis*) in California, 2020-2021. https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CocciEpiSummary2020-2021.pdf

EPA (Environmental Protection Agency) 2006. AP 42: Compilation of Air Emission Factors. Section 13.2.2: Unpaved Roads. https://www3.epa.gov/ttn/chief/ap42/ch13/final/c13s0202.pdf.

EPA 2023. Particulate Matter Basics. https://www.epa.gov/pm- pollution/particulate-matter-pm-basics.

MDAQMD (Mojave Desert Air Quality Management District). 2020. California Environmental Quality Act (CEQA) and Federal Conformity Guidelines. Accessed December 2024. https://www.mdaqmd.ca.gov/home/show publisheddocument/8510/638591628485530000

OEHHA (Office of Environmental Health Hazard Assessment). 2015. *Air Toxics Hot Spots Program Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments*. February 2015. Accessed December 18, 2023, at https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf.

OPR (California Governor's Office of Planning and Research). 2018. Technical Advisory on Evaluating Transportation Impacts in CEQA. December 2018. Accessed August 5, 2024, at http://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf.

RFF (Resources for the Future). 2023. Medium- and Heavy-Duty Vehicle Electrification: Challenges, Policy Solutions, and Open Research Questions. Report 23-03. May 2023. Accessed August 5, 2024, at https://media.rff.org/documents/Report_23-03_v3.pdf.SCAG (Southern California Association of Governments). 2001a. Employment Density Study Summary Report. October 31, 2001. Accessed December 21, 2023, at http://www.mwcog.org/uploads/committee-documents/bl5aX1pa20091008155406.pdf.

SCAG (Southern California Association of Governments). 2001b. The New Economy and Jobs/Housing Balance in Southern California. SCAG (Southern California Association of Governments). 2001.

SCAG (Southern California Association of Governments). 2021. Pre-Certified Local Housing Data for the Town of Apple Valley. Updated 2021. https://scag.ca.gov/sites/main/files/file-attachments/apple-valley-he-0421.pdf?1620801830.

SCAQMD (South Coast Air Quality Management District). 2008. Draft Guidance Document – Interim CEQA Greenhouse Gas Significance Threshold. October 2008. Accessed December 2024. https://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgattachmente.pdf

SMAQMD (Sacramento Metropolitan Air Quality Management District). 2017. Landscaping Guidance for Improving Air Quality Near Roadways: Plant Species and Best Practices for the Sacramento Region. V1. April 2017. Accessed August 5, 2024, at https://www.airquality.org/LandUseTransportation/Documents/.pdf.

Town of Apple Valley. 2009a. *2009 General Plan*. Adopted August 11, 2009. Accessed December 21, 2023, at https://www.applevalley.org/services/planning-division/2009-general-plan.

Town of Apple Valley. 2009b. Apple Valley General Plan Environmental Impact Report. Accessed October 13, 2023, at https://www.applevalley.org/home/showpublisheddocument/24331/636552384686570000.

Town of Apple Valley. 2021. Town of Apple Valley adopted Resolution No 2021-08. May 11.

U.S. Census Bureau. 2022. Quick Facts, Apple Valley Town, California. Accessed December 21, 2023, at https://www.census.gov/quickfacts/fact/table/applevalleytowncalifornia/PST045222.00

INTENTIONALLY LEFT BLANK

# 4 Mitigation Monitoring and Reporting Program

California Public Resources Code (PRC) Section 21081.6 requires that, upon certification of an EIR, "the public agency shall adopt a reporting or monitoring program for the changes made to the Project or conditions of Project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during Project implementation." (PRC Section 21000–21177.)

This Mitigation Monitoring and Reporting Program was developed in compliance with Section 21081.6 of the PRC and Section 15097 of the CEQA Guidelines (14 CCR 15000–15387 and Appendices A–L.), and includes the following information:

- List of mitigation measures
- Timing for implementation of the mitigation measures
- Party responsible for implementing or monitoring the mitigation measures
- Date of completion of monitoring

The Town of Apple Valley must adopt this Mitigation Monitoring and Reporting Program, or an equally effective program, if it approves the proposed Project with the mitigation measures that were adopted or made conditions of Project approval.

## Table 4.1. Mitigation Monitoring and Reporting Program

| Mitigation Measure or Project Design Feature | Implementation Timing | Agency Responsible for Monitoring | Initials | Date |
|---|---|---|---|---|
| **Mitigation Measures** | | | | |
| **Air Quality** | | | | |
| **MM-AQ-1 Construction Requirements.**<br>▪ Architectural and industrial maintenance coatings (e.g., paints) applied to the Project site shall have volatile organic compound levels of less than 10 grams per liter.<br>▪ The Project's construction manager shall maintain and keep current construction logs detailing the following:<br>- An inventory of construction equipment, maintenance records, and datasheets, including design specifications and emission control tier classifications;<br>- Verification that construction equipment operators have been advised of idling time limits and photographic evidence that signage with idling time limits have been posted around the construction site; and<br>- Evidence that construction contractors have been provided with transit and ridesharing information for construction workers.<br>▪ The construction logs shall be kept on the construction site at all times and shall be made available to local, regional, or state officials (e.g., officials from the Town of Apple Valley, MDAQMD, or CARB) by request or when conducting an inspection at the Project site.<br>▪ In addition, the Project's construction manager or its designee shall provide to all Project construction employees the fact sheet entitled "Preventing Work-Related Coccidioidomycosis (Valley Fever)" by the California Department of Public Health and ensure all employees are aware of the potential risks the site poses. The Project construction manager or its designee shall schedule mandatory training for all Project construction employees providing information on the occupational responsibilities and requirements contained in these measures to reduce potential exposure to *Coccidioides* spores.<br>The training for Project construction employees shall include all the following topics:<br>▪ What Valley Fever is and how it is contracted.<br>▪ High-risk areas and types of work and environmental conditions during which the risk of contracting Valley Fever is highest. | Prior to construction | Town of Apple Valley | | |

## Table 4.1. Mitigation Monitoring and Reporting Program

| Mitigation Measure or Project Design Feature | Implementation Timing | Agency Responsible for Monitoring | Initials | Date |
|---|---|---|---|---|
| ▪ Personal risk factors that may create a higher risk for some individuals.<br>▪ Personal and environmental exposure prevention methods.<br>▪ Importance of early detection, diagnosis, and treatment.<br>▪ Recognizing common signs and symptoms of Valley Fever.<br>▪ Importance of reporting symptoms to the employer and seeking medical attention.<br>▪ Common treatment and prognosis for Valley Fever. | | | | |
| **MM-AQ-2 Zero-Emission or Near-Zero-Emission Equipment.** The following measure shall be implemented during all ongoing business operations and shall be included as part of contractual lease agreement language to ensure that tenants and operators of the Project are informed of the following operational responsibility:<br>▪ All equipment and appliances operating on the Project site shall be zero-emission or near-zero-emission equipment. This requirement shall apply to indoor and outdoor equipment such as forklifts, handheld landscaping equipment, yard equipment, and office appliances. The building manager or their designee shall be responsible for enforcing these requirements. | During Project operation | Town of Apple Valley/Building Manager | | |
| **MM-AQ-3. Restriction on Cold and/or Refrigerated Space.** Operations involving cold or refrigerated storage shall be prohibited unless additional environmental review, including a health risk assessment, is conducted and certified pursuant to the California Environmental Quality Act. | Prior to tenant occupancy | Town of Apple Valley | | |
| **Biological Resources** | | | | |
| **MM BIO-1: Conservation of Western Joshua Trees.** Mitigation for direct impacts to 4 western Joshua trees that are 5 meters or greater in height, 201 trees 1 meter or greater but less than 5 meters in height, and 78 trees less than 1 meter in height will be fulfilled through a payment of the elected fees as described in Section 1927.3 of the Western Joshua Tree Conservation Act, or through obtaining an Incidental Take Permit pursuant to California Fish and Game Code Section 2081. In conformance with the reduced fee schedule of the Western Joshua Tree Conservation Act, mitigation will consist of payment of $1,000 for each western Joshua tree 5 meters or greater in height, $200 for each western Joshua tree 1 meter or greater but less than 5 meters in height, and $150 for each western Joshua tree less than 1 meter in height. | Prior to issuance of grading permits | Town of Apple Valley | | |

## Table 4.1. Mitigation Monitoring and Reporting Program

| Mitigation Measure or Project Design Feature | Implementation Timing | Agency Responsible for Monitoring | Initials | Date |
|---|---|---|---|---|
| **MM BIO-2: Relocation of Desert Native Plants.** Prior to the issuance of grading permits, the Project Applicant shall submit an application and applicable fee paid to the Town of Apple Valley for removal or relocation of protected native desert plants under Town of Apple Valley Municipal Code Chapter 9.76, as required, and shall schedule a pre-construction site inspection with the appropriate authority. In addition, a plot plan shall be approved by the appropriate Town of Apple Valley Review Authority (County Certified Plant Expert, Planning Commission, or Town Council) indicating exactly which trees or plants are authorized to be removed.<br><br>The application shall include certification from a qualified western Joshua tree and native desert plant expert(s) to determine that proposed removal or relocation of protected native desert plants are appropriate, supportive of a healthy environment, and in compliance with the Town of Apple Valley Municipal Code. Protected plants subject to Town of Apple Valley Municipal Code Chapter 9.76 may be relocated on site or within an area designated for the species.<br><br>The application shall include a detailed plan for removal of all protected plants on the Project site. The plan shall be prepared by a qualified western Joshua tree and native desert plant expert(s). The plan shall include the following measures:<br>▪ Salvaged plants shall be transplanted expeditiously to either their final on-site location or to an approved off-site area. If the plants cannot be expeditiously taken to their permanent relocation area at the time of excavation, they may be transplanted in a temporary area (stockpiled) prior to being moved to their permanent relocation site(s).<br>▪ Western Joshua trees shall be marked on their north-facing side prior to excavation. Transplanted western Joshua trees shall be planted in the same orientation as they currently occur on the Project site, with the marking on the north side of the trees facing north at the relocation site(s).<br>▪ Transplanted plants shall be watered prior to and at the time of transplantation. The schedule of watering shall be determined by the qualified tree expert and desert native plant expert(s) to maintain plant health. Watering of the transplanted plants shall continue under the guidance of a qualified tree expert and desert native plant expert(s) until it has been determined that the transplants have become established in the permanent relocation site(s) and no longer require supplemental watering. | Prior to issuance of grading permits and during ground clearing activities | Town of Apple Valley (County Certified Plant Expert, Planning Commission, or Town Council) | | |

## Table 4.1. Mitigation Monitoring and Reporting Program

| Mitigation Measure or Project Design Feature | Implementation Timing | Agency Responsible for Monitoring | Initials | Date |
|---|---|---|---|---|
| **MM BIO-3: Designated Biologist Authority.** The designated biologist shall have authority to immediately stop any activity that does not comply with the biological resources mitigation measures and/or to order any reasonable measure to avoid the unauthorized take of an individual western Joshua tree or special-status wildlife species. | During site disturbance/ grading/ construction | Town of Apple Valley/ Biologist | | |
| **MM BIO-4: Compliance Monitoring.** The designated biologist shall be on site daily when impacts occur. The designated biologist shall conduct compliance inspections to minimize incidental take of western Joshua trees and impacts to other sensitive biological resources; including Mohave ground squirrel, if present; prevent unlawful take of western Joshua trees; and ensure that signs, stakes, and fencing are intact, and that impacts are only occurring outside the permitted impact footprint. Weekly written observation and inspection records that summarize oversight activities and compliance inspections and monitoring activities required by the Incidental Take Permit shall be prepared.<br><br>Species Connectivity Database Observation Reporting. During all Project ground disturbing activities, the Qualified Biologist shall report any collision-related mortalities of special status-species that may occur within adjacent roadways (I-15 Frontage Road, Falchion Road, Norco Road and Apple Valley Road in the immediate project vicinity) of the Project site to the California Roadkill Observation System. In addition, the qualified Biologist shall report any identifiable recently sprouted native and nonnative plant species that occur within the Project area during Project activities to the CalFlora Plant Observation database. | During site disturbance/ grading/ construction | Town of Apple Valley/ construction contractor | | |
| **MM BIO-5: Education Program.** An education program (Worker Environmental Awareness Program [WEAP]) for all persons employed or otherwise working in the Project area shall be administered before performing impacts. The WEAP shall consist of a presentation from the designated biologist that includes a discussion of the biology and status of western Joshua trees, burrowing owls, and loggerhead shrikes, and other biological resources mitigation measures described in the California Environmental Quality Act document. The training shall also discuss the invasive plant species currently present within the Project area as well as those that may pose a threat to or have the potential to invade the Project area through implementation of ground disturbing activities. The discussion shall describe the potential long-lasting effects of introduced invasive species that may encroach on native plant species and continue to spread following the | During site disturbance/ grading/ construction | Town of Apple Valley | | |

## Table 4.1. Mitigation Monitoring and Reporting Program

| Mitigation Measure or Project Design Feature | Implementation Timing | Agency Responsible for Monitoring | Initials | Date |
|---|---|---|---|---|
| construction of the Project and beginning of industrial work. Interpretation for non-English-speaking workers shall be provided, and the same instruction shall be provided to all new workers before they are authorized to perform work in the Project area. Upon completion of the WEAP, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees who will be conducting work in the Project area. | | | | |
| **MM BIO-6: Construction Monitoring Notebook.** The designated biologist shall maintain a construction-monitoring notebook on site throughout the construction period that shall include a copy of the biological resources mitigation measures with attachments and a list of signatures of all personnel who have successfully completed the education program. The permittee shall ensure that a copy of the construction monitoring notebook is available for review at the Project site upon request by the Town. | During site disturbance/ grading/ construction | Town of Apple Valley/Biologist | | |
| **MM BIO-7: Delineation of Property Boundaries.** Before beginning activities that would cause impacts, the contractor shall, in consultation with the designated biologist, clearly delineate the boundaries with fencing, stakes, or flags, consistent with the grading plan, within which Project impacts will take place. All impacts outside the fenced, staked, or flagged areas shall be avoided, and all fencing, stakes, and flags shall be maintained until the completion of impacts in that area. | Prior to construction or any ground disturbance | Town of Apple Valley/Biologist | | |
| **MM BIO-8: Hazardous Waste.** The applicant shall immediately stop work and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and cleanup by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. | During site disturbance/ grading/ construction | Town of Apple Valley/ construction contractor | | |
| **MM BIO-9: Herbicides.** The applicant shall limit herbicide use for invasive plant species and shall use herbicides only if it has been determined that hand or mechanical efforts are infeasible. To prevent drift, the permittee shall apply herbicides only when wind speeds are less than 7 miles per hour. All herbicide application shall be performed by a licensed applicator and in accordance with all applicable federal, state, and local laws and regulations. | During site disturbance/grading/construction | Town of Apple Valley | | |
| **MM BIO-10: Pre-construction Clearance Surveys for Mojave Desert Tortoise and Avoidance.** One pre-construction clearance survey in accordance with current U.S. Fish and Wildlife Service (USFWS) protocol shall be conducted to reevaluate locations of | Within 14 to 21 days prior to the start of | Town of Apple | | |

## Table 4.1. Mitigation Monitoring and Reporting Program

| Mitigation Measure or Project Design Feature | Implementation Timing | Agency Responsible for Monitoring | Initials | Date |
|---|---|---|---|---|
| potential Mojave desert tortoise burrows within the Project limits so take of Mojave desert tortoise can be avoided. The pre-construction clearance survey shall be conducted on the Project site at any time following construction of a desert tortoise–proof fence encompassing the Project site that would ensure that tortoises cannot enter the Project after clearance surveys are completed. If no Mojave desert tortoises are found during the surveys, no further mitigation would be required; however, desert tortoise–proof fence encompassing the Project site shall remain in place until Project construction is completed and shall be monitored by a qualified biologist in compliance with current USFWS protocol.<br><br>Should Mojave desert tortoise be located during the clearance survey, all methods used for handling desert tortoises during the clearance surveys must be in accordance with the USFWS Desert Tortoise Field Manual or Project-specific guidance contained in a habitat conservation plan or Incidental Take Permit. No take of Mojave desert tortoise shall occur without authorization in the form of an Incidental Take Permit pursuant to California Fish and Game Code Section 2081 and a habitat conservation plan. The Project Applicant shall adhere to measures and conditions set forth within the Incidental Take Permit. Anyone who handles desert tortoises during clearance activities must have the appropriate authorizations from USFWS. The area cleared and number of Mojave desert tortoises found within that area shall be reported to the local USFWS and appropriate state wildlife agency. Notification shall be made in accordance with the conditions of the habitat conservation plan or Incidental Take Permit.<br><br>Should Mojave desert tortoise be located during the clearance survey, the Project would result in the loss of 165.4 acres of suitable habitat for Mojave desert tortoise. Mitigation for direct impacts to 165.4 acres shall be fulfilled through conservation of suitable Mojave desert tortoise habitat through the purchase of credits at a minimum of 1:1 in-kind habitat replacement of equal or better functions and values to those impacted by the Project, for a total of 165.4 acres or as otherwise determined through coordination with USFWS and/or the California Department of Fish and Wildlife. | construction activities; after construction of exclusionary fencing. | Valley/Biologist | | |
| **MM-BIO-11: Pre-construction Surveys for Burrowing Owl and Avoidance.**<br><br>**MM-BIO-11.1 Focused Non-Breeding Season Surveys.** Focused non-breeding season surveys for burrowing owl shall be conducted in accordance with protocols | **First Survey** within 14 days prior to site | Town of Apple | | |

## Table 4.1. Mitigation Monitoring and Reporting Program

| Mitigation Measure or Project Design Feature | Implementation Timing | Agency Responsible for Monitoring | Initials | Date |
|---|---|---|---|---|
| established in the California Department of Fish and Wildlife (CDFW; then California Department of Fish and Game) 2012 Staff Report or the most recent guidance. As outlined in the 2012 Staff Report, non-breeding season surveys will occur from September 1 to January 31. If burrowing owl are not detected, a pre-construction survey shall be completed, as described in 11.2. If burrowing owls are detected during these surveys, avoidance and preparation of a Burrowing Owl Plan will occur as outlined in MM-BIO-11.3 and MM-BIO-11.4.<br><br>**MM-BIO-11.2 Pre-Construction Survey.** One pre-construction burrowing owl survey shall be completed no more than 14 days before initiation of site preparation or grading activities, and a second survey shall be completed within 24 hours of the start of site preparation or grading activities. If ground-disturbing activities are delayed or suspended for more than 30 days after the pre-construction surveys, the Project site and off-site improvement areas shall be resurveyed. Surveys for burrowing owl shall be conducted in accordance with protocols established in the 2012 (or most recent version) Staff Report on Burrowing Owl Mitigation. Evidence of owl activity may include presence of owls themselves, burrows, and owl sign at burrow entrances such as pellets, whitewash or other "ornamentation," feathers, prey remains, etc. If it is evident that the burrows are actively being used by burrowing owl, avoidance and preparation of a Burrowing Owl Plan will occur as outlined in MM-BIO-11.3 and MM-BIO-11.4.<br><br>**MM-BIO-11.3 Avoidance.** The Project proponent shall clearly delineate no-disturbance ~~b~~buffers of 250 feet radius around all occupied burrows within the Project site and approximately 400 feet of the Project site, where legally accessible, with posted signs demarcating the avoidance area and by using stakes, flags, and/or rope or cord to minimize the disturbance of burrowing owl habitat. The Project proponent shall delineate occupied burrows with different materials than those used to delineate the Project site. No Project activities shall be allowed to encroach into established buffers without the consent of a monitoring biologist. The buffer shall remain in place until it is determined that occupied burrows have been vacated. The Project proponent shall remove and | disturbance/grading<br><br>**Second Survey** within 24 hours prior to the start of site disturbance/grading | Valley/Biologist | | |

## Table 4.1. Mitigation Monitoring and Reporting Program

| Mitigation Measure or Project Design Feature | Implementation Timing | Agency Responsible for Monitoring | Initials | Date |
|---|---|---|---|---|
| properly dispose of all materials used for delineation immediately upon completion of the Project.<br><br>**MM-BIO-11.4 Burrowing Owl Plan**. If burrowing owls are detected on the Project site, the Project proponent shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval at least 30 days prior to initiation of ground-disturbing activities. If burrowing owls are detected after ground-disturbing activities have been initiated, a Burrowing Owl Plan shall be submitted to CDFW for review and approval within two weeks of detection. Project activities shall not occur within 400 feet of an active burrow until CDFW approves the Burrowing Owl Plan. The Burrowing Owl Plan shall include but is not limited to 1) impact assessment that details the number and location of occupied burrow sites, and acres of burrowing owl habitat with a qualitative description of the habitat vegetation characteristics that will be impacted; 2) details on avoidance actions and monitoring such as proposed buffers, visual barriers and other actions; 3) site monitoring; and 4)minimization and compensatory mitigation actions that will be implemented.<br><br>Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method, may be a potentially significant impact under CEQA, and has the possibility to result in take. The Burrowing Owl Plan shall identify compensatory mitigation for the loss of occupied burrow(s) and habitat consistent with the "Mitigation Impacts" section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of ground disturbing activities, as outlined in MM-BIO-11.5 below. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, 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 Project proponent shall implement the Burrowing Owl Plan following CDFW review and approval. | | | | |

## Table 4.1. Mitigation Monitoring and Reporting Program

| Mitigation Measure or Project Design Feature | Implementation Timing | Agency Responsible for Monitoring | Initials | Date |
|---|---|---|---|---|
| **MM-BIO-11.5 Compensatory Mitigation.** No take of burrowing owl shall occur without prior authorization in the form of an Incidental Take Permit (ITP) pursuant to California Fish and Game Code Section 2081. The Project Applicant shall adhere to measures and conditions set forth within the ITP. Anyone who handles burrowing owl during clearance activities must have the appropriate authorizations from CDFW. Notification shall be made in accordance with the conditions of the ITP. Should burrowing owl be located during the non-breeding season or clearance survey, the Project would result in the loss of 165.4 acres of suitable habitat for burrowing owl. Mitigation for direct impacts to 165.4 acres shall be fulfilled through conservation of suitable burrowing owl habitat through the purchase of credits at a minimum of 1:1 in-kind habitat replacement of equal or better functions and values to those impacted by the Project, for a total of 165.4 acres.<br><br>**MM-BIO-11.6 Burrowing Owls Observed During Construction.** If burrowing owls are observed within the Project site during Project implementation and construction, the Project proponent shall notify CDFW immediately in writing. | | | | |
| **MM-BIO-12: Pre-construction Nesting Bird Surveys and Avoidance.** Special-status bird species that have a moderate potential to occur within the Project include burrowing owl, LeConte's thrasher, and loggerhead shrike. The Project also contains trees, shrubs, and other vegetation that provide opportunities for other non-sensitive birds and raptors to nest on site. Construction activities shall avoid the migratory bird nesting season (typically February 1 through August 31) to reduce any potential significant impact to birds that may be nesting in the survey area. Regardless of the time of year, a pre-construction avian nesting clearance survey of the Project site and within 500 feet of all impact areas must be conducted to determine the presence/absence of protected migratory birds and active nests. The avian nesting survey shall be performed by a qualified wildlife biologist within 72 hours prior to the start of construction in accordance with the Migratory Bird Treaty Act and California Fish and Game Code Sections 3503, 3503.5, and 3513. If an active bird nest is found within the Project area or within 500 feet of the Project area, the nest shall be flagged and mapped on the construction plans, along with an appropriate buffer established around the nest, which shall be determined by the biologist based on the species' sensitivity to disturbance. The nest area and buffers shall be monitored daily by | Within 72 hours prior to site disturbance/grading and construction | Town of Apple Valley/Biologist | | |

## Table 4.1. Mitigation Monitoring and Reporting Program

| Mitigation Measure or Project Design Feature | Implementation Timing | Agency Responsible for Monitoring | Initials | Date |
|---|---|---|---|---|
| the qualified biologist and avoided until the qualified biologist has determined that the nest is vacated and the juveniles have fledged. The nest area shall be demarcated in the field with flagging and stakes or construction fencing. On-site construction monitoring shall be conducted when construction occurs in close proximately to an active nest buffer. The buffer shall remain in place until is determined by the qualified biologist that the nestlings have fledged and the nest is no longer active. If an active nest is encountered during the Project construction, construction shall stop immediately until a qualified biologist can determined (1) that status of the nest, and (2) when work can proceed without risking violation to state or federal laws. | | | | |
| **MM-BIO-13: Trash and Debris.** The following avoidance and minimization measures shall be implemented during Project construction**:**<br>▪ Fully covered trash receptacles that are animal-proof shall be installed and used by the operator to contain all food, food scraps, food wrappers, beverage containers, and other miscellaneous trash. Trash contained within the receptacles shall be removed at least once a week from the Project site.<br>▪ Construction work areas shall be kept clean of debris, such as cable, trash, and construction materials. All construction/contractor personnel shall collect all litter, vehicle fluids, and food waste from the Project site on a daily basis. | Prior to, during, and after construction/ grading | Town of Apple Valley/ Lahontan RWQCB/ CDFW | | |
| **MM-BIO-14. Invasive Plant Management.** To reduce the spread of invasive plant species, landscape plants within 200 feet of native vegetation communities shall not be on the most recent version of the California Invasive Plant Council's Inventory of Invasive Plants (http://www.cal-ipc.org/ip/inventory/index.php). Post-construction, the Project Applicant shall continually remove invasive plant species on site by hand or mechanical methods, as feasible. | During operation | Town of Apple Valley/Buildi ng Manager | | |
| **MM-BIO-15. Lighting.** Lighting for construction activities and operations within 50 feet of the outside edge of the impact footprint containing habitat for special-status wildlife shall be directed away from natural areas. | During construction | Town of Apple Valley | | |
| **MM-BIO-16. Aquatic Resources Mitigation.** The Project site and off-site improvements area support aquatic resources that are considered jurisdictional under the Regional Water Quality Control Board (RWQCB) and the California Department of Fish and Wildlife (CDFW). Prior to construction activity, the Applicant shall coordinate with the Lahontan | Prior to, during, and after construction | Town of Apple Valley | | |

## Table 4.1. Mitigation Monitoring and Reporting Program

| Mitigation Measure or Project Design Feature | Implementation Timing | Agency Responsible for Monitoring | Initials | Date |
|---|---|---|---|---|
| RWQCB (Region 6) to ensure conformance with the requirements of the Porter–Cologne Water Quality Control Act (waste discharge requirement). Prior to activity within CDFW jurisdictional streambed or associated riparian habitat, the Applicant shall coordinate with CDFW (Inland Deserts Region 6) relative to conformance to the Lake and Streambed Alteration permit requirements.<br><br>The Project shall mitigate to ensure no-net-loss of waters at a minimum of 1:1 with purchase of credits (1.61 acres RWQCB/CDFW jurisdiction and 0.25 acres CDFW only jurisdiction) for impacts to aquatic resources as part of an overall strategy to ensure no net loss. Mitigation shall be completed through use of a mitigation bank (e.g., West Mojave Mitigation Bank, Wildlands) or other applicant-sponsored mitigation. Final mitigation ratios and credits shall be determined in consultation with RWQCB and/or CDFW based on agency evaluation of current resource functions and values and through each agency's respective permitting process.<br><br>Should Applicant-sponsored mitigation be implemented, a Habitat Mitigation and Monitoring Plan (HMMP) shall be prepared in accordance with State Water Resources Control Board guidelines and approved by the agencies in accordance with the proposed program permits. The HMMP shall include a conceptual planting plan including planting zones, grading, and irrigation, as applicable; a conceptual planting plant palette; a long-term maintenance and monitoring plan; annual reporting requirements; and proposed success criteria. Any Applicant-sponsored mitigation shall be conserved and managed in perpetuity.<br><br>Best management practices shall be implemented to avoid any indirect impacts on jurisdictional waters, including the following:<br><br>▪ Vehicles and equipment shall not be operated in ponded or flowing water except as described in permits.<br>▪ Water containing mud, silt, or other pollutants from grading or other activities shall not be allowed to enter jurisdictional waters or be placed in locations that may be subjected to high storm flows.<br>▪ Spoil sites shall not be located within 30 feet from the boundaries of jurisdictional waters or in locations that may be subject to high storm flows, where spoils might be washed back into drainages. | | | | |

## Table 4.1. Mitigation Monitoring and Reporting Program

| Mitigation Measure or Project Design Feature | Implementation Timing | Agency Responsible for Monitoring | Initials | Date |
|---|---|---|---|---|
| ▪ Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances that could be hazardous to vegetation or wildlife resources resulting from Project-related activities shall be prevented from contaminating the soil and/or entering avoided jurisdictional waters.<br>No equipment maintenance shall be performed within 100 feet of jurisdictional waters, including wetlands and riparian areas, where petroleum products or other pollutants from the equipment may enter these areas. Fueling of equipment shall not occur on the Project site. | | | | |
| **Cultural, Tribal Cultural, and Paleontological Resources** | | | | |
| **MM-CUL-1: Workers Environmental Awareness Program (WEAP) Training.** All construction personnel and monitors who are not trained archaeologists shall be briefed regarding unanticipated discoveries prior to the start of any ground disturbing activities. A basic presentation shall be prepared and presented by a qualified archaeologist and retained tribal monitor to inform all personnel working on the Project about the archaeological sensitivity of the area. The purpose of the WEAP training is to provide specific details on the kinds of archaeological materials that may be identified during construction of the Project and explain the importance of and legal basis for the protection of significant archaeological resources. Each worker shall also learn the proper procedures to follow in the event that cultural resources or human remains are uncovered during ground-disturbing activities. These procedures include work curtailment or redirection, and the immediate contact of the on-call archaeologist and if appropriate, Tribal representative. The requirement for mandatory training and attendance by all construction personnel shall be stated on all construction plans. | Prior to ground disturbing activities | Town of Apple Valley/ Archaeologist | | |
| **MM-CUL-2: On-Call Archaeological Construction Monitoring.** In consideration of the general sensitivity of the Project site for cultural resources, a qualified archaeologist shall be retained prior to ground disturbing activities. A qualified archaeologist, meeting the Secretary of the Interior's Professional Qualification Standards, shall oversee and adjust monitoring efforts as needed (increase, decrease, or discontinue monitoring frequency) based on the observed potential for construction activities to encounter cultural deposits. The archaeologist shall be responsible for maintaining monitoring logs. Following the completion of construction, the qualified archaeologist shall provide an archaeological monitoring report to the lead agency and the SCCIC with the results of the cultural monitoring program. | Prior to grading permits and following the completion of construction if any resources are identified | Town of Apple Valley/ Archaeologist | | |

## Table 4.1. Mitigation Monitoring and Reporting Program

| Mitigation Measure or Project Design Feature | Implementation Timing | Agency Responsible for Monitoring | Initials | Date |
|---|---|---|---|---|
| The project Archaeologist shall develop a Cultural Resource Management Plan (CRMP) and/or Archaeological Monitoring and Treatment Plan (AMTP) to address the details, timing, and responsibilities of all archaeological and cultural resource activities that occur on the project site. This Plan shall be written in consultation with the consulting Tribe[s] and shall include approved Mitigation Measures (MM) and Conditions of Approval (COA), contact information for all pertinent parties, parties' responsibilities, procedures for each MM or COA, and an overview of the project schedule.<br><br>Additionally, the applicant shall enter into a Tribal Monitoring Services Agreement with the Morongo Band of Mission Indians (MBMI) for the Project. The Tribal Monitor shall be on-site during all ground-disturbing activities (including, but not limited to, clearing, grubbing, tree and bush removal, grading, trenching, fence post placement and removal, construction excavation, excavation for all utility and irrigation lines, and landscaping phases of any kind). The Tribal Monitor shall have the authority to temporarily divert, redirect, or halt the ground disturbing activities in the immediate vicinity of a suspected find to allow time for the Project archaeologist and Tribal Monitor to identify, evaluate and determine the potential for recovery of cultural resources. | | | | |
| **MM-CUL-3: Inadvertent Discovery of Archaeological Resources.** In the event that archaeological resources (sites, features, or artifacts) are exposed during construction activities for the Project, all construction work occurring within 60 feet of the find shall immediately stop until a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualification Standards, can evaluate the significance of the find and determine whether or not additional study is warranted. Work on the other portions of the Project outside of the buffered area may continue during this assessment period. Depending upon the significance of the find under the California Environmental Quality Act (14 CCR 15064.5(f); California PRC Section 21082), the archaeologist may simply record the find and allow work to continue. If the discovery proves significant under CEQA, additional work, such as preparation of an archaeological treatment plan, testing, or data recovery, may be warranted. If the discovery is Native American in nature, consultation with and/or monitoring by a Tribal representative may be necessary. | During construction/ grading and following the completion of construction if any resources are identified | Town of Apple Valley/ Archaeologist | | |

## Table 4.1. Mitigation Monitoring and Reporting Program

| Mitigation Measure or Project Design Feature | Implementation Timing | Agency Responsible for Monitoring | Initials | Date |
|---|---|---|---|---|
| **MM-CUL-4. Paleontological Resources Impact Mitigation Program and Paleontological Monitoring.** Prior to commencement of any grading activity on site, the Project Proponent or Applicant shall retain a qualified paleontologist per the Society of Vertebrate Paleontology (SVP) 2010 guidelines to prepare a Paleontological Resources Impact Mitigation Program (PRIMP) for the Project. The PRIMP shall be approved by the Town prior to commencement of any grading activity. The PRIMP shall be consistent with the SVP 2010 guidelines and outline requirements for preconstruction meeting attendance and worker environmental awareness training; where paleontological monitoring is required within the Project site based on construction plans and/or geotechnical reports; and procedures for adequate paleontological monitoring and discoveries treatment, including paleontological methods (including sediment sampling for microinvertebrate and microvertebrate fossils), reporting, and collections management. The PRIMP shall also include a statement that any fossil lab or curation costs (if necessary due to fossil recovery) are the responsibility of the Project Proponent or Applicant.<br><br>In addition, a qualified paleontological monitor shall be on site during initial rough grading and other significant ground-disturbing activities (including augering) in areas underlain by geological units with high paleontological resource sensitivity or potential (e.g., Pleistocene alluvium and below a depth of 5 feet below the ground surface in areas underlain by Holocene alluvial fan deposits). No paleontological monitoring is necessary during ground disturbance within artificial fill/disturbed sediments or in areas underlain by plutonic igneous rocks (e.g., granodiorite). In the event that paleontological resources (e.g., fossils) are unearthed during grading, the paleontological monitor will temporarily halt and/or divert grading activity to allow recovery of paleontological resources. The area of discovery will be roped off with a 50-foot radius buffer. Once documentation and collection of the find is completed, the monitor will allow grading to recommence in the area of the find.<br><br>Upon completion of ground-disturbing activity (and curation of fossils, if necessary), the Project paleontologist shall prepare a final mitigation and monitoring report outlining the results of the mitigation and monitoring program. The report shall include a discussion of the location, duration, and methods of the monitoring, stratigraphic sections, and any | Prior to any site grading | Town of Apple Balley/Paleontologist | | |

## Table 4.1. Mitigation Monitoring and Reporting Program

| Mitigation Measure or Project Design Feature | Implementation Timing | Agency Responsible for Monitoring | Initials | Date |
|---|---|---|---|---|
| recovered fossils, as well as the scientific significance of those fossils and where fossils were curated. | | | | |
| **MM-TCR-1:** In the event that cultural resources are discovered during Project activities, all work shall follow protocols outlined under MM-CUL-3. Additionally, the consulting Tribe(s) shall be contacted regarding any pre-contact and/or historic-era resources of a Native American origin and be provided information after the qualified archaeologist, as defined within MM-CUL-2, makes their initial assessment of the nature of the discovery. Should the discovery be deemed significant, as defined by CEQA (as amended, 2015), and avoidance cannot be ensured, a cultural resources monitoring and treatment plan shall be created by the qualified archaeologist, in coordination with the consulting Tribe(s), and all subsequent discoveries shall be subject to this plan. This plan shall be approved by the Town. This plan shall allow for a monitor to be present representing the consulting Tribe(s) for the remainder of the Project, should the consulting Tribe(s) elect to place a monitor on site. | During ground disturbance, grading, and/or construction | Town of Apple Valley | | |
| **MM-TCR-2: Discovery of Human Remains.** If human remains or funerary objects are encountered during any ground disturbing activities associated with the Project, work in the immediate vicinity (within a 100-foot buffer of the find) shall cease, and the discoveries shall be treated in accordance with state and local regulations, including California Health and Safety Code Section 7050.5, California Public Resources Code Section 5097.98, and the California Code of Regulations Section 15064.5(e). No photographs are to be taken except by the coroner, with written approval by the consulting Tribe[s]. | During ground disturbance, grading, and/or construction | Town of Apple Valley | | |
| **MM-TCR-3:** Any and all archaeological/cultural documents created as a part of the Project shall be supplied to the Applicant and Lead Agency for dissemination to the consulting Tribe(s). However, access to confidential records from the California Historical Research Information System (CHRIS) (i.e., (isolate records, site records, survey reports, testing reports, etc.) are restricted from disclosure under federal and state laws; thus, researchers must meet access requirements to obtain this data. Access to confidential CHRIS data shall follow the CHRIS THPO Tribal Access Policy (OHP 2019) or have personnel on staff that meet the CHRIS authorized user's requirements (OHP 2016; OHP 2023). Data security/confidentiality of all CHRIS data provided/acquired shall follow the requirements as outlined in the THPO-Tribal Access Policy (OHP 2019). Notwithstanding, | Prior to ground disturbance consistent with MM TCR-1 | Town of Apple Valley | | |

## Table 4.1. Mitigation Monitoring and Reporting Program

| Mitigation Measure or Project Design Feature | Implementation Timing | Agency Responsible for Monitoring | Initials | Date |
|---|---|---|---|---|
| non-confidential CHRIS data can be provided for planning purposes and includes a checklist (Summary Records Search) or narrative letter (Extended Records Search) stating whether there are known resources in the study area and offering a recommendation as to sensitivity for recorded and unrecorded cultural resources (OHP 2023). Access to CHRIS information is subject to review and approval of the appropriate Information Center in consultation with the State Historic Preservation Officer[1] (SHPO) (OHP 2016).<br><br>The Lead Agency and/or Applicant shall, in good faith, consult with the consulting Tribe(s) throughout the life of the Project. | | | | |
| **Greenhouse Gas Emissions** | | | | |
| **MM-GHG-1.** The Project Applicant shall implement the following measure in order to reduce operational energy source greenhouse gas (GHG) emissions to the extent feasible:<br><br>▪ Design the Project to meet, at minimum, U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Silver certification or otherwise design the Project to reach equivalent reductions in GHG emissions. Prior to the issue of building permits, documentation demonstrating that the Project has been designed to achieve, at minimum, LEED Silver certification or has otherwise been designed to result in equivalent GHG emission reductions will be submitted to the Town's Planning Department. Design features that will be implemented to achieve, at minimum, LEED Silver certification include the following:<br>- Install Energy Star–rated heating, cooling, lighting, and appliances. All light bulbs shall be CFL or LED.<br>- The Project electrical infrastructure shall be designed to accommodate the required number of electric vehicle charging stations, the anticipated number charging stations for electric cargo handling equipment, and the potential installation of additional automobile and truck electric vehicle charging stations per Title 24, Part 11 (California Green Building Standards (CALGreen). | Prior to the issuance of building permits | Town of Apple Valley | | |

[1] Pursuant to federal and state law, the California State Historical Resources Commission (SHRC) directs the State Historic Preservation Officer (SHPO) to maintain an inventory of historical resources in California. The SHPO meets this responsibility via the California Historical Resources Information System (CHRIS), which is administered by the Office of Historic Preservation (OHP) under SHPO authority (OHP 2016).

## Table 4.1. Mitigation Monitoring and Reporting Program

| Mitigation Measure or Project Design Feature | Implementation Timing | Agency Responsible for Monitoring | Initials | Date |
|---|---|---|---|---|
| - Electrical conduit shall be installed in specified Project locations (e.g., parking areas, at or near dock doors) at the time of building construction to satisfy CALGreen standards. The Project's electrical rooms shall be of sufficient size to accommodate the upsizing of electrical equipment to accommodate potential future electrical loads.<br>- Prior to issuance of a Certificate of Occupancy from the Town of Apple Valley, level 2 (or faster) electric vehicle charging stations shall be installed on-site for employees for the percentage of employee parking spaces in accordance with Title 24, Part 11 (CALGreen) requirements in effect at the time of building permit issuance plus additional charging stations equal to 5% of the total employee parking spaces in the building permit, whichever is greater. By January 1, 2030, Level 2 (or faster) electric vehicle charging stations shall be installed for 25% of the employee parking spaces required.<br>- Structures shall be equipped with outdoor electric outlets in the front and rear of the structures to facilitate use of electrical lawn and garden equipment.<br>- Provide information on energy efficiency, energy-efficient lighting and lighting control systems, energy management, and existing energy incentive programs to future tenants of the Project.<br>• The Project shall comply with the mandatory solar requirements outlined in Title 24. In addition, future tenants of the Project shall be required to subscribe to the Apple Valley Choice Energy 100% Renewable Energy Plan, which is 100% renewable and 100% carbon-free, for the duration of occupancy as part of the entitlement agreement. At each lease or change of building ownership, the new lessee or owner shall also be automatically enrolled in the Apple Valley Choice Energy 100% Renewable Energy Plan.<br>• Prior to tenant occupancy, the Project Applicant or successor in interest shall provide documentation to the Town of Apple Valley demonstrating that occupants/tenants of the Project site have been provided informational documentation regarding energy efficiency, energy-efficient lighting and lighting control systems, energy management, cleaning products that are water-based or containing low quantities of volatile organic compounds, electric or alternatively fueled sweepers with HEPA filters, on-site meal options such as food trucks, and existing energy incentive programs to future tenants of the Project. | | | | |

## Table 4.1. Mitigation Monitoring and Reporting Program

| Mitigation Measure or Project Design Feature | Implementation Timing | Agency Responsible for Monitoring | Initials | Date |
|---|---|---|---|---|
| • Provision of Information Regarding Programs to Reduce Emissions from Trucks. Prior to tenant occupancy, the Project Applicant or successor in interest shall provide documentation to the Town of Apple Valley demonstrating that occupants/tenants of the Project site have been provided informational documentation regarding:<br>- Funding opportunities that provide incentives for using cleaner-than-required engines and equipment, such as the Carl Moyer Program and Voucher Incentive Program.<br>- The U.S. EPA SmartWay Program, which assists freight shippers, carriers, logistics companies, and other stakeholder partner with the U.S. EPA to measure, benchmark, and improve logistics operations and reduce air pollutant emissions from the transport of cargo.<br>▪ The following measures shall be implemented to reduce air pollutant emissions from idling:<br>- Signage. Legible, durable, weather-proof signs shall be placed at truck access gates, loading docks, and truck parking areas that identify the Project's three-minute idling restriction. At a minimum, each sign shall include: (1) instructions for truck drivers to shut off engines when not in use; (2) instructions for drivers of diesel trucks to restrict idling to no more than 3 minutes once the vehicle is stopped, the transmission is set to "neutral" or "park," and the parking brake is engaged; (3) telephone numbers of the building facilities manager and CARB to report violations; and (4) that penalties apply for violations. Prior to the issuance of an occupancy permit, the Town of Apple Valley shall conduct a site inspection to ensure that the signs are in place.<br>- Efficient Load Management. The facility operator(s) shall be required to train managers and employees on efficient scheduling and load management to eliminate unnecessary queuing and idling of trucks.<br>- Anti-Idling Training. Tenants and operators on the Project site shall ensure that site enforcement staff in charge of keeping the daily log and monitoring for excess idling will be trained/certified in diesel health effects and technologies, for example, by requiring attendance at CARB-approved courses (such as the free, one-day Course #512).<br>▪ The following measure shall be implemented during all ongoing business operations and shall be included as part of contractual lease agreement language to ensure that tenants and operators of the Project are informed of the following operational responsibility: | | | | |

## Table 4.1. Mitigation Monitoring and Reporting Program

| Mitigation Measure or Project Design Feature | Implementation Timing | Agency Responsible for Monitoring | Initials | Date |
|---|---|---|---|---|
| - Upon commencement of operations, the tenant/operator of the Project shall be required to restrict truck idling on site to a maximum of 3 minutes, subject to exceptions defined by the CARB's commercial vehicle idling requirements. The building manager or their designee shall be responsible for enforcing this requirement.<br>- For occupants with more than 250 employees, a Transportation Demand Management (TDM) program to reduce employee commute vehicle emissions shall be established, subject to review and approval by the Town of Apple Valley. The TDM plan shall apply to Project tenants through tenant leases. The TDM plan shall discourage single-occupancy vehicle trips and encourage alternative modes of transportation such as carpooling, taking transit, walking, and biking. Examples of trip reduction measures may include, but are not limited to transit passes, car-sharing programs, and ride sharing programs. | | | | |
| **MM-GHG-2.** To reduce water demands and associated energy use, subsequent development proposals within the Project site would be required to implement a Water Conservation Strategy and demonstrate a minimum 20% reduction in indoor and outdoor water usage when compared to baseline water demand (total expected water demand without implementation of the Water Conservation Strategy). The Town shall approve the Water Conservation Strategy prior to the issuance of building permits for the Project. Included in the Water Conservation Strategy, the Project Applicant shall provide building plans that include the following water conservation measures:<br>▪ Install low-water use appliances and fixtures<br>▪ Restrict the use of water for cleaning outdoor surfaces and prohibit systems that apply water to non-vegetated surfaces<br>▪ Implement water-sensitive urban design practices in new construction<br>▪ Install rainwater collection systems where feasible<br>▪ Consider the use of artificial turf where feasible<br>▪ The Project's landscape plan shall emphasize drought-tolerant plants and use water-efficient irrigation techniques.<br>▪ All fixtures installed in restrooms and employee break areas shall be U.S. Environmental Protection Agency (EPA) WaterSense certified or equivalent. | Prior to the issuance of first occupancy permit | Town of Apple Valley | | |

# Appendix A
Bracketed Comment Letters

**From:** Johnson, Shawn - DPW <Shawn.Johnson@dpw.sbcounty.gov>
**Sent:** Thursday, October 10, 2024 2:14 PM
**To:** Richard Hirsch
**Cc:** Roque, Osvaldo - DPW; Valencia, Eric - DPW; Jessica Haughton; Richard Pedersen; Cindi Hoover
**Subject:** RE: Inland Empire North Logistics Center Apple Valley Project - Traffic Study

Good afternoon everyone,

The traffic study dated April 2, 2024 shows an impact at Stoddard Wells Road and Victorville Quarry Road which are both County Maintained Roads. Victorville Quarry Road at I-15 Southbound Ramps is also County/Caltrans maintained.

The County will require a review of the traffic study to determine the impact to County maintained intersections. The traffic study can be submitted online through EZ Online Permitting (EZOP). We will require an initial deposit of $1,802 to begin review. We have worked with James Daisa on other projects so he should be familiar with our review process. We will also require Caltrans approval for Victorville Quarry Road at I-15 Southbound Ramps since that is shared jurisdiction with County and Caltrans. 04-1

EZOP: Traffic Study – EZ Online Permitting (sbcounty.gov)
San Bernardino County Traffic Study Guidelines: Traffic – Public Works (sbcounty.gov)

If you have any questions please let us know.

Thank you,

**Shawn Johnson**
Engineering Technician V
***Department of Public Works – Traffic Division***
Phone: 909-387-8186
Fax: 909-387-7809
825 E. Third Street – Room 115
San Bernardino, CA 92415-0835

SAN BERNARDINO COUNTY

***Our job is to create a county in which those who reside and invest can prosper and achieve well-being.***
***www.SBCounty.gov***

**Cindi Hoover**

**From:** Johnson, Shawn - DPW <Shawn.Johnson@dpw.sbcounty.gov>
**Sent:** Tuesday, December 3, 2024 11:18 AM
**To:** Jessica Haughton <jhaughton@synergyconsultingca.com>
**Cc:** Roque, Osvaldo - DPW <Osvaldo.Roque@dpw.sbcounty.gov>; Valencia, Eric - DPW <Eric.Valencia@dpw.sbcounty.gov>
**Subject:** RE: Inland Empire North Logistics Center Apple Valley Project - Traffic Study

Jessica,

Good morning. San Bernardino County has no further comments for your traffic study. Below is the County's project conditions which are the recommendations from the traffic study. Please let me know if you agree with the County's conditions or if you have any questions. The next step will be for us to coordinate with the City on how to incorporate our conditions into the Project's conditions.

1. Improvements
   The applicant shall design their street improvement plans to include the following as recommended per the traffic study:
   - Stoddard Wells Road at Quarry Road
     - A traffic signal is required at the intersection of Stoddard Wells Road and Quarry Road.
     - Road Dedication: Provide adequate dedication for the installation of the traffic signal
     - Reconfigure Intersection:
       - Eastbound approach: widen and configure Stoddard Wells Road to add left turn lane from Stoddard Wells Road to Quarry Road (250 feet long + a 120-foot transition) and maintain the existing lane as a through lane. Provide eastbound left turn protected phasing.
       - Westbound approach: widen and configure Stoddard Wells Road to add a right turn lane from Stoddard Wells Road to Quarry Road with a receiving lane and maintain the existing lane as a through lane.
       - Southbound approach: widen and configure Quarry Road to add a right turn lane (250-feet long + 120-foot transition) and maintain the existing lane as a left lane. Provide southbound left turn protected phasing.

2. The applicant shall construct, at 100% cost to the applicant all roadway improvements as shown on their approved street improvement plans. This shall include any software and/or hardware to implement the approved signal coordination plan.

04-2

Thank you,

**Shawn Johnson**
Engineering Technician V
***Department of Public Works – Traffic Division***
Phone: 909-387-8186
Fax: 909-387-7809
825 E. Third Street – Room 115
San Bernardino, CA 92415-0835

***Our job is to create a county in which those who reside and invest can prosper and achieve well-being.***
***www.SBCounty.gov***

ADAMS BROADWELL JOSEPH & CARDOZO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037
TEL: (650) 589-1660
FAX: (650) 589-5062
ssannadan@adamsbroadwell.com

SACRAMENTO OFFICE
520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721
TEL: (916) 444-6201
FAX: (916) 444-6209

ARIANA ABEDIFARD
KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
RICHARD M. FRANCO
ANDREW J. GRAF
TANYA A. GULESSERIAN
DARION N. JOHNSTON
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO

*Of Counsel*
MARC D. JOSEPH
DANIEL L. CARDOZO

October 10, 2024

**VIA EMAIL AND U.S. MAIL**

Daniel Alcayaga, AICP, Planning Manager
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307
**Email:** dalcayaga@applevalley.org; planning@applevalley.org

La Vonda M. Pearson, Town Clerk
Town of Apple Valley
14955 Dale Evans Pkwy
Apple Valley, CA 92307
**Email:** townclerk@applevalley.org

**VIA EMAIL ONLY**

Richard Hirsch, Planning Manager
**Email:** rhirsch@interwestgrp.com

**Re: Request for Immediate Access to Documents Referenced in the Draft Environmental Impact Report - Inland Empire North Logistics Center Apple Valley Project (SCH No. 2023090366)**

Dear Mr. Alcayaga, Ms. Pearson, and Mr. Hirsch:

We are writing on behalf of Californians Allied for a Responsible Economy ("CARE CA") to request ***immediate access*** to any and all documents referenced, incorporated by reference, and relied upon in the Draft Environmental Impact Report ("DEIR") prepared for the Inland Empire North Logistics Center Apple Valley Project (SCH No. 2023090366), proposed by FGFW IV, LLC ("Applicant"). *This request excludes a copy of the DEIR and any documents that are currently available on the Town of Apple Valley website, as of today's date*.[1] 05-1

The Project would include construction of two industrial/warehouse buildings and associated improvements on approximately 178 acres of land in the Town of Apple Valley, San Bernardino County, California. Building 1 would be approximately 1,507,326 square feet (SF) while Building 2 would be approximately 1,097,120 SF. The Project site is located directly east of I-15, north of Falchion

[1] Accessed https://www.applevalley.org/services/planning-division/environmental on October 10, 2024.

Road and south of Norco Street in the northwestern part of the Town of Apple Valley and consists of Assessor's Parcel Number 0472-031-08.

05-1 Cont.

Our request for ***immediate access*** to all documents referenced in the DEIR is made pursuant to the California Environmental Quality Act ("CEQA"), which requires that all documents referenced, incorporated by reference, and relied upon in an environmental review document be made available to the public for the entire comment period.[2]

05-2

Please use the following contact information for all correspondence:

**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

05-3

If you have any questions, please call me at (650) 589-1660 or email me at ssannadan@adamsbroadwell.com. Thank you for your assistance with this matter.

Sincerely,

Sheila M. Sannadan
Legal Assistant

SMS:acp

[2] *See* Public Resources Code § 21092(b)(1) (stating that "all documents referenced in the draft environmental impact report" shall be made "available for review"); 14 Cal. Code Reg. § 15087(c)(5) (stating that all documents incorporated by reference in the EIR . . . shall be readily accessible to the public"); see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442, as modified (Apr. 18, 2007) (EIR must transparently incorporate and describe the reference materials relied on in its analysis); *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 ("[W]hatever is required to be considered in an EIR must be in that formal report. . ."), internal citations omitted.

October 14, 2024

**Advocates for the Environment**

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

Daniel Alcayaga
Planning Manager
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307

Via U.S. Mail and email to dalcayaga@applevalley.org

Re: Comments on Draft Environmental Impact Report for Inland Empire North Logistics Center Project, SCH No. 2023090366

Dear Mr. Alcayaga:

Advocates for the Environment submits the comments in this letter regarding the Draft Environmental Impact Report (**DEIR**) for the Inland Empire North Logistics Center Project (**Project**). The Project Site is located directly east of Interstate 15, north of Falchion Road and south of Norco Street in the Town of Apple Valley (**Town**), in San Bernardino County. The Project proposes to develop the 178-acre Project Site by constructing two industrial warehouse buildings: Building 1, which would be a 1,507,326 square-foot warehouse; Building 2, which would be a 1,097,120 square-foot warehouse. We have reviewed the DEIR prepared in September 2024 and submit comments regarding the sufficiency of the DEIR's Greenhouse-Gas (**GHG**) analysis under the California Environmental Quality Act (**CEQA**). 06-1

## The Town 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. 06-2

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

We urge the Town 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.)

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

06-2 Cont.

## GHG Mitigation is Insufficient under CEQA

The calculated project-related emissions amount to 76,613 metric tons of carbon dioxide equivalent (**MTCO2e**) per year. (DEIR, p. 4.6-26). The Town adopted a significance threshold based on Appendix G of the CEQA Guidelines. Based on this threshold, the Town concluded the Project would have significant GHG emissions. (DEIR, p. 4.6-35.) To reduce this identified significant GHG impact, the GHG Analysis offered GHG Mitigation Measures (**MM-GHG**) 1-2 and Air Quality Mitigation Measures (**MM-AQ**) 2. (DEIR, p. 4.6-35.)

Despite these measures, the Project still significantly exceeds the SCAQMD's threshold of 3,000 MTCO2e/yr. Although further feasible GHG mitigation measures are available, the DEIR concluded that "[n]o further feasible mitigation measures beyond those already identified exist that would reduce these emissions to levels that are less than significant." (DEIR, p. 4.6-26.) The Town did not provide specific rationale as to why the existing regulations and adopted mitigation measures would be the only feasible mitigation for this Project. Nor did the Town reject any mitigation measures for being infeasible. Despite the availability of other GHG mitigation measures, the DEIR declared that the Project's mitigated emissions were unavoidable. (DEIR, p. 4.6-36.) This conclusion lacks substantial evidence, and the DEIR should have incorporated additional mitigation to reduce the Project's GHG emissions to the extent required by CEQA.

06-3

### *The EIR Identifies Improperly Deferred Mitigation Measures*

CEQA mandates that mitigation measures must be identified and analyzed during the EIR process to ensure they are feasible and will effectively mitigate significant impacts. 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. For example, the performance standards in MM-GHG 1 indicate a lack of commitment by the Town to any particular standard due to the inclusion of multiple options. Consequently, the actual emissions reductions achieved are unclear. MM GHG 1 presents two alternatives: 1) Leadership in Energy and Environmental Design (LEED); *or* 2) has otherwise been designed to result in equivalent GHG emission reductions. The measure fails to ensure enforceable benefits because it offers multiple options without committing to a definitive plan. Additionally, the measure describes elements of plans to be prepared and adopted later; however, it does not specify the design measures it will implement in place of LEED Silver certification. 06-4

### *The EIR Identifies Ineffective and Insufficient Mitigation Measures*

MM-GHG 1 is unlikely to be effective because it only mandates providing information without establishing clear methods to ensure tenants receive, understand, or act upon the information. MM-GHG 1 requires the tenant to provide information on energy efficiency, energy-efficient lighting and lighting control systems, energy management, and existing energy incentive programs to future tenants of the Project. (DEIR, p. 4.6-35.) However, this measure lacks performance standards to ensure the information results in tangible GHG emission reductions. The measure itself does not list any concrete strategies to bring about the reduction of emissions. Merely providing information is unlikely to contribute to effective changes in tenant behavior without additional enforceable measures. The measure should be aimed at reducing the behavior, not simply informing tenants on it. The absence of specific strategies and enforceable commitments is insufficient to achieve quantifiable reductions in GHG. The Town should change this measure to make it more enforceable by requiring tenants to enroll in existing energy incentive programs. 06-5

Ultimately, this mitigation measures should be revised to require the level of effectiveness required by CEQA, which is to the extent feasible to achieve fair share mitigation.

### *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 Town did not 06-6

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, especially considering that over 80%[1] of the Project's GHG impact originates from mobile emissions which the mitigation measures were not focused on reducing. For instance, the DEIR vaguely notes: "the majority of operational emissions come from mobile emission sources (e.g., vehicle emissions). Therefore, even with the incorporation of mitigation… emissions would be significant and unavoidable." (DEIR p. 4.6-26.) Yet, the Applicant and Town have the capacity to control emissions that are directly and indirectly related to this Project, including mobile emission sources. For example, the Town can require vehicle fleets to 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 be to require the Applicant to enter into a contract with future tenants to use zero-emission commercial vehicles whenever reasonably available. The Applicant can also install electric vehicle (EV) chargers for cars and trucks to the extent feasible. Such mitigation measures are both feasible and necessary to address the Project's fair share of emissions.

06-6 Cont.

Thus, the conclusion that further mitigation is infeasible was not supported by substantial evidence.

## 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 comprise the Project's fair share is clear. The reasonable lifespan of this Project is approximately 30 years as indicated by the amortization of construction emissions. (DEIR, p. 4.6-25.) Therefore, the Project would likely contribute over 2 million MTCO2e during its entire lifespan.[2] This is a good starting point from which to subtract the effect of additional non-offset mitigation measures, before implementing offset purchases.

06-7 Cont.

In addition to implementing the aforementioned mobile emission mitigation measures to the extent feasible, several on-site mitigation measures are feasible, including solar water heaters and automatic light switches. The Project could also require emergency generators or fire pumps to be

[1] $\left(\frac{61{,}969\ \text{MTCO2e}}{76{,}613\ \text{MTCO2e}}\right) \times 100 = 80.88\%$ (DEIR, p. 4.6 – 26.)
[2] 76,613 MTCO2e per year × 30 years = 2,298,390 MTCO2e

powered by clean energy, among many other mitigation strategies that can be incorporated as design features or mitigation measures.

Installing solar panels or incorporating renewable energy production on-site is also a feasible mitigation measure. The DEIR indicates that the Project will comply with Title 24 requirements. (DEIR, p. 4.6-33.) However, Title 24 mandates only that a minimum of 15 percent of the roof area be solar-ready. 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 feasible measure. Having solar panels capable of offsetting 100% of the buildings' energy demands would enhance the effectiveness and decrease GHG emissions overall. 06-7

Even after implementing on-site emissions reductions to the maximum feasible extent, the Town could also require the Applicant to buy clean power for the warehouse's remaining electricity usage that it is unable to produce through solar power on-site. Overall, there are more options available to mitigate emissions to the full extent of the Project emissions.

## Carbon Offsets are Feasible as Mitigation Measures

After requiring operational emissions reductions to the maximum feasible extent, the Town could also require the Applicant to purchase offsets for the Project's remaining GHG emissions. The Town did not provide any evidence for why offsets would be infeasible. Overall, there are more options available to mitigate emissions to the full extent of Project emissions, and the Town failed to acknowledge or implement many mitigation measures that are feasible and could help reduce the Project's GHG impact to the fair share extent. 06-8

Offsets are acceptable mitigation measures under CEQA (Guidelines § 15126.4 (c)(3).) There are also many offset projects that are currently operating in California, including projects that are relevant to the Project's operations such as the Truck Stop Electrification project in California (Project ID ACR133), among others.[3] Such offset programs are just examples of which the Town could consider as feasible carbon offsets to reduce the Project's GHG impact.

## 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 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. 06-9

[3] American Carbon Registry (ACR), list of offset projects, available at https://acr2.apx.com/myModule/rpt/myrpt.asp?r=111 (Accessed October 3, 2024).

Sincerely,

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

06-9
Cont.

10211 Sunland Blvd., Shadow Hills, CA 91040 (818) 650-0030 X101 dw@aenv.org

**BLUM, COLLINS & HO LLP**
ATTORNEYS AT LAW
AON CENTER
707 WILSHIRE BOULEVARD
SUITE 4880
LOS ANGELES, CALIFORNIA 90017
(213) 572-0400

November 11, 2024

Rick Hirsch
Consulting Planner
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307

*Via Email to:*
rhirsch@interwestgrp.com

*Subject: Comments on Inland Empire North Logistics Center Apple Valley Project EIR (SCH NO. 2023090366)*

Dear Mr. Hirsch,

Thank you for the opportunity to comment on the Environmental Impact Report (EIR) for the proposed Inland Empire North Logistics Center Apple Valley Project. 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. 08-1

**1.0 Summary**

The project proposes the construction and operation of two single-story industrial warehouse buildings totaling 2,604,446 square feet (sf) on an approximately 178 acre project site. A tentative parcel map proposes to split the parcel into two legal parcels, with one building on each parcel, and to accommodate the eastward re-alignment of Apple Valley Road.

Building 1 is approximately 1,507,326 square feet and Building 2 is approximately 1,097,120 square feet. Both buildings are designed as cross-dock (sort) fulfillment centers with truck/trailer loading dock doors on the east and west sides of the buildings. Building 1 includes 103 truck/trailer loading docks on each side of the building (206 total) and the site provides 692 truck/trailer parking spaces/container storage, and 826 passenger car parking spaces. Building 2 includes 118 loading docks on each side of the building (236 total) and the site provides 663 truck/trailer parking spaces and 590 passenger car parking spaces. 08-2

The following discretionary actions are required to implement the proposed project: 08-3 Cont.

1. General Plan Amendment. An amendment to the Circulation Element of the Town's General Plan to realign Apple Valley Road and change the designation of Norco Road.
2. Development Agreement. A Development Agreement between the Town and the Project Applicant pursuant to Section 9.04 of the Apple Valley Municipal Code may be considered. The Development Agreement would provide sufficient time for the development of the Project by locking in development standards and extending applicable vesting periods for the Project's entitlements and would also establish a mechanism whereby the Project Applicant would be partially reimbursed for costs associated with public improvements constructed that would be used by future developments. Reimbursements would be funded by developers of these future developments.
3. Development Permit Review. A review of Development Permit No. DP2022-014 will be held in order to consider the Project, including all requested entitlements.
4. Tentative Parcel Map. A tentative map is required to re-align Apple Valley Road eastward and also to divide the single parcel into two roughly equal-sized parcels to accommodate one building on each new lot.

08-3
.

**3.0 Project Description**

The EIR does not include a floor plan, detailed elevations, detailed site plan, or a detailed grading plan. The basic components of a Planning Application include a detailed site plan, floor plan, conceptual grading plan, written narrative, and detailed elevations. For example, Figure 3-4: Site Plan has been completely edited to remove all pertinent information that is readily available on all Site Plans from public review, including the basic north arrow, legend, key notes, floor area ratio, and other site data.

Providing the complete grading plan and earthwork quantity notes is also vital as the EIR states that "For on-site and off-site development, the Project was assumed to have a balanced cut and fill," without any supporting information provided, including the full extent of the off-site utilities improvements required as noted below. The EIR has not provided any method for the public to verify the claims made in this statement. Verification of the import/export materials is vital as it 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 adequate detailed project site plan, floor plan, grading plan, elevations, and project narrative for public review.

08-4
Cont.

The project requires extensive off-site improvements for utilities, including water and sewer. The EIR states that, "the Project would connect to existing sewer infrastructure located at Stoddard

Wells Road, **west** of Interstate 15," and "The Project site is proposed to be annexed into Liberty Utilities service area to supply water for all phases of the Project. Potable water would be conveyed to the Project site via pipelines that would be extended from existing 8-inch pipelines located at Ohna Road and Saugus Road. A new 16-inch main would be installed along Apple Valley Road and new 8-inch pipelines would be installed along Falchion Road and Norco Road with points of connection to the buildings. Backflow valves and meters would be installed at the points of connection. Fire water would be provided to the Project site via the 8-inch mains along Norco Road and Falchion Road." Notably, the extent of these improvements are not shown on Figure 3-2: Vicinity that depicts the off-site improvement area (other figures within the Project Description qualify the off-site improvement areas as those within the project boundary). The available sewer infrastructure is at least one mile from the site, on the opposite side of the I-15. Also of note, while the EIR does not specify the precise location of the available sewer tie-in, land located to the west of the I-15 in the area of Stoddard Wells Road is located within the City of Victorville, is beyond the control of the lead agency, and could also spur growth within Victorville by extending the available utilities. Construction of the sewer infrastructure on the east side of the I-15 will enable further future development in the area. Excluding a figure depicting the full extent of the off-site improvements required to construct the project serves to obfuscate the severity of the project's negative environmental impacts. The EIR must be revised to provide a map depicting all off-site improvement areas, including those listed above, and the overall disturbance area associated with the project.

08-4
.

The EIR misleads the public and decision makers by obfuscating the project's transportation impacts by inaccurately modeling the project as a custom "blend" of industrial uses. The Project Description states that, "Because an end user has not yet been identified, specific details regarding future operational activities on the Project site are not yet available. However, for the purposes of CEQA and to ensure full disclosure on all potential allowable uses on the Project site, this EIR assumes development of a "blend" of industrial uses. Thus, the modeling assumptions used for the air quality, health risk assessment, greenhouse gas, energy, and traffic impact analyses summarized in subsequent chapters of this EIR assume a blend of all warehouse types **with the exception of highcube fulfillment sort facility, which is the most intensive warehouse type**."

08-5
Cont.

This custom "blend" of industrial use types only serves to artificially skew the project's impacts downwards and result in lowered and/or less than significant findings. It is clear that the project buildings are designed and intended for use as a high cube fulfillment sort facility. Both buildings are designed in a cross-dock configuration with truck/trailer loading docks on two opposite sides of each building. The purpose of cross-dock buildings is to receive inbound items from trucks, sort the items, and then reload items onto outbound trucks. Cross-dock buildings are sort facilities

within the operational supply chain, and modeling the proposed project as a "blend" of everything except what it will actually be used for does not comply with CEQA's requirements for meaningful disclosure and adequate informational documents. The EIR must be revised to accurately model the proposed project as a high cube fulfillment sort facility and update all associated sections of environmental analysis.

08-5

**4.2 Air Quality, 4.5 Energy, and 4.6 Greenhouse Gas Emissions**

The EIR does not include for analysis relevant environmental justice issues in reviewing potential impacts, including cumulative impacts from the proposed project. The EIR provides general information about the census tract's CalEnviroScreen scores but does not provide meaningful analysis regarding the health impacts and effects of severe pollution rates. 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 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 (6071012101) is highly burdened by pollution. The surrounding community bears the impact of multiple sources of pollution and is more polluted than other census tracts in many pollution indicators measured by CalEnviroScreen. For example, the project census tract ranks in the 80th percentile for ozone burden and 60th percentile for traffic burdens. 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].

08-6 Cont.

The census tract ranks in the 85th percentile for solid waste facility 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

[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 https://oehha.ca.gov/calenviroscreen/indicator/traffic-density

populations[4]. The census tract also bears more impacts from cleanup sites than 52% of the state. Chemicals in the buildings, soil, or water at cleanup sites can move into nearby communities through the air or movement of water[5].

Further, the census tract is a diverse community including 22% Hispanic, 10% African-American, and 2% Asian-American residents, whom are especially vulnerable to the impacts of pollution. The community also has a high rate of poverty, meaning 53% of the households in the census tract have a total income 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[6]. Poor communities are often located in areas with high levels of pollution[7]. Poverty can cause stress that weakens the immune system and causes people to become ill from pollution[8]. Living in poverty is also an indication that residents may lack health insurance or access to medical care. Medical care is vital for this census tract as it ranks in the 89th percentile for incidence of cardiovascular disease and 88th percentile for incidence of asthma.

08-6

The State of California lists three approved compliance modeling softwares[9] 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, 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.

08-07

The EIR again misleads the public and decision makers by obfuscating the project's transportation impacts by inaccurately modeling the project as a custom "blend" of industrial uses. The Project Description states that, "Because an end user has not yet been identified, specific details regarding future operational activities on the Project site are not yet available. However, for the purposes of

08-08 Cont.

[4] OEHHA Solid Waste Facilities https://oehha.ca.gov/calenviroscreen/indicator/solid-waste-sites-and-facilities
[5] OEHHA Cleanup Sites https://oehha.ca.gov/calenviroscreen/indicator/cleanup-sites
[6] OEHHA Poverty https://oehha.ca.gov/calenviroscreen/indicator/poverty
[7] Ibid.
[8] Ibid.
[9] 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

CEQA and to ensure full disclosure on all potential allowable uses on the Project site, this EIR assumes development of a "blend" of industrial uses. Thus, the modeling assumptions used for the air quality, health risk assessment, greenhouse gas, energy, and traffic impact analyses summarized in subsequent chapters of this EIR assume a blend of all warehouse types **with the exception of highcube fulfillment sort facility, which is the most intensive warehouse type**."

This custom "blend" of industrial use types only serves to artificially skew the project's impacts downwards and result in lowered and/or less than significant findings. It is clear that the project buildings are designed and intended for use as a high cube fulfillment sort facility. Both buildings are designed in a cross-dock configuration with truck/trailer loading docks on two opposite sides of each building. The purpose of cross-dock buildings is to receive inbound items from trucks, sort the items, and then reload items onto outbound trucks. Cross-dock buildings are sort facilities within the operational supply chain, and modeling the proposed project as a "blend" of everything except what it will actually be used for does not comply with CEQA's requirements for meaningful disclosure and adequate informational documents. The EIR must be revised to accurately model the proposed project as a high cube fulfillment sort facility and update all associated sections of environmental analysis.

08-8

**4.9 Land Use and Planning**

Table III-41: Preferred Alternative General Plan Land Use Designation Build Out Summary: Town & Unincorporated Lands of the General Plan EIR[10] states that the Regional Commercial (RC) land use designation will have a buildout of 12,486,488 total square feet. The proposed project's 2,604,446 square feet represents 20.8% of the General Plan buildout for this land use designation, which is significant to be attributed to a single project. The EIR has not demonstrated that the proposed project is within the General Plan buildout scenario, including all cumulative development constructed since approval of the General Plan, approved projects not yet constructed, and "projects in the pipeline." Other recent projects in the RC district, such as Apple Valley I-15 Travel Center[11] (1,165,738 sf) and Apple Valley Commercial Project[12] (49,995 sf), cumulatively with the proposed project generate 3,820,179 square feet of building area, which is 30.6% of the General Plan buildout capacity accounted for by only three recent projects. A revised EIR must be prepared to include this analysis in order to provide an adequate and accurate environmental analysis.

08-9

[10] Apple Valley General Plan EIR https://www.applevalley.org/home/showpublisheddocument/24331/636552384686570000
[11] Apple Valley I-15 Travel Center https://ceqanet.opr.ca.gov/2021120062/3
[12] Apple Valley Commercial Project https://ceqanet.opr.ca.gov/2021100585

The EIR does not provide a consistency analysis with all land use plans, policies, or regulations adopted for the purpose of avoiding or mitigating an environmental effect. The project has significant potential to conflict with many of these items, including but not limited to the following from the Climate Action Plan and General Plan and a revised EIR must be prepared with a consistency analysis in order to provide an adequate and accurate environmental document:

1. Circulation Element Policy 1.A The street system recommended in the Town's Circulation Map shall be strictly implemented.

2. Circulation Element Program 1.A.4: The Town shall require that all intersections maintain a Level of Service D during both the morning and evening peak hour.

3. Circulation Element Program 1.C.2 Concurrent with construction, all new development proposals located adjacent to public roadways shall be required to install all improvements to their ultimate General Plan half-width.

4. Circulation Element Policy 1.E Bus pullouts shall be designed into all new projects on arterial roadways, to allow buses to leave the flow of traffic and reduce congestion.

5. Air Quality Element Program 1.A.1: Apple Valley shall adhere to existing and future greenhouse gas and global warming rules, regulations, and requirements to monitor and reduce emissions.

6. Air Quality Element Policy 1.B: The Town shall proactively regulate local pollutant emitters by coordinating and cooperating with local, regional and federal efforts to monitor, manage and decrease the levels of major pollutants affecting the Town and region, with particular emphasis on PM10 and ozone emissions, as well as other emissions associated with diesel-fueled equipment and motor vehicles.

7. Water Resources Element Policy 1.A The Town shall coordinate land development and assure a balance of development and water supply that ensures the long-term maintenance of an adequate supply of water, and its continued high quality.

8. Water, Wastewater, and Utilities Element Policy 1.D The Town shall confer and coordinate with service and utility providers to ensure the timely expansion of facilities so as to minimize or avoid environmental impacts and disturbance of existing improvements. Planning efforts shall include design and siting of support and distribution facilities.

08-9
Cont.

9. ND-7. Preserve trees occurring on-site either through in situ protection during and after construction, or through transplant and relocation within landscaped areas.(Climate Action Plan)

10. ND-14. Use passive solar design by orienting buildings and incorporating landscaping to maximize passive solar heating during the winter, and minimize solar heating during the summer. (Climate Action Plan)

08-9 Cont.

The EIR must also be revised to remove misleading and erroneous consistency analysis for several items in Table 4.9-1: Analysis of the Project's Consistency with the Town of Apple Valley General Plan. For example, the EIR concludes the project does not conflict with "Air Quality Element Policy 1.D: All proposals for development activities within the Town shall be reviewed for their potential to adversely impact local and regional air quality and shall be required to mitigate any significant impacts," and "Air Quality Element Program 1.D.1: All projects that have the potential to generate significant levels of air pollution shall be required to provide detailed impact analyses and design mitigation measures that incorporate the most advanced technological methods available. Prior to the issuance of grading or demolition permits, the Town shall review and determine the effectiveness of proposed mitigation measures and set forth additional measures as needed," without providing any specific analysis. The EIR states, "See Section 4.2, Air Quality, for further discussion." The EIR excludes that the project will have significant and unavoidable cumulatively considerable impacts to Air Quality. The proposed project does not meet the requirement to mitigate significant impacts and the effectiveness of the proposed mitigation is not sufficient to achieve less than significant impacts. The EIR must be revised to include a finding of significance due to the project's inconsistency with these items from the General Plan.

08-10

Further, the proposed project is directly inconsistent with "Circulation Element Policy 1.A The street system recommended in the Town's Circulation Map shall be strictly implemented." The proposed General Plan Amendment to revise the Circulation Map to remove the portion of Apple Valley Road that bisects the project site cannot be approved as it is prohibited by Circulation Element Policy 1.A. The EIR states that, "The proposed General Plan Amendment would modify the General Plan Circulation Element and eliminate the potential inconsistency between the Project and the General Plan Circulation Element with regard to Apple Valley Road and Norco Street. The proposed modification would facilitate efficient circulation in the Project vicinity." However, as depicted in the EIR, the proposed modification would create a confusing roadway in which Apple Valley Road is not a continuous street and is separated by Falchion Road and the project site. Vehicles traveling north on Apple Valley Road would need to turn right on Falchion Road and then left on the new segment of Apple Valley Road in order to drive around the project site and continue on. The EIR also does not discuss the proposed street reclassification amendments

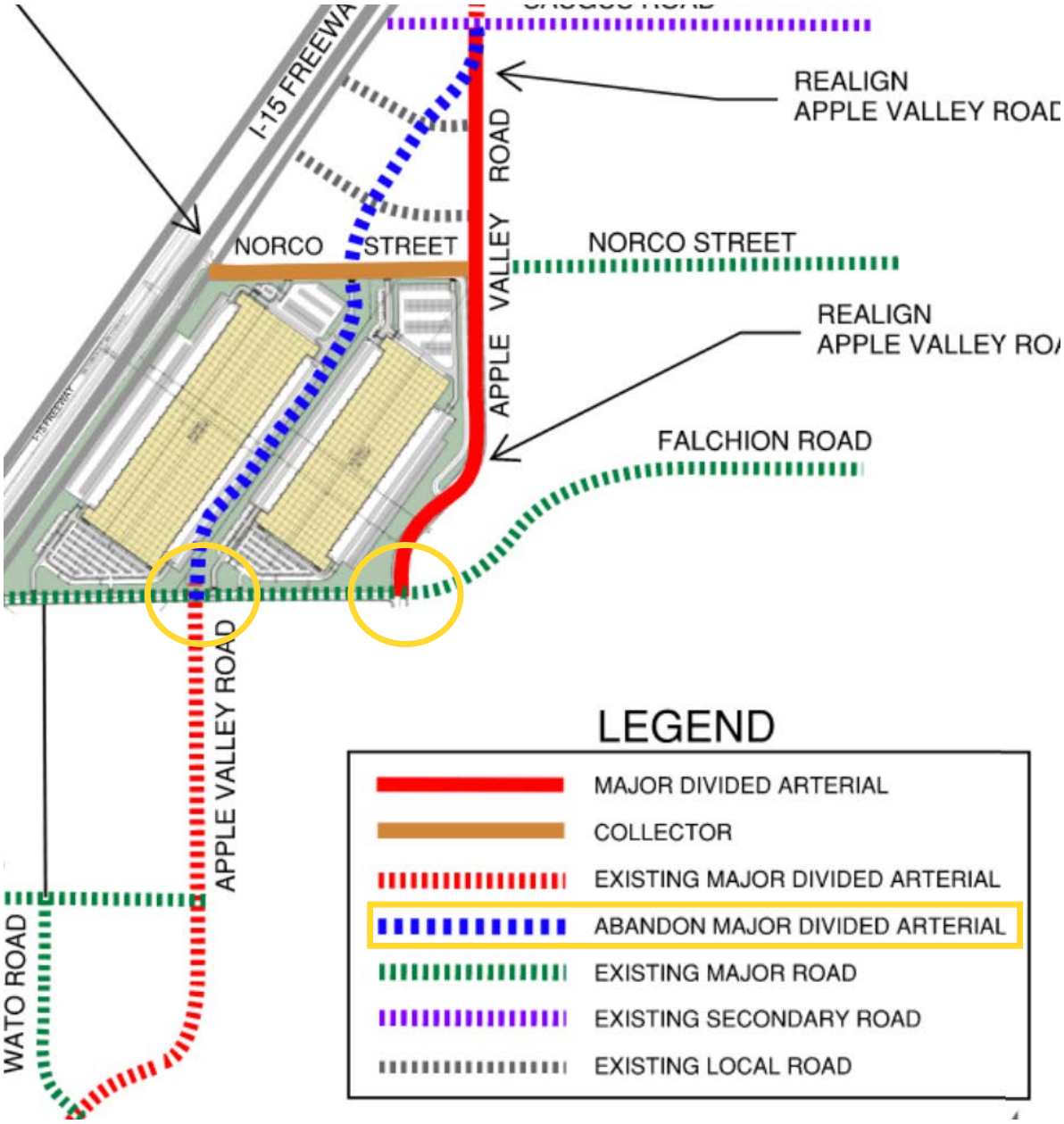
08-11

discussed in Appendix J: Transportation Impact Analysis (change Norco Street from a Major Road to a Collector Street and change Papago and Wato Roads from Major Roads to Secondary Roads), which also conflicts with Circulation Element Policy 1.A. All above-listed items are not efficient circulation and conflict with Circulation Element Policy 1.A and the General Plan Circulation Map, and a finding of significance must be included in a revised EIR.

08-11 Cont.

Table 4.9-2: Consistency with 2020-2045 RTP/SCS Goals provides a misleading and erroneous consistency analysis with SCAG's 2020-2045 Connect SoCal RTP/SCS. Due to errors in modeling, modeling without supporting evidence (as noted throughout this comment letter and attachments) and the EIR's determination that the project will have significant and unavoidable cumulatively considerable impacts to Air Quality and Greenhouse Gas Emissions, 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 a finding of significance due to these direct inconsistencies with SCAG's 2020-2045 Connect SoCal RTP/SCS.

08-12



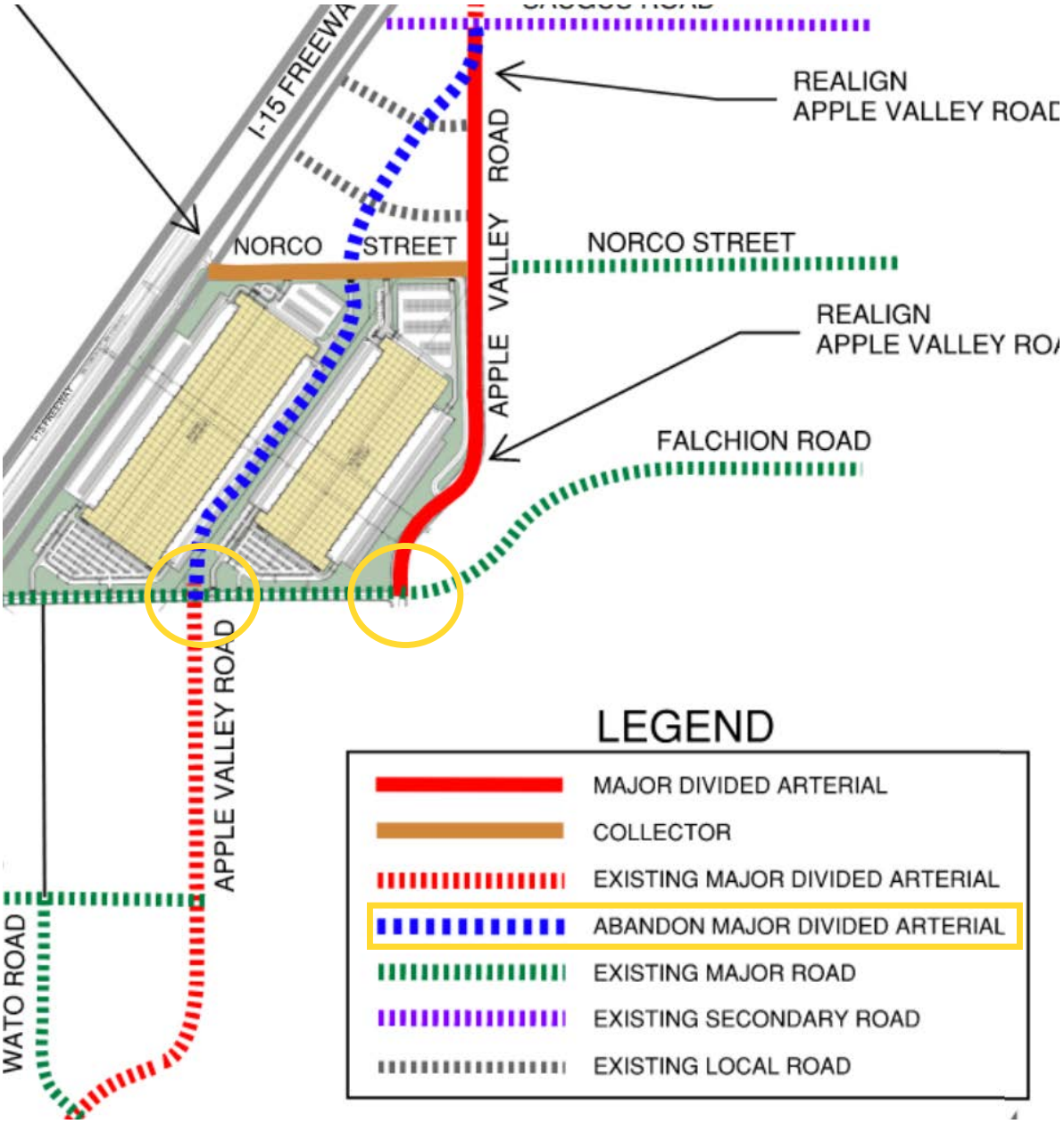

**4.13 Transportation**

The EIR states that, "Beyond the amendments to the General Plan Circulation system, the proposed Project would be consistent with the applicable goals and policies of the General Plan Circulation Element including policies related to maintaining and expanding a safe and efficient circulation and transportation system." However, the EIR excludes any meaningful analysis actually pertaining to the amendments to the General Plan Circulation system. As noted above, the

08-13

proposed project is directly inconsistent with "Circulation Element Policy 1.A The street system recommended in the Town's Circulation Map shall be strictly implemented." The proposed General Plan Amendment to revise the Circulation Map to remove the portion of Apple Valley Road that bisects the project site cannot be approved as it is prohibited by Circulation Element Policy 1.A. The EIR states that, "The proposed General Plan Amendment would modify the General Plan Circulation Element and eliminate the potential inconsistency between the Project and the General Plan Circulation Element with regard to Apple Valley Road and Norco Street. The proposed modification would facilitate efficient circulation in the Project vicinity." However, as depicted in the EIR, the proposed modification would create a confusing roadway in which Apple Valley Road is not a continuous street and is separated by Falchion Road and the project site. Vehicles traveling north on Apple Valley Road would need to turn right on Falchion Road and then left on the new segment of Apple Valley Road in order to drive around the project site and continue on. The EIR also does not discuss the proposed street reclassification amendments discussed in Appendix J: Transportation Impact Analysis (change Norco Street from a Major Road to a Collector Street and change Papago and Wato Roads from Major Roads to Secondary Roads), which also conflicts with Circulation Element Policy 1.A. All above-listed items are not efficient circulation and conflict with Circulation Element Policy 1.A and the General Plan Circulation Map, and a finding of significance must be included in a revised EIR.

08-13
Cont.




08-13 Cont.

The EIR again misleads the public and decision makers by obfuscating the project's transportation impacts by inaccurately modeling the project as a custom "blend" of industrial uses. The Project Description states that, "Because an end user has not yet been identified, specific details regarding future operational activities on the Project site are not yet available. However, for the purposes of CEQA and to ensure full disclosure on all potential allowable uses on the Project site, this EIR assumes development of a "blend" of industrial uses. Thus, the modeling assumptions used for the air quality, health risk assessment, greenhouse gas, energy, and traffic impact analyses summarized

08-14

in subsequent chapters of this EIR assume a blend of all warehouse types **with the exception of highcube fulfillment sort facility, which is the most intensive warehouse type**."

This custom "blend" of industrial use types only serves to artificially skew the project's impacts downwards and result in lowered and/or less than significant findings. It is clear that the project buildings are designed and intended for use as a high cube fulfillment sort facility. Both buildings are designed in a cross-dock configuration with truck/trailer loading docks on two opposite sides of each building. The purpose of cross-dock buildings is to receive inbound items from trucks, sort the items, and then reload items onto outbound trucks. Cross-dock buildings are sort facilities within the operational supply chain, and modeling the proposed project as a "blend" of everything except what it will actually be used for does not comply with CEQA's requirements for meaningful disclosure and adequate informational documents. The EIR must be revised to accurately model the proposed project as a high cube fulfillment sort facility and update all associated sections of environmental analysis.

08-14 Cont.

Appendix J: Traffic Impact Analysis concludes the following intersections require improvements to address the deficiencies per the applicable thresholds:

1. Intersection #1 Stoddard Wells Rd / Outer Highway 15
2. Intersection #2 Outer Highway 15 / I-15 NB Ramps
3. Intersection #6 Stoddard Wells Rd / Outer Highway 15 / I-15 NB Ramps
4. Intersection #8 Quarry Rd / I-15 SB Ramps
5. Intersection #10 Falchion Rd / Outer Hwy 15

Table 1-3: Recommended Project-Specific and Cumulative Improvements to Mitigate LOS Deficiencies within Appendix J provides a list of recommended street/traffic improvements and Tables 8-1 and 8-2 provide a list of fair-share calculations for improvements that will allegedly mitigate significant and unavoidable impacts to less than significant levels. It must be noted that the impacts to the intersections listed above are outside of the jurisdiction of lead agency. Quarry Road at Intersection #8 and Outer Highway 15 at Intersections #1, #2, and #10 are within the City of Victorville[13]; and the I-15 is a Caltrans facility. Any improvements planned/constructed or in-lieu fees/fair share fees paid for City of Victorville or 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*

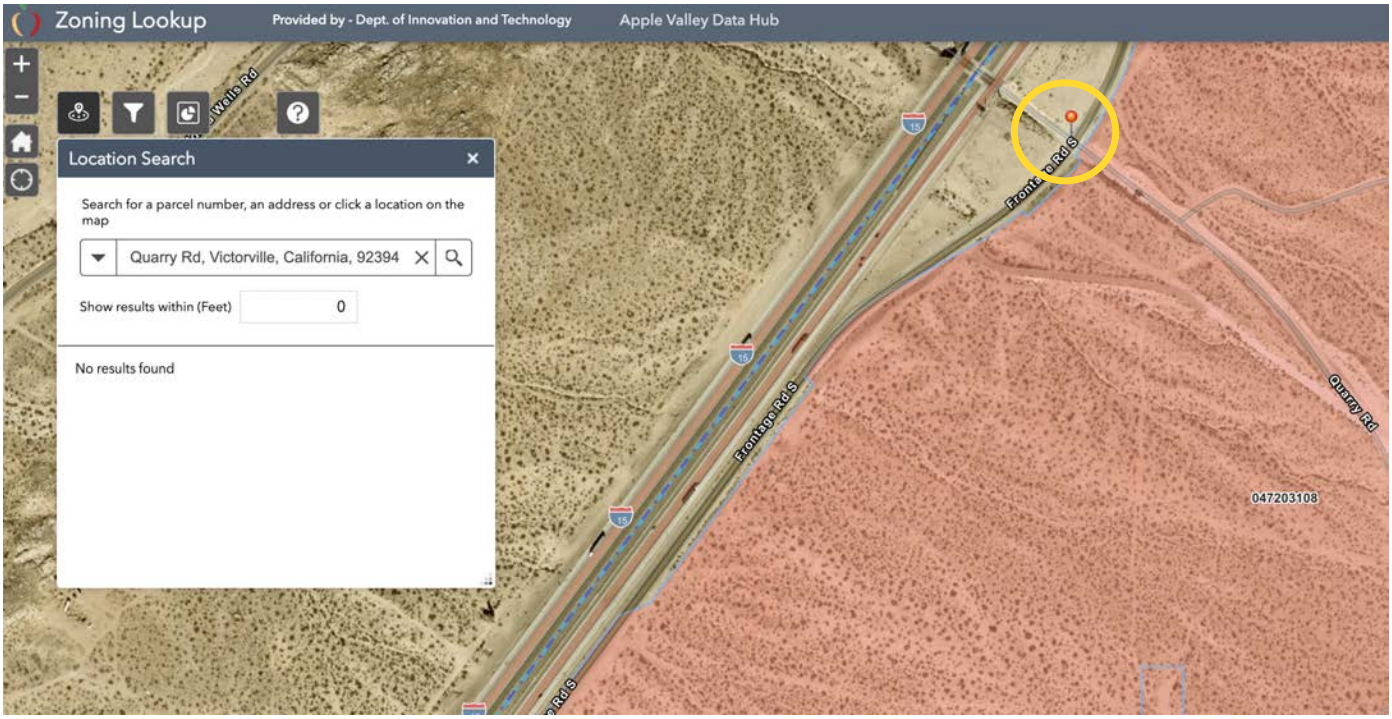
08-15

[13] Apple Valley Zoning Lookup https://applevalley.maps.arcgis.com/apps/webappviewer/index.html?id=95acfd358b5149c8b3331405e9911334

*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 associated with the fair-share fees and any improvements recommended without fees are not planned to occur at all or by any certain date, whether by the City of Victorville or Caltrans. Any improvements recommended or fees paid to mitigate impacts for City of Victorville or Caltrans facilities are beyond the control of the lead agency and evidence that these improvements will be completed or approved by City of Victorville 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 A and Land Use and Planning Impact Threshold B because it is not consistent with the following General Plan Policy:

1. Circulation Element Program 1.A.4: The Town shall require that all intersections maintain a Level of Service D during both the morning and evening peak hour.

08-15
Cont.



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. 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. A revised EIR must be prepared to reflect a quantified VMT analysis that includes all truck/trailer and delivery van activity. 08-16

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 has not provided any exhibits depicting the available truck/trailer turning radius at the intersection of the project driveways and the adjacent streets to determine if there is enough space available to accommodate heavy truck maneuvering. Further, there are no exhibits providing on-site analysis regarding available space on the property to accommodate heavy truck maneuvering. Notably, both buildings provide truck/trailer parking stalls within a rectangular area on the north side of the buildings, and the driveway providing access to these parking stalls is only 40 feet wide. Building 2 also provides additional truck/trailer parking stalls in a tandem configuration. These parking stalls may be in use at any time and further restrict truck/trailer movement on the site, require additional queuing area for trucks and passenger cars, and present a safety hazard with potential for conflicts between passenger cars and trucks/trailers. This issue and overall truck/trailer access at the site has not been analyzed and the EIR must be revised to include a finding of significance as it has not provided any meaningful evidence to support a less than significant finding. 08-17

The EIR states that, "As the Project continues through design review, detailed roadway improvements would continue to be developed in coordination with the Town. These improvements would be overseen by Town and their qualified traffic engineers. This approach would ensure compliance with all applicable roadway design requirements," which is deferred mitigation to after the CEQA public review process. 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 these improvements 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 08-18

to include a finding of significance as the EIR has not provided any meaningful evidence to support a less than significant finding.

08-18 Cont.

There are also no exhibits depicting emergency vehicle access. A similar statement is made regarding emergency vehicle access, in that "Project driveways will be reviewed for required traffic control and the gated primary truck entrances will be analyzed for traffic control, lane geometries, and queuing behind the access gates based on industry standard gate processing times…. These improvements would be overseen by Town and their qualified traffic engineers. This approach would ensure compliance with all applicable roadway design requirements," which is deferred mitigation to after the CEQA public review process. 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.

08-19

**5.5 Effects Found Not to be Significant: Land Use and Planning**

The EIR excludes any discussion or analysis regarding the project's proposed General Plan Amendment to revise the Circulation Map to remove the portion of Apple Valley Road that bisects the project site and move it to the eastern boundary of the project site. The proposed modification would create a confusing roadway in which Apple Valley Road is not a continuous street and is separated by Falchion Road and the project site. Vehicles traveling north on Apple Valley Road would need to turn right on Falchion Road and then left on the new segment of Apple Valley Road in order to drive around the project site and continue on. The EIR also does not discuss the proposed street reclassification amendments discussed in Appendix J: Transportation Impact Analysis (downgrading Norco Street from a Major Road to a Collector Street and downgrading Papago and Wato Roads from Major Roads to Secondary Roads). These actions will impede movement within the area and will physically divide an established community (the incorporated Town of Apple Valley) by constructing a linear feature (realigned Apple Valley Road) and removing means of access (downgrading Norco Street from a Major Road to a Collector Street and downgrading Papago and Wato Roads from Major Roads to Secondary Roads) that would impair mobility within an existing community or between a community and outlying area. The

08-20

EIR must be revised to include a finding of significance due to this impact that cannot be mitigated and is directly inconsistent with the Town's General Plan Circulation Element Policy 1.A.

08-20 Cont.

**5.6 Effects Found Not to be Significant: Population and Housing**

The EIR utilizes uncertain language and does not provide any meaningful analysis or supporting evidence to substantiate the conclusion that there will be no significant impacts to population and housing. For example, the EIR states regarding the project's construction and operational jobs that "the Project's temporary and permanent employment requirements *could likely* be met by the Town's existing labor force without people needing to relocate into the Project *region*." The EIR specifically states simultaneously that the "local" and "regional" existing labor force will accommodate the jobs generated by the proposed project but only cites that the "unemployment rate for San Bernardino County is at 5%," which is lower than the state average of 5.4% and indicates that the available labor pool is significantly smaller than necessary to accommodate the proposed project and cumulative development. Notably, unemployment at or below 5% is considered full employment and does not support a less than significant finding. The EIR has not provided evidence that the local workforce (the Town specifically or San Bernardino County) is qualified for or interested in work in the construction and/or industrial sector. Without this supporting evidence, the project must relying on the entire labor force within the greater SCAG region to fill the project's construction and operational jobs. This will increase VMT and emissions during all phases of construction and operations and a revised EIR must be prepared to account for longer worker trip distances.

08-21

SCAG's Connect SoCal Demographics and Growth Forecast[14] states that Apple Valley will add 12,200 jobs between 2016 - 2045. Utilizing the EIR's calculation of 2,179 employees, the project represents 17.8% of Apple Valley's employment growth from 2016 - 2045. A single project accounting for this amount of 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 2016, General Plan adoption, and projects "in the pipeline" to determine if the project will exceed SCAG's and/or the Town's employment and/or population growth forecast. For example, other recent projects such as Apple Valley 143 (2,520,000 square feet of industrial/warehouse space; 2,108 employees[15]), Apple Valley Commercial Project (49,995 square feet commercial space; 75 employees[16]), The Development at Dale Evans and Lafayette

08-22

[14] 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
[15] Apple Valley 143 https://ceqanet.opr.ca.gov/2022070019
[16] Apple Valley Commercial Project https://ceqanet.opr.ca.gov/2021100585

(1,207,544 square feet of industrial/warehouse space; 1,172 employees[17]), 1M Warehouse (1,080,125 square feet of industrial/warehouse space; 904 employees[18]), Cordova Complex and Quarry at Pawnee (3,022,294 square feet of industrial/warehouse space; 2,529 employees[19]), and Cordova Business Center (494,000 square feet of industrial/warehouse space; 200 employees[20]) combined with the proposed project will cumulatively generate 9,167 employees, which is 75.1% of Apple Valley's employment growth forecast over 29 years accounted for by only seven recent industrial projects. These totals increase exponentially when commercial and other industrial development activity is added to the brief list of recent activity above. 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 Town's General Plan.

08-22 Cont.

The EIR has not provided any analysis of the project's infrastructure development and its capacity to not induce substantial unplanned population growth in an area, either directly or indirectly (for example through extension of roads or other infrastructure). The project site and vicinity are devoid of existing utility infrastructure and extensive off-site improvements are required. This includes the EIR's statements that, the Project would connect to existing sewer infrastructure located at Stoddard Wells Road, **west** of Interstate 15," and "The Project site is proposed to be annexed into Liberty Utilities service area to supply water for all phases of the Project. Potable water would be conveyed to the Project site via pipelines that would be extended from existing 8-inch pipelines located at Ohna Road and Saugus Road. A new 16-inch main would be installed along Apple Valley Road and new 8-inch pipelines would be installed along Falchion Road and Norco Road with points of connection to the buildings. Backflow valves and meters would be installed at the points of connection. Fire water would be provided to the Project site via the 8-inch mains along Norco Road and Falchion Road." Notably, the extent of these improvements are not shown on Figure 3-2: Vicinity that depicts the off-site improvement area (other figures within the Project Description qualify the off-site improvement areas as those within the project boundary). Excluding a figure depicting the full extent of the off-site improvements required to construct the project serves to obfuscate the severity of the project's negative environmental impacts. The EIR must be revised to provide a map depicting all off-site improvement areas, including those listed above, and the overall disturbance area associated with the project.

08-23

[17] The Development at Dale Evans and Lafayette https://ceqanet.opr.ca.gov/2022120356/2
[18] 1M Warehouse https://ceqanet.opr.ca.gov/2023020285/2
[19] Cordova Complex and Quarry at Pawnee https://ceqanet.opr.ca.gov/2023090009/2
[20] Cordova Business Center https://ceqanet.opr.ca.gov/2024100839

The utility development necessary to accommodate the proposed project is extensive, especially as the available sewer infrastructure is at least one mile from the site, on the opposite side of the I-15. Also of note, while the EIR does not specify the precise location of the available sewer tie-in, land located to the west of the I-15 in the area of Stoddard Wells Road is located within the City of Victorville, is beyond the control of the lead agency, and could also spur growth within Victorville by extending the available utilities. Construction of the sewer infrastructure on the east side of the I-15 will enable further future development in the area. The project cannot proceed without water or sewer service, and construction of the proposed water infrastructure will spur growth that accounts for a significant portion of local and regional growth forecasts.

Further, the project cannot proceed without water or sewer service, and construction of the proposed water infrastructure will spur growth that accounts for a significant portion of local and regional growth forecasts. The proposed water and sewer infrastructure may be utilized or "tied-into" by other future developments, spurring further growth in the area. This is a known conclusion as a Development Agreement is a proposed component of the project that would, "establish a mechanism whereby the Project Applicant would be partially reimbursed for costs associated with public improvements constructed that would be used by future developments. Reimbursements would be funded by developers of these future developments." The EIR must be revised to include a finding of significance due to the project's infrastructure development and its capacity to induce substantial unplanned population growth in an area.

08-24

The EIR also does not analyze here that the Project also requires site annexation into the Liberty Utilities service area to supply water for all phases of the Project, further indicating that it is indirectly inducing growth in an area that was not planned to be served for utilities. The EIR must be revised to include a finding of significance as it has not provided any meaningful evidence to support a less than significant finding.

08-25

There is also no discussion or analysis of the project's construction of new roadways and changes to the Town's circulation system and its capacity to induce substantial unplanned population growth in an area. This includes construction of Falchion Road, Outer Highway 15, Norco Road, and Apple Valley Road. The project site is currently bisected by the General Plan Circulation Element planned location for Apple Valley Road and requires a General Plan Amendment to modify the Town's Circulation Element to re-align Apple Valley Road to the east of the project site to proceed. Several necessary components of the project - changing the planned location of Apple Valley Road and constructing Falchion Road, Outer Highway 15, Norco Road, and Apple Valley Road - will induce substantial unplanned population growth in an area. The EIR has not provided any of this information for discussion or analysis and must be revised to include a finding of significance.

08-26

**6.1 Growth-Inducing Impacts**

The EIR does not meaningfully discuss or analyze the project's significant and unavoidable cumulatively considerable Air Quality and GHG impacts, or its required General Plan Amendment. The EIR does not provide any meaningful evidence that the project will not result in significant and irreversible environmental changes, especially considering the project's direct impact and contribution to negative climate change impacts. The EIR must be revised to include a finding of significance as there is no meaningful evidence to support a less than significant finding. 08-27

The EIR utilizes uncertain language and does not provide any meaningful analysis or supporting evidence to substantiate the conclusion that there will be no significant impacts to population and housing. For example, the EIR states regarding the project's construction and operational jobs that "the Project's temporary and permanent employment requirements *could likely* be met by the Town's existing labor force without people needing to relocate into the Project *region*." The EIR specifically states simultaneously that the "local" and "regional" existing labor force will accommodate the jobs generated by the proposed project but only cites that the "unemployment rate for San Bernardino County is at 5%," which is lower than the state average of 5.4% and indicates that the available labor pool is significantly smaller than necessary to accommodate the proposed project and cumulative development. Notably, unemployment at or below 5% is considered full employment and does not support a less than significant finding. The EIR has not provided evidence that the local workforce (the Town specifically or San Bernardino County) is qualified for or interested in work in the construction and/or industrial sector. Without this supporting evidence, the project must relying on the entire labor force within the greater SCAG region to fill the project's construction and operational jobs. This will increase VMT and emissions during all phases of construction and operations and a revised EIR must be prepared to account for longer worker trip distances. 08-28

The EIR does not adequately discuss or and analyze the commitment of resources is not consistent with regional and local growth forecasts. As noted throughout this comment letter, the project represents a significant amount of building area growth in the Town and a significant amount of the Town's employment growth over 29 years. The EIR does not meaningfully discuss or analyze the project's compliance with the General Plan's Land Use Buildout Scenario. Table III-41: Preferred Alternative General Plan Land Use Designation Build Out Summary: Town & Unincorporated Lands of the General Plan EIR[21] states that the Regional Commercial (RC) land 08-29

[21] Apple Valley General Plan EIR
https://www.applevalley.org/home/showpublisheddocument/24331/636552384686570000

use designation will have a buildout of 12,486,488 total square feet. The proposed project's 2,604,446 square feet represents 20.8% of the General Plan buildout for this land use designation, which is significant to be attributed to a single project. The EIR has not demonstrated that the proposed project is within the General Plan buildout scenario, including all cumulative development constructed since approval of the General Plan, approved projects not yet constructed, and "projects in the pipeline." Other recent projects in the RC district, such as Apple Valley I-15 Travel Center[22] (1,165,738 sf) and Apple Valley Commercial Project[23] (49,995 sf), cumulatively with the proposed project generate 3,820,179 square feet of building area, which is 30.6% of the General Plan buildout capacity accounted for by only three recent projects. A revised EIR must be prepared to include this analysis in order to provide an adequate and accurate environmental analysis.

08-29 Cont.

SCAG's Connect SoCal Demographics and Growth Forecast[24] states that Apple Valley will add 12,200 jobs between 2016 - 2045. Utilizing the EIR's calculation of 2,179 employees, the project represents 17.8% of Apple Valley's employment growth from 2016 - 2045. A single project accounting for this amount of 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 2016, General Plan adoption, and projects "in the pipeline" to determine if the project will exceed SCAG's and/or the Town's employment and/or population growth forecast. For example, other recent projects such as Apple Valley 143 (2,520,000 square feet of industrial/warehouse space; 2,108 employees[25]), Apple Valley Commercial Project (49,995 square feet commercial space; 75 employees[26]), The Development at Dale Evans and Lafayette (1,207,544 square feet of industrial/warehouse space; 1,172 employees[27]), 1M Warehouse (1,080,125 square feet of industrial/warehouse space; 904 employees[28]), Cordova Complex and Quarry at Pawnee (3,022,294 square feet of industrial/warehouse space; 2,529 employees[29]), and Cordova Business Center (494,000 square feet of industrial/warehouse space; 200 employees[30]) combined with the proposed project will cumulatively generate 9,167 employees, which is 75.1% of Apple Valley's employment growth forecast over 29 years accounted for by only seven recent

08-30

[22] Apple Valley I-15 Travel Center https://ceqanet.opr.ca.gov/2021120062/3
[23] Apple Valley Commercial Project https://ceqanet.opr.ca.gov/2021100585
[24] 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
[25] Apple Valley 143 https://ceqanet.opr.ca.gov/2022070019
[26] Apple Valley Commercial Project https://ceqanet.opr.ca.gov/2021100585
[27] The Development at Dale Evans and Lafayette https://ceqanet.opr.ca.gov/2022120356/2
[28] 1M Warehouse https://ceqanet.opr.ca.gov/2023020285/2
[29] Cordova Complex and Quarry at Pawnee https://ceqanet.opr.ca.gov/2023090009/2
[30] Cordova Business Center https://ceqanet.opr.ca.gov/2024100839

industrial projects. These totals increase exponentially when commercial and other industrial development activity is added to the brief list of recent activity above. 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 Town's General Plan.

08-30 Cont.

The EIR has not provided an accurate analysis of the project's infrastructure development and its ability to remove obstacles to population growth or require the construction of new or expanded facilities "outside of the project site." The project site and vicinity are devoid of existing utility infrastructure and extensive off-site improvements are required. This includes the EIR's statements that, the Project would connect to existing sewer infrastructure located at Stoddard Wells Road, **west** of Interstate 15," and "The Project site is proposed to be annexed into Liberty Utilities service area to supply water for all phases of the Project. Potable water would be conveyed to the Project site via pipelines that would be extended from existing 8-inch pipelines located at Ohna Road and Saugus Road. A new 16-inch main would be installed along Apple Valley Road and new 8-inch pipelines would be installed along Falchion Road and Norco Road with points of connection to the buildings. Backflow valves and meters would be installed at the points of connection. Fire water would be provided to the Project site via the 8-inch mains along Norco Road and Falchion Road." Notably, the extent of these improvements are not shown on Figure 3-2: Vicinity that depicts the off-site improvement area (other figures within the Project Description qualify the off-site improvement areas as those within the project boundary). The EIR must be revised to provide a map depicting all off-site improvement areas, including those listed above, and the overall disturbance area associated with the project.

08-31

The utility development necessary to accommodate the proposed project is extensive, especially as the available sewer infrastructure is at least one mile from the site, on the opposite side of the I-15. Also of note, while the EIR does not specify the precise location of the available sewer tie-in, land located to the west of the I-15 in the area of Stoddard Wells Road is located within the City of Victorville, is beyond the control of the lead agency, and could also spur growth within Victorville by extending the available utilities. Construction of the sewer infrastructure on the east side of the I-15 will enable further future development in the area. The project cannot proceed without water or sewer service, and construction of the proposed water infrastructure will spur growth that accounts for a significant portion of local and regional growth forecasts.

08-32

The proposed water and sewer infrastructure may be utilized or "tied-into" by other future developments, spurring further growth in the area. The EIR concludes that the project will not remove obstacles to population growth or require the construction of new or expanded facilities

08-33

"outside of the project site." The EIR provides misleading reasoning in stating that, "The Project would involve installation of new water and sewer lines in the Project vicinity. The purpose of these new utilities is solely to serve the needs of the Project, and not to provide capacity for future projects or growth." However, this is contradictory to the proposed Development Agreement that would, "establish a mechanism whereby the Project Applicant would be partially reimbursed for costs associated with public improvements constructed that would be used by future developments. Reimbursements would be funded by developers of these future developments." The EIR must be revised to include a finding of significance due to the project's infrastructure development and its removal of obstacles to population growth.

08-33 Cont.

The EIR also does not analyze here that the Project also requires site annexation into the Liberty Utilities service area to supply water for all phases of the Project, further indicating that it is indirectly inducing growth in an area that was not planned to be served for utilities. The EIR must be revised to include a finding of significance.

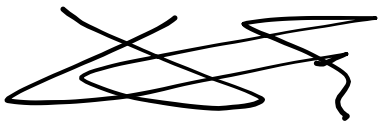
08-34

**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.

08-35

Sincerely,



Gary Ho
Blum, Collins & Ho LLP

Attachments:
1. SWAPE Technical Analysis

SWAPE Technical Consultation, Data Analysis and Litigation Support for the Environment

2656 29th Street, Suite 201
Santa Monica, CA 90405

Matt Hagemann, P.G, C.Hg.
(949) 887-9013
mhagemann@swape.com

Paul E. Rosenfeld, PhD
(310) 795-2335
prosenfeld@swape.com

November 7, 2024

Gary Ho
Blum, Collins & Ho LLP
707 Wilshire Blvd, Ste. 4880
Los Angeles, CA 90017

**Subject:** **Comments on the Inland Empire North Logistics Center Apple Valley Project (SCH No. 2023090366)**

Dear Mr. Ho,

We have reviewed the September 2024 Draft Environmental Impact Report ("DEIR") for the Inland Empire North Logistics Center Apple Valley Project ("Project") located in the City of Apple Valley ("City"). The Project proposes to construct 1,507,326-square-feet of warehouse space on the 178-acre site.

Our review demonstrates that the DEIR inadequately evaluates the Project's air quality, health risk, and greenhouse gas ("GHG") impacts. As such, the resulting emissions and health risk impacts associated with construction and operation of the proposed Project may be underestimated. A revised environmental impact report ("EIR") should be prepared to adequately assess and mitigate the potential impacts from criteria air pollutants, toxic air contaminants, and GHG emissions associated with the Project.

08-36

# Air Quality

## Unsubstantiated Input Parameters Used to Estimate Project Emissions

The DEIR concludes that the Project's operational air quality emissions for nitrogen oxides ("$NO_x$") and particulate matter 10 ("$PM_{10}$") would exceed thresholds set by the Mojave Desert Air Quality Management District ("MDAQMD") (see excerpt below) (p. 4.2-32, 4.2-33, Table 4.2-12).

08-37

**Table 4.2-11. Estimated Maximum Daily Operation Criteria Air Pollutant Emissions - Unmitigated**

| Emissions Source | VOC | $NO_x$ | CO | $SO_x$ | $PM_{10}$ | $PM_{2.5}$ |
|---|---|---|---|---|---|---|
| | Pounds per Day | | | | | |
| Energy | 0.73 | 13.30 | 11.17 | 0.08 | 1.107 | 1.107 |
| Offroad Equipment | 1.2 | 8.94 | 7.70 | 0.03 | 0.34 | 0.31 |
| **Total Daily Summer Emissions** | **80.33** | **301.52** | **496.51** | **3.66** | **179.81** | **51.87** |
| **Winter** | | | | | | |
| Mobile | 18.98 | 294.00 | 278.68 | 3.44 | 178.31 | 50.44 |
| Area | 43.98 | – | – | – | – | – |
| Energy | 0.73 | 13.30 | 11.17 | 0.08 | 1.107 | 1.107 |
| Offroad Equipment | 1.20 | 8.94 | 7.70 | 0.03 | 0.34 | 0.31 |
| **Total Daily Winter Emissions** | **64.90** | **316.24** | **297.54** | **3.55** | **179.66** | **51.76** |
| **Maximum Daily Emissions** | **80.33** | **316.24** | **496.51** | **3.66** | **189.81** | **51.87** |
| *MDAQMD Threshold* | *137* | *137* | *548* | *137* | *82* | *65* |
| **Threshold Exceeded?** | **No** | **Yes** | **No** | **No** | **Yes** | **No** |

Source: See Appendix B-1 for complete results.
Notes: VOC = volatile organic compound; $NO_x$ = oxides of nitrogen; CO = carbon monoxide; $SO_x$ = sulfur oxides; $PM_{10}$ = coarse particulate matter; $PM_{2.5}$ = fine particulate matter; MDAQMD = Mojave Desert Air Quality Management District.

08-37 Cont.

The DEIR concludes:

> "Although mitigation measures have been recommended to minimize operational-related air quality impacts (MM-AQ-2) no feasible mitigation measures beyond those already identified exist that would reduce these emissions to levels that are less than significant. Therefore, even with the incorporation of mitigation measures MM-AQ-1 through MM-AQ-3, long-term impacts associated with a cumulatively considerable net increase of criteria pollutants for which the Project region is non-attainment would be significant and unavoidable, as would their potential health effects" (p. 1-35).

While we agree that the Project would result in significant air quality impacts, the DEIR's assertion that this impact is significant-and-unavoidable is unsupported. According to California Environmental Quality Act ("CEQA") Guidelines § 15096(g)(2):[1]

> "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."

CEQA mandates that all feasible mitigation measures be included in project-related documents, to reduce impacts to the greatest extent possible. Although the DEIR includes mitigation measure ("MM") AQ-2, its assertion that there are "no additional feasible mitigation measures" is inaccurate. To sufficiently minimize the Project's air quality impacts, additional feasible mitigation measures should be included, as outlined in the section of this letter titled "Feasible Mitigation Measures Available to

[1] "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.

Reduce Emissions." A revised EIR should therefore be prepared to incorporate all feasible mitigation and reduce emissions to the greatest extent possible.

08-37 Cont.

## Deisel Particulate Matter Emissions Inadequately Evaluated

The DEIR concludes that the proposed Project would result in a less-than-significant health risk impact based on quantified construction and operational health risk analyses ("HRAs"). The DEIR estimates that the maximum incremental cancer risk posed to nearby, existing residential sensitive receptors from exposure to diesel particulate matter ("DPM") emissions during Project construction and operation would be 0.14 and 0.89 in one million, respectively, which would not exceed the MDAQMD significance threshold of 10 in one million (see excerpt below) (p. 4.2-38, Table 4.2-13; p. 4.2-39, Table 4.2-15).

**Table 4.2-13. Construction Health Risk Assessment Results**

| Impact Parameter | Units | Project Impact | CEQA Threshold | Level of Significance |
|---|---|---|---|---|
| Maximum Individual Cancer Risk – Residential | Per Million | 0.14 | 10 | Less than Significant |
| Chronic Hazard Index – Residential | Index Value | 0.0001 | 1.0 | Less than Significant |

Source: Appendix B-2.
Note: CEQA = California Environmental Quality Act.

**Table 4.2-14. Operational Health Risk Assessment Results - Unmitigated**

| Impact Parameter | Units | Impact Level | CEQA Threshold | Level of Significance |
|---|---|---|---|---|
| Maximum Individual Cancer Risk – Residential | Per Million | 5.6 | 10 | Less than Significant |
| Chronic Hazard Index – Residential | Index Value | 0.0055 | 1.0 | Less than Significant |

Source: Appendix B-2.
Notes: CEQA = California Environmental Quality Act

08-38

The DEIR's evaluation of the Project's potential health risk impacts may be underestimated, as the DEIR does not provide or reference the exposure assumptions used in the HRA, such as age sensitivity factors ("ASF") or fraction of time at home ("FAH") values. Until the DEIR substantiates the use of accurate exposure assumptions, the HRA may underestimate the cancer risk posed to nearby, existing sensitive receptors due to Project construction. Furthermore, the DEIR and supporting documents do not provide a dose and risk equation to calculate the Project's construction-related cancer risks. According to the *Risk Assessment Guidelines* provided by the Office of Environmental Health Hazard Assessment ("OEHHA"), the organization responsible for providing guidance on conducting HRAs in California, the DEIR's model should have used the following equation:[2]

[2] "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf, p. 8-7 Equation 8.2.4.

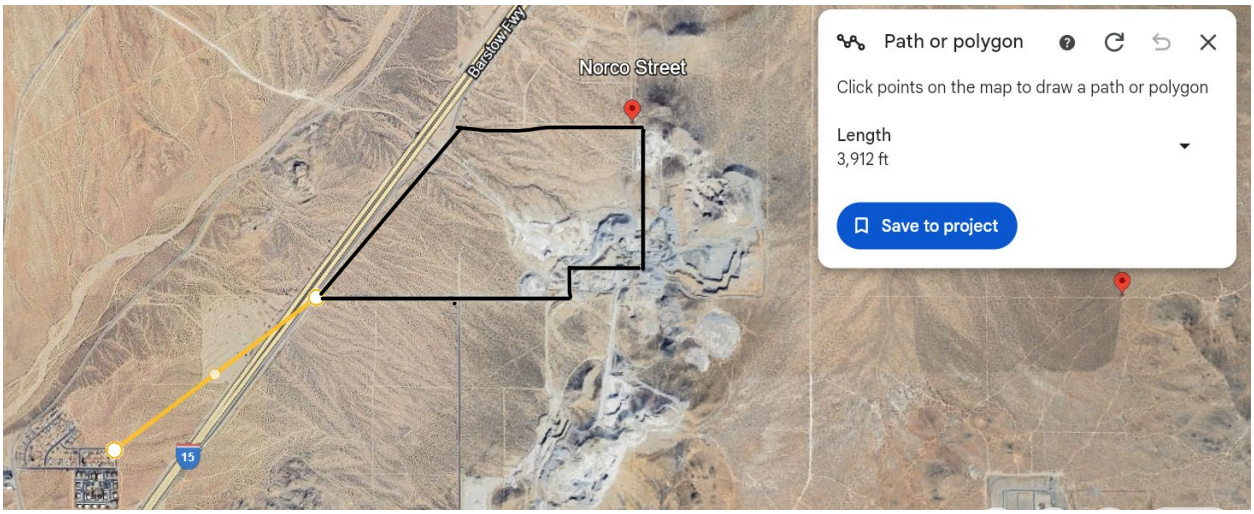
**A. Equation 8.2.4 A:** $RISK_{inh\text{-}res} = DOSE_{air} \times CPF \times ASF \times ED/AT \times FAH$

7. $RISK_{inh\text{-}res}$ = Residential inhalation cancer risk
8. $DOSE_{air}$ = Daily inhalation dose (mg/kg-day)
9. CPF = Inhalation cancer potency factor (mg/kg-day$^{-1}$)
10. ASF = Age sensitivity factor for a specified age group (unitless)
11. ED = Exposure duration (in years) for a specified age group
12. AT = Averaging time for lifetime cancer risk (years)
13. FAH = Fraction of time spent at home (unitless)

Without access to the exposure assumptions or dose and risk equation used in the DEIR's HRAs, we cannot verify the accuracy of the Project's cancer risks.

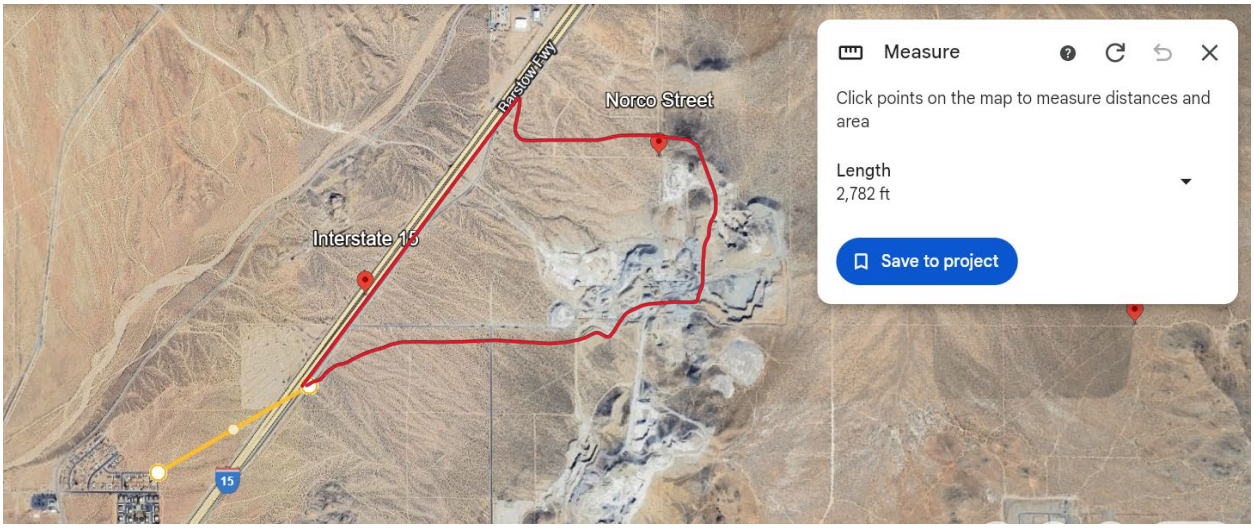
The DEIR's HRA may also rely on an inaccurately estimated distance to the Project site's nearest sensitive receptor. The DEIR states that the nearest sensitive receptors are residences located "approximately 4,700 feet to the southwest" of the Project site (p. 4.2-37). Review of Google Earth reveals that the nearest residential receptor is approximately 3,912 feet from the Project site (see screenshot below).

08-38 Cont.




The screenshot above shows an underestimation of approximately 788 feet for the distance to the nearest sensitive receptor, compared to the value provided in the DEIR.[3] Furthermore, the nearest residential receptor is located 2,981 feet from the edge of the road work being conducted by the Project, which leads to an additional underestimation of 1,918 feet (see screenshot below)(DEIR, p. 3-17, Figure 3-3).[4]

[3] 4,700 feet (DEIR's estimation) – 3,912 feet (SWAPE's estimation) = 788 feet
[4] 4,700 feet (DEIR's estimation) – 2,981 feet (SWAPE's estimation) = 1,918 feet




08-38 Cont.

The DEIR relies upon this distance to calculate the Project's potential cancer risk to nearby receptors (p. 4.2-38, Table 4.2-7; p. 4.2-28, Table 4.2-8). Until this value is verified, the DEIR's HRA should not be relied upon as the basis for determining the Project's significance.

## Greenhouse Gas

### Failure to Adequately Evaluate Greenhouse Gas Impacts

The DEIR identifies that the Project would result in net annual GHG emissions of 76,613-metric tons of carbon dioxide equivalents per year ("MT $CO_2e$/year"), which exceeds the applicable South Coast Air Quality Management District ("SCAQMD") GHG significance threshold of 3,000 MT$CO_2e$/year, adopted by the MDAQMD (see excerpt below) (p. 4.6-26, Table 4.6-6):

**Table 4.6-6. Estimated Annual Operational Greenhouse Gas Emissions - Mitigated**

| Emission Source | $CO_2$ | $CH_4$ | $N_2O$ | R | $CO_2e$ |
|---|---|---|---|---|---|
| | metric tons per year | | | | |
| Mobile | 59,832 | 0.34 | 6.89 | 76.8 | 61,969 |
| Area | 28 | 0 | 0 | – | 28 |
| Energy | 13,016 | 0.88 | 0.08 | – | 13,063 |
| Water | 777 | 14.2 | 0.34 | – | 1,235 |
| Waste | 55 | 5.46 | 0 | – | 191 |
| Off-Road Equipment | 0 | 0 | 0 | – | 0 |
| **Total** | **72,276** | **20.8** | **7.30** | **76.82** | **76,486** |
| | | | | *Amortized Construction Emissions* | *126.7* |
| | | | | **Operational Emissions plus Amortized Construction Emissions** | **76,613** |

Source: Appendix B.
Notes: CO2 = carbon dioxide; CH4 = methane; N2O = nitrous oxide; R=refrigerants; CO2e = carbon dioxide equivalent; GHG = greenhouse gas.
Values of "–" mean that no emissions estimate is provided. Totals may not sum due to rounding. Includes implementation of MM-AQ-2 and MM-GHG-1 and MM-GHG-2.

08-39

The DEIR asserts that, with the implementation of MM-AQ-2, MM-GHG-1, and MM-GHG-2, the Project would have a significant-and-unavoidable GHG impact, stating:

> "Construction and operation of the Project would result in the generation of approximately 79,045 metric tons of carbon dioxide (CO2) equivalent, which would exceed the numerical GHG

threshold established by the South Coast Air Quality Management District of 3,000 metric tons of CO2 equivalent per year. While the Project is located within the jurisdiction of the Mojave Desert Air Quality Management District, because the South Coast Air Quality Management District's thresholds are more stringent and are backed by substantial evidence from an expert agency, the South Coast Air Quality Management District's recommended thresholds have been utilized for determining the significance of the Project's GHG emission impacts. Implementation of mitigation measures MM-AQ-2, MM-GHG-1, and MM-GHG-2 would also reduce operation-related GHG emissions. However, the effectiveness of the mitigation and the associated emission reductions cannot be accurately quantified at this time and GHG emissions impacts are inherently cumulative in nature. As such, impacts on the project-level and cumulatively would remain significant and unavoidable" (p. 1-35).

08-39 Cont.

While we acknowledge that the Project would result in a significant GHG impact, the DEIR's conclusion that this impact is significant-and-unavoidable is not substantiated. As mentioned above, an impact can only be deemed significant-and-unavoidable once all feasible mitigation measures have been fully considered and incorporated. While the DEIR references MM-AQ-2, MM-GHG-1, and MM-GHG-2, it does not incorporate all feasible mitigation measures. To minimize the Project's GHG impacts to the greatest extent possible, additional feasible mitigation measures, such as those outlined in the section titled "Feasible Mitigation Measures Available to Reduce Emissions," should be included. The Project should not be approved until a revised EIR is prepared that integrates all feasible mitigation measures to reduce emissions to the greatest extent possible.

# 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.[5] As demonstrated in the sections above, the Project would result in potentially significant air quality, health risk, and GHG impacts which should be further mitigated to protect the environment and benefit surrounding communities.

08-40

The U.S. Environmental Protection Agency explains that sources of $NO_x$ and $PM_{10}$ emissions include "motor vehicle internal combustion engines and fossil fuel-fired electric utility and industrial boilers," as well as "vehicle exhaust and road dust."[6,7] To reduce the $NO_x$ and $PM_{10}$ emissions associated with Project operation, we recommend the DEIR consider incorporating several mitigation measures (see list below).

[5] "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.

[6] "Proposed Revisions to the National Ambient Air Quality Standards for Nitrogen Dioxide." U.S. Environmental Protection Agency, July 2009, *available at*: https://www.gpo.gov/fdsys/pkg/FR-2009-07-15/pdf/E9-15944.pdf.

[7] "Particle Pollution and your Health." U.S. Environmental Protection Agency, September 2003, *available at*: https://www.airnow.gov/publications/air-quality-and-your-health/partical-pollution-and-your-health/.

The California Air Resources Board ("CARB") recommends the following measures applicable to the Project:[8]

- Require tenants to use the cleanest technologies available, and to provide the necessary infrastructure to support zero-emission vehicles and equipment that will be operating on site.
- Require future tenants to exclusively use zero-emission light and medium-duty delivery trucks and vans.
- Require all heavy-duty trucks entering or on the project site to be zero-emission vehicles, and be fully zero-emission. A list of commercially available zero-emission trucks can be obtained from the Hybrid and Zero-emission Truck and Bus Voucher Incentive Project (HVIP). Additional incentive funds can be obtained from the Carl Moyer Program and Voucher Incentive Program.
- Restrict trucks and support equipment from idling longer than two minutes while on site. Require the installation of vegetative walls or other effective barriers that separate loading docks and people living or working nearby.

08-40 Cont.

Furthermore, to reduce the GHG emissions associated with the Project, we recommend several mitigation measures (see list below).

The California Department of Justice ("CA DOJ") recommends: [9]

- Installing solar photovoltaic systems on the project site of a specified electrical generation capacity that is equal to or greater than the building's projected energy needs, including all electrical chargers.
- Designing all project building roofs to accommodate the maximum future coverage of solar panels and installing the maximum solar power generation capacity feasible.
- Oversizing electrical rooms by 25 percent or providing a secondary electrical room to accommodate future expansion of electric vehicle charging capability.
- 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.
- Running conduit to designated locations for future electric truck charging stations.
- Constructing and maintaining electric light-duty vehicle charging stations proportional to the number of employee parking spaces.
- Running conduit to an additional proportion of employee parking spaces for a future increase in the number of electric light-duty charging stations.
- Requiring facility operators to train managers and employees on efficient scheduling and load management to eliminate unnecessary queuing and idling of trucks.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations.

08- 41 Cont.

[8] "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.
[9] *Ibid.* p. 9 – 10.

- 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.
- 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.
- Providing tenants with information on incentive programs, such as the Carl Moyer Program and Voucher Incentive Program, to upgrade their fleets.

08-41 Cont.

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.[10] 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.[11] We recommend consideration of local carbon offset programs to reduce the Project's GHG impacts as a measure of last result.

We have recommended a series of mitigation measures, developed from sources such as CARB, the CA DOJ, and other agencies, aimed at reducing the Project's operational air quality and GHG emissions. These measures offer feasible strategies to integrate lower-emission design features, reducing emissions generated during both construction and operation phases. A revised EIR should be prepared, incorporating all feasible mitigation measures alongside updated air quality and GHG analyses, to ensure their implementation and to maximize emissions reductions.

## 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 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

08-42

[10] "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.

[11] "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.

otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.

08-42 Cont.

Sincerely,

Matt Hagemann, P.G., C.Hg.

Paul E. Rosenfeld, Ph.D.

**Attachment A: Matt Hagemann CV**
**Attachment B: Paul Rosenfeld CV**

SWAPE Technical Consultation, Data Analysis and Litigation Support for the Environment

2656 29th Street, Suite 201
Santa Monica, CA 90405

Matt Hagemann, P.G, C.Hg.
(949) 887-9013
mhagemann@swape.com

## 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

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

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).

**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.

**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.

**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.

SWAPE Technical Consultation, Data Analysis and Litigation Support for the Environment

**SOIL WATER AIR PROTECTION ENTERPRISE**
2656 29th Street, Suite 201
Santa Monica, California 90405
Attn: Paul Rosenfeld, Ph.D.
Mobil: (310) 795-2335
Office: (310) 452-5555
Fax: (310) 452-5550
**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.

Sullivan, P. J. Clark, J.J.J., Agardy, F. J., **Rosenfeld, P.E.** (2007). *Toxic Legacy, Synthetic Toxins in the Food, Water, and Air in American Cities.* Boston Massachusetts: Elsevier Publishing

**Rosenfeld, P.E.,** and Suffet I.H. (2004). Control of Compost Odor Using High Carbon Wood Ash. *Water Science and Technology*. 49(9),171-178.

**Rosenfeld P. E.,** J.J. Clark, I.H. (Mel) Suffet (2004). The Value of An Odor-Quality-Wheel Classification Scheme For The Urban Environment. *Water Environment Federation's Technical Exhibition and Conference (WEFTEC) 2004.* New Orleans, October 2-6, 2004.

**Rosenfeld, P.E.,** and Suffet, I.H. (2004). Understanding Odorants Associated With Compost, Biomass Facilities, and the Land Application of Biosolids. *Water Science and Technology*. 49(9), 193-199.

**Rosenfeld, P.E.,** and Suffet I.H. (2004). Control of Compost Odor Using High Carbon Wood Ash, *Water Science and Technology*, 49( 9), 171-178.

**Rosenfeld, P. E**., Grey, M. A., Sellew, P. (2004). Measurement of Biosolids Odor and Odorant Emissions from Windrows, Static Pile and Biofilter. *Water Environment Research*. 76(4), 310-315.

**Rosenfeld, P.E.,** Grey, M and Suffet, M. (2002). Compost Demonstration Project, Sacramento California Using High-Carbon Wood Ash to Control Odor at a Green Materials Composting Facility. *Integrated Waste Management Board Public Affairs Office*, Publications Clearinghouse (MS–6), Sacramento, CA Publication #442-02-008.

**Rosenfeld, P.E**., and C.L. Henry. (2001). Characterization of odor emissions from three different biosolids. *Water Soil and Air Pollution*. 127(1-4), 173-191.

**Rosenfeld, P.E.,** and Henry C. L., (2000). Wood ash control of odor emissions from biosolids application. *Journal of Environmental Quality.* 29, 1662-1668.

**Rosenfeld, P.E.,** C.L. Henry and D. Bennett. (2001). Wastewater dewatering polymer affect on biosolids odor emissions and microbial activity. *Water Environment Research*. 73(4), 363-367.

**Rosenfeld, P.E.,** and C.L. Henry. (2001). Activated Carbon and Wood Ash Sorption of Wastewater, Compost, and Biosolids Odorants. *Water Environment Research*, 73, 388-393.

**Rosenfeld, P.E.,** and Henry C. L., (2001). High carbon wood ash effect on biosolids microbial activity and odor. *Water Environment Research*. 131(1-4), 247-262.

Chollack, T. and **P. Rosenfeld. (**1998). Compost Amendment Handbook For Landscaping. Prepared for and distributed by the City of Redmond, Washington State.

**Rosenfeld, P. E.** (1992). The Mount Liamuiga Crater Trail. *Heritage Magazine of St. Kitts*, 3(2).

**Rosenfeld, P. E.** (1993). High School Biogas Project to Prevent Deforestation On St. Kitts. *Biomass Users Network*, 7(1).

**Rosenfeld, P. E. (**1998). Characterization, Quantification, and Control of Odor Emissions From Biosolids Application To Forest Soil. Doctoral Thesis. University of Washington College of Forest Resources.

**Rosenfeld, P. E.** (1994). Potential Utilization of Small Diameter Trees on Sierra County Public Land. Masters thesis reprinted by the Sierra County Economic Council. Sierra County, California.

**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.

Feng, L.; Gonzalez, J.; Sok, H.L.; Sutherland, A.J.; Waller, C.C.; Wisdom-Stack, T.; Sahai, R.K.; La, M.; Hesse, R.C.; **Rosenfeld, P.E.** (June 20-23, 2010). Bringing Environmental Justice to East St. Louis, Illinois. *Urban Environmental Pollution.* Lecture conducted from Boston, MA.

**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.

Wu, C., Tam, L., Clark, J., **Rosenfeld, P**. (20-22 July, 2009). Dioxin and furan blood lipid concentrations in populations living near four wood treatment facilities in the United States. Brebbia, C.A. and Popov, V., eds., *Air Pollution XVII: Proceedings of the Seventeenth International Conference on Modeling, Monitoring and Management of Air Pollution*. Lecture conducted from Tallinn, Estonia.

**Rosenfeld, P. E.** (October 15-18, 2007). Moss Point Community Exposure To Contaminants From A Releasing Facility. *The 23rd Annual International Conferences on Soils Sediment and Water.* Platform lecture conducted from University of Massachusetts, Amherst MA.

**Rosenfeld, P. E.** (October 15-18, 2007). The Repeated Trespass of Tritium-Contaminated Water Into A Surrounding Community Form Repeated Waste Spills From A Nuclear Power Plant. *The 23rd Annual International Conferences on Soils Sediment and Water*. Platform lecture conducted from University of Massachusetts, Amherst MA.

**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.

**Paul Rosenfeld Ph.D**. (September 19, 2005). Brominated Flame Retardants in Groundwater: Pathways to Human Ingestion, *Toxicology and Remediation PEMA Emerging Contaminant Conference*. Lecture conducted from Hilton Hotel, Irvine California.

**Paul Rosenfeld Ph.D**. (September 19, 2005). Fate, Transport, Toxicity, And Persistence of 1,2,3-TCP. *PEMA Emerging Contaminant Conference.* Lecture conducted from Hilton Hotel in Irvine, California.

**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

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

***GAVIN NEWSOM, Governor***
***CHARLTON H. BONHAM, Director***

November 12, 2024
*Sent via email.*

Daniel Alcayaga, Planning Manager
Town of Apple Valley, Planning Department
14955 Dale Evans Parkway
Apple Valley, CA 92307
Dalcayaga@applevalley.org

Dear Daniel Alcayaga:

Inland Empire North Logistics Center Apple Valley (Project)
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
SCH# 2023090366

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from the Town of Apple Valley for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

09-1

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.

**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, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (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 fish and wildlife resources.

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. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) 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.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

09-2

**PROJECT DESCRIPTION SUMMARY**

**Proponent:** Synergy Consulting CA
**Objective:** The Project proposes the construction of two industrial buildings on 178 acres of land. Building 1 would be approximately 1,507,326 square feet and Building 2 would be approximately 1,097,120 square feet. The Project also proposes loading docks, vehicle parking and several roadway improvements.
**Location:** The Project site is located within the northwestern part of the town of Apple Valley within San Bernardino County at APN: 0472-031-08.
**Timeframe:** The Project is expected to commence in 2024 lasting through 2026.

09-3

[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.

**COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the Town of Apple Valley in adequately identifying 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 may also be included to improve the document. 09-4

**COMMENT #1: Western Joshua tree (*Yucca brevifolia*) MM-BIO-1**

**Draft Environmental Impact Report**

**Issue:** The Project will impact western Joshua Tree (WJT), a candidate species pursuant to the California Endangered Species Act. The Draft EIR states that a total of 298 WJTs were observed within the Project site and the associated 50-foot buffer. MM-BIO-1 states that mitigation for the direct impacts to WJT on-site will be mitigated through the fulfillment of payment of elected fees described in the Westen Joshua Tree Conservation Act (WJTCA).

**Specific impact:** Mitigation measure MM-BIO-1 states that impacts only to those WJT mentioned would be mitigated for. CDFW would like to note that an additional WJT census survey may be needed for the Incidental Take Permit (ITP) application. Additionally, CDFW would like to include the option of obtaining an ITP either through the WJTCA or through the California Endangered Species Act (CESA).

**Why impact would occur:** Incidental take of WJT individuals in the form of mortality ("kill") may occur as a result of removing mature and emergent individuals; relocating individuals; eliminating and modifying habitat; removing seedbank and crushing an/or burying living seeds in the soil, rendering living seeds inviable and/or causing them to be killed. 09-5

**Evidence impact would be significant:** As outlined in MM-BIO-1, mitigation would only apply to those WJT outlined and as a result does not thoroughly explain how mitigation would be provided if new sprouts are observed throughout the Project site outside of the amount outlined. Additionally, MM-BIO-1 should include the option of obtaining an ITP through the WJTCA and the CESA.

**Recommended potentially feasible mitigation measure to reduce impacts to less than significant:** CDFW appreciates that the Draft EIR provides a measure to minimize the Project's impacts to western Joshua trees. CDFW offers the following revisions to MM-BIO-1 (edits are in ~~strikethrough~~ and **bold**) for inclusion in the Final EIR.

**Mitigation Measure:** (MM-BIO-1) Conservation of Western Joshua Tree Lands. **(REVISED)**

~~Mitigation for direct impacts to 4 western Joshua trees that are 5 meters or greater in height, 201 trees 1 meter or greater but less than 5 meters in height, and 78 trees less than 1 meter in height will be fulfilled through a payment of the elected fees as described in Section 1927.3 of the Western Joshua Tree Conservation Act. In conformance with the reduced fee schedule, mitigation will consist of payment of $1,000 for each western Joshua tree 5 meters or greater in height, $200 for each western Joshua tree 1 meter or greater but less than 5 meters in height, and $150 for each western Joshua tree less than 1 meter in height.~~

**Obtain an Incidental Take Permit (ITP) for impacts to western Joshua tree (*Yucca brevifolia*) through compliance with the Western Joshua Tree Conservation Act (Fish and Game Code §§ 1927-1927.12) and adhere to the Western Joshua Tree Relocation Guidelines and Protocols if determined necessary by CDFW, or through the California Endangered Species Act (Fish and Game Code, §§ 2080-2085).**

**COMMENT #2: Desert Tortoise (*Gopherus agassizii*) MM-BIO-10**

**Draft Environmental Impact Report**

**Issue**: The Project has the potential to result in permanent and temporary loss, degradation, and impacts to desert tortoise habitat. The Project may result in the take of desert tortoise, a California Endangered Species Act (CESA) listed threatened and candidate endangered species, during construction of the Project and life of the Project.

**Specific impact:** Project construction and related activities of constructing two industrial buildings and associated roadway improvements may cause direct take of desert tortoise and indirect take in the form of reducing habitat and species movement.

**Why impact would occur:** As described on page 4.3-7 of the DEIR, 12 suitable burrows were mapped throughout the Project site and were noted as in good condition for desert tortoise. In addition, 6 inactive burrows were detected that may have been used by desert tortoise in the past. Also, 11 areas were noted to support desert tortoise pallet sites such as shallow burrows or bunk overhangs. Lastly, possible desert tortoise scat was found within the Project site. Impact to desert tortoise would occur due to the loss of habitat for desert tortoise as reported by the numerous suitable burrows and areas for desert tortoise. Within the DEIR, it is noted that the most recent CNDDB occurrence for desert tortoise within 1 mile of the Project site was in 2005, however, this outdated occurrence does not preclude the potential that desert tortoise could inhibit the area. The loss of desert tortoise habitat could result in significant impacts.

09-6

**Evidence impact would be significant:** Desert tortoise was recently uplisted from a threatened to endangered species under CESA, signifying the continued need to conserve the species and importances to avoid impacts to the species and its habitat. Although surveys and the DEIR indicate desert tortoise or sign of desert tortoise was not found, the species could have moved into the area since the surveys occurred. CDFW considers the take of a listed species and loss of species habitat as a significant impact, unless mitigated to a level of less than significant.

**Recommended potentially feasible mitigation measure to reduce impacts to less than significant:** CDFW appreciates that the Draft EIR provides a measure to minimize the Project's impacts to desert tortoise. CDFW strongly recommends the following revisions to MM-BIO-10 (edits are in ~~strikethrough~~ and **bold**) for inclusion in the Final EIR.

**Mitigation Measure:** (MM-BIO-10) Pre-construction Clearence Surveys for Mojave Desert Tortoise and Avoidance. **(REVISED)**

**An Incidental Take Permit (ITP) for Desert tortoise (*Gopherus agassizii*) shall be obtained prior to initiation of ground disturbing activities. The Project proponent shall adhere to measures and conditions set forth within the ITP. Mitigation for direct impacts to 165.4 acres shall be fulfilled through conservation of suitable Mojave desert tortoise habitat through the purchase of mitigation bank credits or land acquisition determined through coordination with USFWS and/or the California Department of Fish and Wildlife.** One pre-construction clearance survey in accordance with current U.S. Fish and Wildlife Service (USFWS) protocol shall be conducted to reevaluate locations of potential Mojave desert tortoise burrows within the Project limits so take of Mojave desert tortoise can be avoided. The pre-construction clearance survey shall be conducted **on the Project site** ~~in areas supporting potentially suitable habitat~~ 14 to 21 days prior to the start of construction activities; or alternatively, pre-construction clearance surveys may be conducted at any time following **the installation** ~~construction~~ of ~~a~~ desert tortoise **exclusionary fencing** ~~– proof fence~~ encompassing the Project site that would ensure that tortoises cannot enter the Project after clearance surveys are completed. **Should there be any faults following the installation of the desert tortoise exclusionary fence that would compromise the efficiency, an additional pre-construction clearance survey shall be conducted**

**throughout the Project site.** If no Mojave desert tortoises are found during the surveys~~, no further mitigation would be required; however,~~ desert tortoise **exclusionary fencing**~~ proof fence~~ encompassing the Project site shall remain in place until Project construction is completed and shall be monitored by a qualified biologist in compliance with current USFWS protocol. Should Mojave desert tortoise be located during the clearance survey, all methods used for handling desert tortoises during the clearance surveys must be in accordance with the USFWS Desert Tortoise Field Manual **and** ~~or~~ Project-specific guidance contained in a habitat conservation plan **and** ~~or~~ **ITP** ~~Incidental Take Permit~~. No take of Mojave desert tortoise shall occur without **prior** authorization in the form of an **ITP** ~~Incidental Take Permit~~ pursuant to California Fish and Game Code Section 2081 and a habitat conservation plan. The Project proponent shall adhere to measures and conditions set forth within the Incidental Take Permit. Anyone who handles desert tortoises during clearance activities must have the appropriate authorizations from USFWS **and CDFW**. The area cleared and number of Mojave desert tortoises found within that area shall be reported to the local USFWS and appropriate state wildlife agency. Notification shall be made in accordance with the conditions of the habitat conservation plan **and** ~~or~~ **ITP** ~~Incidental Take Permit~~. ~~Should Mojave desert tortoise be located during the clearance survey, the Project would result in the loss of 165.4 acres of suitable habitat for Mojave desert tortoise.~~ ~~Mitigation for direct impacts to 165.4 acres shall be fulfilled through conservation of suitable Mojave desert tortoise habitat through the purchase of credits at a minimum of 1:1 in-kind habitat replacement of equal or better functions and values to those impacted by the Project, for a total of 165.4 acres or as otherwise determined through coordination with USFWS and/or the California Department of Fish and Wildlife.~~

09-6 Cont.

**COMMENT #3: Burrowing Owl (*Athene cunicularia*) MM-BIO-11**

**Draft Environmental Impact Report**

**Issue**: The Project has the potential to result in permanent and temporary loss, degradation, and impacts to burrowing owl habitat. The Project may result in the take of burrowing owl, a CESA listed candidate species, during construction of the Project and life of the Project.

**Specific impact:** The DIER describes that multiple suitable burrowing owl burrows were located thorough the site although no sign of burrowing owl was observed, however since the time of surveying, burrowing owl could have potentially inhabited the site. If burrowing owl has inhabited the site the potential for the collapsing of burrows, entombment, displacement, direct take associated with vehicle and equipment strike, indirect take associated with Project operations such as attracting predators, reduction of habitat and habitat quality could occur. The Project as described will cause permanent and temporary impacts to burrowing owl foraging and nesting habitat

09-7

**Why impact would occur:** On page 4.3-7 of the DEIR, the Project site contains open scrub habitat that may support burrowing owl. Additionally, the DEIR states that numerous potentially suitable burrows for nesting were found and mapped throughout the Project site. Although the DEIR states that no active sign of burrowing own was found throughout the site. Also, within the DEIR, it is noted that the most recent CNDDB occurrence for burrowing owl is 4.5 miles southwest of the Project site is from 2008 however, this outdated occurrence does not preclude the potential that burrowing owl could inhibit the area. Lastly, the DEIR concludes that burrowing owl has a moderate potential to occur within the Project area and because the Project area contains suitable habitat for burrowing owl, the loss of burrowing owl habitat could result in significant impacts.

**Evidence impact would be significant:** The Project, as described, may result in injury, direct mortality, indirect mortality, disruption of breeding behavior, and/or may reduce reproductive capacity of the species. CDFW considers the direct and indirect take of burrowing owl, and the loss of the species' habitat as a significant impact, unless mitigated to a level of less than significant and in compliance with State (*i.e.,* Fish and Game Code sections 3503.5, *etc.*) and Federal laws (*i.e.,* Migratory Bird

Treaty Act). Furthermore, following the Fish and Game Commission's decision to list burrowing owl as a candidate species under CESA, CDFW considers the take of burrowing owl and the loss of the species' habitat as a significant impact, unless mitigated to a level of less than significant which may include that ground disturbing activities be postponed until appropriate authorization (*i.e.*, a finalized CESA ITP under Fish and Game Code section 2081) is obtained.

**Recommended potentially feasible mitigation measure(s):** CDFW appreciates that the DEIR provides a measure to minimize the Project's impacts to burrowing owl. CDFW offers the following revisions to MM-BIO-11 (edits are in ~~strikethrough~~ and **bold**) for inclusion in the Final EIR.

**Mitigation Measure:** (MM-BIO-11) Burrowing Owl Surveys. **(NEW)**

~~MM-BIO-11. Pre-construction Surveys for Burrowing Owl and Avoidance.~~
~~One pre-construction burrowing owl survey shall be completed no more than 14 days before initiation of site preparation or grading activities, and a second survey shall be completed within 24 hours of the start of site preparation or grading activities. If ground-disturbing activities are delayed or suspended for more than 30 days after the pre-construction surveys, the Project site and offsite improvement areas shall be resurveyed. Surveys for burrowing owl shall be conducted in accordance with protocols established in the California Department of Fish and Wildlife (CDFW; then California Department of Fish and Game) 2012 (or most recent version) Staff Report on Burrowing Owl Mitigation. If burrowing owls are detected, the burrowing owl relocation plan shall be implemented in consultation with CDFW, with the plan to be approved by the Town. As required by the burrowing owl relocation plan, disturbance to occupied burrows shall be avoided during the nesting season (February 1 through August 31). Buffers shall be established around occupied burrows in accordance with guidance provided in CDFW's Staff Report on Burrowing Owl Mitigation. No Project activities shall be allowed to encroach into established buffers without the consent of a monitoring biologist. The buffer shall remain in place until it is determined that occupied burrows have been vacated or the nesting season has completed. Outside of the nesting season, passive owl relocation techniques shall be implemented. Owls shall be excluded from burrows in the immediate Project area and within a buffer zone by installing one-way doors in burrow entrances. These doors shall be in place at least 72 hours prior to ground-disturbing activities. The Project site shall be monitored daily for 1 week to confirm owl departure from burrows prior to any ground-disturbing activities. Compensatory mitigation for permanent loss of owl habitat, if the site is occupied by burrowing owl, shall be provided following the guidance in CDFW's Staff Report on Burrowing Owl Mitigation. Where possible, burrows shall be excavated using hand tools and refilled to prevent reoccupation. Sections of flexible plastic pipe shall be inserted into the tunnels during excavation to maintain an escape route for any wildlife inside the burrow. An endoscope (fiber optic camera) should also be used to scope the burrow in front of the excavation. Occupied burrows that are excavated need to be replaced at a 2:1 ratio if there are already suitable burrows present nearby. Should burrowing owl be located during the clearance survey, the Project would result in the loss of 165.4 acres of suitable habitat for burrowing owl. Mitigation for direct impacts to 165.4 acres shall be fulfilled through conservation of suitable burrowing owl habitat through the purchase of credits at a minimum of 1:1 in-kind habitat replacement of equal or better functions and values to those impacted by the Project, for a total of 165.4 acres.~~

(MM-BIO-11) **Burrowing Owl. An Incidental Take Permit (ITP) for Burrowing owl (*Athene cunicularia*) shall be obtained prior to initiation of ground disturbing activities. The Project proponent shall adhere to measures and conditions set forth within the ITP. Mitigation for direct impacts to 165.4 acres shall be fulfilled through conservation of suitable Burrowing owl habitat.**

**(MM-BIO-11.1.) Burrowing Owl Habitat Assessment. Prior to the initiation of ground disturbing activities, The Project proponent shall conduct a burrowing owl habitat assessment consistent with the 2012 Staff Report. A habitat assessment shall be conducted by Designated Biologist(s) knowledgeable of burrowing owl habitat, ecology, and field identification of the species, burrow and burrow surrogates, and burrowing owl**

09-7
Cont.

**sign at least thirty (30) calendar days prior to the initiation of ground disturbing activities. The assessment shall consist of walking the Project site to identify the presence of burrowing owl habitat. Survey duration shall take into consideration the size of the property; 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. A report summarizing the results of the habitat assessment shall be submitted to CDFW within 10 days of survey completion.**

**(MM-BIO-11.2.) Burrowing Owl Avoidance. Project proponent shall clearly delineate a no-disturbance buffer of 250 ft radius around all burrowing owl burrows such as roosting and satellite burrows within and adjacent to within approximately 400 feet of the Project area with posted signs demarking the area to avoid, using stakes, flags, and/or rope or cord to minimize the disturbance of burrowing owl habitat. Project proponent shall delineate burrows with different materials than those used to delineate the Project area. Project proponent shall remove and properly dispose of all materials used for delineation immediately upon completion of the Project.**

**(MM-BIO-11.3.) Burrowing Owl Pre-Construction Surveys. The Project proponent shall have a Designated Biologist(s), pre-approved by CDFW, inspect all burrows that exhibit typical characteristics of owl activity within three (3) days prior to any site-preparation activities. Evidence of owl activity may include presence of owls themselves, burrows, and owl sign at burrow entrances such as pellets, whitewash or other "ornamentation," feathers, prey remains, etc. If it is evident that the burrows are actively being used, the Project proponent 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. CDFW shall be notified in writing of detection of active burrows within three (3) days.**

**(MM-BIO-11.4.) Burrowing Owl Survey Results. The Project proponent shall submit the survey methodology and results within ten days of survey completion and at least twenty-one days prior to commencement of ground disturbing activities to CDFW Inland Deserts Region.**

**(MM-BIO-11.5.) Burrowing Owl Plan. If burrowing owls are detected on the Project site, the Project proponent shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval at least 30 days prior to initiation of ground disturbing activities. If burrowing owls are detected after ground disturbing activities have been initiated, a Burrowing Owl Plan shall be submitted to CDFW for review and approval within two weeks of detection and no Project activity shall continue within 1000 feet of the burrowing owls. Project activities shall not occur within 1000 feet of an active burrow until CDFW approves the Burrowing Owl Plan. The Burrowing Owl Plan shall include 1) impact assessment that details the number and location of occupied burrow sites, and acres of burrowing owl habitat with a qualitative description of the habitat vegetation characteristics that will be impacted; 2) if avoidance of impacts is proposed details on avoidance actions and monitoring such as proposed buffers, visual barriers and other actions; 3) site monitoring to be conducted prior to, during, and after any exclusion of burrowing owls from their burrows sufficient to ensure take is avoided, daily monitoring with cameras and direct observation for one week to confirm young of the year have fledged if the exclusion will occur immediately after the end of the breeding season, and process to document any excluded burrowing owls are using artificial or natural burrows on an adjoining mitigation site (if able to confirm by band re-sight). If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method, may be a potentially significant impact under CEQA, and has the possibility to result in take. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the "Mitigation Impacts" section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of ground disturbing activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, 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 Project proponent shall implement the Burrowing Owl Plan following CDFW review and approval.**

09-7
Cont.

**(MM-BIO-11.6.) Burrowing Owls Observed During Construction. If burrowing owls are observed within the Project Site during Project implementation and construction, the Project proponent shall notify CDFW immediately in writing.**

09-7 Cont.

**COMMENT #4: Nesting Birds MM-BIO-12**

**Draft Environmental Impact Report**

**Issue**: The Project may have impacts on nesting birds, including CESA-listed birds, SSC, and common birds that are subject to Fish and Game Code Sections 3503, 3503.5, and 3513, and the Migratory Bird Treaty Act of 1918.

**Specific impact:** The Project as described could result in direct take associated with vehicle and equipment strike, indirect take associated with Project operations such as attracting predators, displacement, reduction of habitat and habitat quality associated with road infrastructure. The Project as described would cause permanent and temporary impacts to avian species' foraging and nesting habitat.

**Why impact would occur:** Within the DEIR, MM-BIO-12 limits nesting bird surveys to only occur within nesting bird season, CDFW would like to note that regardless the time of year, a pre-construction clearance survey should be conducted to avoid potential impacts to nesting birds. 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 equipment may disrupt nesting bird mating calls or songs, which could impact reproductive success [23]. On page 4.3-28, the DEIR states that the Project would result in loss of suitable habitat for LeConte's thrasher and Loggerhead strike through vegetation removal. MM-BIO-12 as outlined in the DEIR does not adequately give authority to the qualified biologist to monitor and determine whether the nest has been vacated in order to proceed without risking violation to state or federal laws.

**Evidence impact would be significant:** 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 provided by Fish and Game Code or any regulation adopted pursuant thereto.

09-8

**Recommended potentially feasible mitigation measure(s):** CDFW appreciates that the Draft EIR provides a measure to minimize the Project's impacts to nesting birds. CDFW offers the following revisions to MM-BIO-12 (edits are in ~~strikethrough~~ and **bold**) for inclusion in the Final EIR.

**Mitigation Measure:** (MM-BIO-12) Pre-construction Nesting Bird Surveys and Avoidance. **(REVISED)**

Special-status bird species that have a moderate potential to occur within the Project include burrowing owl, LeConte's thrasher, ~~and~~ loggerhead shrike**, pallid bat, and Townsend's big-eared bat.** The Project also contains trees, shrubs, and other vegetation that provide opportunities for other non-sensitive birds and raptors to nest on site. Construction activities shall avoid the migratory bird nesting season (typically February 1 through August 31) to reduce any potential significant impact to birds that

[2] Patricelli, G. L., & Blickley, J. L. 2006. Avian Communication in Urban Noise: Causes and Consequences of Vocal Adjustment. The Auk, 123(3), 639–649.
[3] Halfwerk, W., L.J.M. Holleman, C. M Lessells, H. Slabbekoorn. 2011. Negative Impact of Traffic Noise on Avian Reproductive Success. Journal of Applied Ecology 48:210–219.

may be nesting in the survey area. ~~If construction activities must occur during the migratory bird nesting season,~~ **Regardless of the time of year, a pre-construction** avian nesting **clearance** survey of the Project site and within 500 feet of all impact areas must be conducted to determine the presence/absence of protected migratory birds and active nests. The avian nesting survey shall be performed by a qualified wildlife biologist within 72 hours prior to the start of construction in accordance with the Migratory Bird Treaty Act and California Fish and Game Code Sections 3503, 3503.5, and 3513. If an active bird nest is found **within the Project area or within 500 feet of the Project area**, the nest shall be flagged and mapped on the construction plans, along with an appropriate buffer established around the nest, which shall be determined by the **qualified** biologist based on the species' sensitivity to disturbance ~~(typically 300 feet for passerines and 500 feet for raptors and special status species)~~. The nest area **and buffers** shall be **monitored daily by the qualified biologist and** avoided until the **qualified biologist has determined the** nest is vacated and the juveniles have fledged. The nest area shall be demarcated in the field with flagging and stakes or construction fencing. On-site construction monitoring shall be conducted when construction occurs in close proximately to an active nest buffer. ~~No Project activities shall encroach into established buffers without the consent of a monitoring biologist.~~ The buffer shall remain in place until ~~is~~ determined **by the qualified biologist** that the nestlings have fledged and the nest is no longer active. **If an active nest is encountered during the Project construction, construction shall stop immediately until a qualified biologist can determine (1) the status of the nest, and (2) when work can proceed without risking violation to state or federal laws.**

09-8 Cont.

**COMMENT #5: Mohave Ground Squirrel (*Xerospermophilus mohavensis*)**

**Draft Environmental Impact Report**

**Issue:** The Project has the potential to result in permanent and temporary loss, degradation, and impacts to Mohave ground squirrel habitat. The Project may result in the take of Mohave ground squirrel, a California Endangered Species Act (CESA) listed threatened, during construction of the Project and life of the Project.

**Specific impact:** Staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and result in direct mortality and/or injury to Mohave ground squirrel. Grading, ground disturbance, and vegetation clearing may result in the permanent loss of up to 178 acres of Mohave ground squirrel habitat.

**Why impact would occur:** On page 4.3-6 of the DEIR, 31 special-status species were determined to have a moderate potential to occur within the Project boundary. Of those species, Mohave ground squirrel was determined to have the potential to occur. The DEIR states that focused surveys for Mohave ground squirrel were conducted and no further analysis will be conducted. Additionally, within the DEIR, it is noted that the most recent occurrence for Mohave ground squirrel is 9 miles southwest of the Project site is from 2011 however, this outdated occurrence does not preclude the potential that Mohave ground squirrel could inhibit the area. Lastly, the DEIR states that marginally suitable habitat is present, loss of suitable habitat may cause significant impacts to Mohave ground squirrel. Desert shrub vegetation such as creosote bush scrub (*Larrea tidentata*) are known to provide habitat for Mohave ground squirrel.

09-9

**Evidence impact would be significant:** Consistent with CEQA Guidelines, Section 15380, the status of the Mohave ground squirrel as a threatened species under the California Endangered Species Act (Fish & G. Code, § 2050 *et seq.*) qualifies it as an endangered, rare, or threatened species under CEQA.

**Recommended potentially feasible mitigation measure to reduce impacts to less than significant:** CDFW recommends the following mitigation measure MM-BIO-16 for Mohave ground squirrel be included in the Final EIR.

**Mitigation Measure: (MM-BIO-16) Pre-construction Clearence Surveys for Mojave Ground Squirrel and Avoidance. (NEW)**

**Prior to the initiation of ground disturbing activities, focused pre-construction clearance surveys throughout the Project site for Mojave ground squirrel will be conducted by a qualified biologist familiar with the species' behavior and life history. Focused Mohave ground squirrel surveys shall follow the California Department of Fish and Game Mohave Ground Squirrel Survey Guidelines[4] (CDFW 2023). Visual surveys will be conducted prior to ground disturbing activities commencing between March 15 and April 15, visual surveys shall be conducted on the Project site during daylight hours but a qualified biologist who can readily identify Mohave ground squirrel (*Xerospermophilus mohavensis*) and White-tailed antelope squirrel (*Ammospermophilus leucurus*). If the results of the survey confirm absence, then the Qualified Biologist shall ensure Mojave ground squirrels do not enter the Project site. If the survey or monitoring throughout the duration of the Project confirms presence, the Project proponent shall obtain an Incidental Take Permit (ITP) for Mohave ground squirrel. The ITP will specify avoidance, minimization, and mitigation conditions for temporary and/or permanent impacts to Mohave ground squirrel.**

09-9 Cont.

**COMMENT #6: Crotch's Bumble Bee (*Bombus crotchii*)**

**Draft Environmental Impact Report**

**Issue:** The project may impact suitable habitat for Crotch's bumble bee (*Bombus crotchii*), a CESA candidate species, and has the potential for take pursuant to Fish & G. Code, § 2081(b).

**Specific Impact:** The Project may result in temporal or permanent loss of suitable nesting and foraging habitat. Project ground-disturbing activities may cause death or injury of adults, eggs, and larva; burrow collapse; nest abandonment; and reduced nest success.

**Why impact would occur:** On page 4.3-9, the DEIR states that the Project site contains scrub communities that could support the preferred plant genera for Crotch's bumble bee. Crotch's bumble bees are considered generalist foragers and have been observed to forage on a diverse range of floral species[5]. The DEIR states that because the focused surveys did not detect suitable flora therefore Crotch's bumble bee is not expected to occur throughout the Project area. CDFW would like to note that the absence of flora commonly associated with Crotch's bumble bee does not preclude that Crotch's bumble bee could inhibit the area.

**Evidence impact would be significant:** The California Fish and Game Commission accepted a petition to list Crotch's bumble bee as endangered under CESA, determining the listing "may be warranted" and advancing the species to the candidacy stage of the CESA listing process. Crotch's bumble bee is granted full protection of a threatened species under CESA. Take of any endangered, threatened, candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9).

If take or adverse impacts to Crotch's bumble bee cannot be avoided either during Project activities or over the life of the Project, the Project should obtain appropriate take authorization from CDFW pursuant to Fish & G. Code, § 2081 subdivision (b).

09-10

**Recommended potentially feasible mitigation measure to reduce impacts to less than significant:** CDFW recommends the following mitigation measure MM-BIO-17 to Crotch's bumble bee for inclusion in the Final EIR.

**Mitigation Measure:** (**MM-BIO-17) Surveys for Crotch's bumble bee. (NEW)**

[4] California Department of Fish and Wildlife. 2023. Mohave Ground Squirrel Survey Guidelines.
[5] Williams P.H., Thorp, R.W., Richardson L.L., and Colla S.R. 2014. Bumble Bees of North America: *An Identification Guide*. Princeton University Press.

**(MM-BIO.17.1) Due to scrub communities that could support the floristic habitat within the Project site, a qualified entomologist familiar with the species behavior and life history shall conduct surveys to determine the presence/absence of Crotch's bumble bee. Surveys should follow CDFW's *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species*[6]. If no CESA-protected bumble bees are found during the surveys, but the habitat assessment identified suitable nesting, foraging, or overwintering habitat within the project site, it is recommended that a biological monitor be onsite during vegetation or ground disturbing activities. Survey results, including negative findings, should be submitted to CDFW prior to implementing Project-related ground disturbing activities. At minimum, a survey report should provide the following:**

> **a) A description and map of the survey area, focusing on areas that could provide suitable habitat for Crotch's bumble bee. CDFW recommends the map show surveyor(s) track lines to document that the entire site was covered during field surveys.**
>
> **b) Field survey conditions that should include name(s) of qualified entomologist(s) and brief qualifications; date and time of survey; survey duration; general weather conditions; survey goals, and species searched.**
>
> **c) Map(s) showing the location of nests/colonies.**
>
> **d) A description of physical (e.g., soil, moisture, slope) and biological (e.g., plant composition) conditions where each nest/colony is found. A sufficient description of biological conditions, primarily impacted habitat, should include native plant composition (e.g., density, cover, and abundance) within impacted habitat (e.g., species list separated by vegetation class; density, cover, and abundance of each species).**

09-10 Cont.

**(MM-BIO-17.1.2) If Crotch's bumble bee is detected, the Project proponent in consultation with a qualified entomologist shall develop a plan to fully avoid impacts to Crotch's bumble bee. The plan should include effective, specific, enforceable, and feasible measures. An avoidance plan should be submitted to CDFW prior to implementing ground disturbing activities and/or vegetation removal where there may be impacts to Crotch's bumble bee.**

**(BIO-17.1.3) If Crotch's bumble bee is detected and if impacts to Crotch's bumble bee cannot be feasibly and fully avoided during Project construction and activities, the Project proponent shall coordinate with CDFW to obtain appropriate permits for incidental take of Crotch's bumble bee and provide appropriate mitigation for impacts to Crotch's bumble bee habitat.**

**COMMENT #7: Species Connectivity**

**Issue:** The Project does not propose any avoidance or minimization measures specific to the Project impacts on the movement between species on the surrounding adjacent undeveloped areas.

**Specific impact:** The Project may result in a semi-permeable to impermeable barrier to wildlife connectivity that could result in the restriction of movement for species.

09-11

**Why impact would occur:** The project has the potential to isolate populations and restrict movement of genes between the adjacent surrounding undeveloped portions of land.

**Evidence impact would be significant:** The Project may result in habitat fragmentation due to the narrowing of wildlife corridors and routes[7] between the two surrounding

[6] California Department of Fish and Wildlife. 2023. Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species.
[7] Crooks, K. R. 2002. Relative Sensitivities of Mammalian Carnivores to Habitat Fragmentation. *Conservation Biology*, *16*(2), 488–502.

undeveloped areas. The Project could restrict gene flow between populations that may result in a lower genetic diversity that may decrease species fitness[8][9]. Additionally, the Project may result in collision-related species mortality due to an increase in traffic patterns and roads[10]. Impacts to special status species should be considered significant under CEQA unless they are clearly mitigated below a level of significance.

09-11 Cont.

**Recommended potentially feasible mitigation measure to reduce to less than significant:** CDFW recommends the adoption of MM-BIO-18 below in the Final EIR to ensure impacts related to species connectivity within the adjacent surrounding undeveloped areas are mitigated to a level of less than significant.

**Mitigation Measure: (MM-BIO-17) Species Connectivity Database Observations. (NEW)**

**During Project all ground disturbing activities, the Qualified Biologist shall report any collision related mortalities that may occur within adjacent roadways of the Project site to the California Roadkill Observation System (CROS). In addition, the qualified Biologist shall report any identifiable recently sprouted native and nonnative plant species that occur within the Project area during Project activities to the CalFlora Plant Observation database.**

## I. Editorial Comments and Suggestions

On pages 4.3-29 and 4.3-30 the DEIR states that mitigation for the following Species of Special Concern (SSC): LeConte's thrasher (*Toxostoma lecontei*), Loggerhead shrike (*Lanius ludovicianus*), Pallid bat (*Antrozous pallidus*), and Townsend's big-eared bat (*Corynothinus townsendii*) would be through Conservation of Western Joshua Tree Lands (MM-BIO-1) because habitat is similar to that of the Joshua tree woodlands. CDFW would like to note that the Western Joshua Tree Conservation Act (Fish and Game Code §§ 1927-1927.12) should only be used for conservation of the Western Joshua tree (*Yucca brevifolia*) species. Mitigation through the WJTCA is only applicable for the species of (*Yucca brevifolia*). Bats are considered non-game mammals and are afforded protection by State law from take and/or harassment (Fish & G. Code, § 4150; Cal. Code of Regs, § 251.1). 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). CDFW strongly recommends the Project proponent implement the revisions to MM-BIO-12 Pre-construction Nesting Bird Surveys and Avoidance to feasibly avoid any significant impacts to SSC species.

09-12

**Invasive species awareness education program.**
CDFW appreciates the incorporation of MM-BIO-5 Education Program and would like to suggest adding more awareness about invasive species as also mentioned within MM-BIO-14 Invasive Plant Management. Prior to the initiation of ground disturbing activities, the Project proponent should provide an education program to educate employees about the spread of invasive species associated within the project. The educational program should consist of a discussion of the invasive species currently present within the Project site as well as those that may pose a threat to or have the potential to invade the Project site. Through the implementation of ground disturbing activities, invasive species may be introduced to the surrounding undeveloped areas and may encroach on native plant species. Additionally, following the construction of the Project and beginning of industrial work; invasive species may still continue to spread and possibly encroach into surrounding areas.

09-13

## ENVIRONMENTAL DATA

[8] Clark, R. W., Brown, W. S., Stechert, R., & Zamudio, K. R. 2010. Roads, Interrupted Dispersal, and Genetic Diversity in Timber Rattlesnakes. *Conservation Biology*, *24*(4), 1059–1069.
[9] Dutcher, K.E., Vandergast, A.G., Esque, T.C., Mitelberg, A., Matocq, M.D., Heaton, J. S., & Nussear, K. E. 2020. Genes in space: what Mojave desert tortoise genetics can tell us about landscape connectivity. *Conservation Genetics 21*, 289–303.
[10] Trombulak, S. C., & C. A. Frissell. (2000). Review of ecological effects of roads on terrestrial and aquatic communities. *Conservation Biology*, *14*, 18–30.

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.**ENVIRONMENTAL DOCUMENT FILING FEES** 09-14

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.)

**CONCLUSION**

CDFW appreciates the opportunity to comment on the DEIR to assist the Town of Apple Valley in identifying and mitigating Project impacts on biological resources. 09-15

Questions regarding this letter or further coordination should be directed to Emily Leon, Environmental Scientist at Emily.Leon@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Alisa Ellsworth
84FBB8273E4C480...

Alisa Ellsworth
Environmental Program Manager

ec: Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov

Julia Karo, Acting Senior Environmental Scientist, Supervisor
Inland Deserts Region
Julia.Karo@wildlife.ca.gov

**ATTACHMENTS**

Attachment A: Draft Mitigation Monitoring and Reporting Plan and Draft Recommendations

**REFERENCES**

California Department of Fish and Wildlife. 2023. Mohave Ground Squirrell Survey Guidelines.

California Department of Fish and Wildlife. 2013. Staff Report on Burrowing Owl Mitigation.

California Department of Fish and Wildlife. 2023. Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species.

Clark, R. W., Brown, W. S., Stechert, R., & Zamudio, K. R. 2010. Roads, Interrupted Dispersal, and Genetic Diversity in Timber Rattlesnakes. *Conservation Biology*, *24*(4), 1059–1069.

Crooks, K. R. 2002. Relative Sensitivities of Mammalian Carnivores to Habitat Fragmentation. *Conservation Biology*, *16*(2), 488–502. JSTOR,

Dutcher, K.E., Vandergast, A.G., Esque, T.C., Mitelberg, A., Matocq, M.D., Heaton, J. S., & Nussear, K. E. 2020. Genes in space: what Mojave desert tortoise genetics can tell us about landscape connectivity. *Conservation Genetics 21*, 289–303.

Halfwerk, W., L.J.M. Holleman, C. M Lessells, H. Slabbekoorn. 2011. Negative Impact of Traffic Noise on Avian Reproductive Success. Journal of Applied Ecology 48:210–219.

Patricelli, G. L., & Blickley, J. L. 2006. Avian Communication in Urban Noise: Causes and Consequences of Vocal Adjustment. The Auk, 123(3), 639–649.

Trombulak, S. C., & C. A. Frissell. (2000). Review of ecological effects of roads on terrestrial and aquatic communities. *Conservation Biology*, *14*, 18–30.

Williams P.H., Thorp, R.W., Richardson L.L., and Colla S.R. 2014. Bumble Bees of North America: *An Identification Guide*. Princeton University Press.

# Attachment A

## Draft Mitigation Monitoring and Reporting Plan and Draft Recommendations

| Biological Resources (BIO) | | |
|---|---|---|
| **Mitigation Measure (MM)** | **Implementation Schedule** | **Responsible Party** |
| MM-BIO-1. Conservation of Western Joshua Tree Lands.<br><br>**Obtain an Incidental Take Permit (ITP) for impacts to western Joshua tree (*Yucca brevifolia*) through compliance with the Western Joshua Tree Conservation Act (Fish and Game Code §§ 1927-1927.12) and adhere to the Western Joshua Tree Relocation Guidelines and Protocols if determined necessary by CDFW, or through the California Endangered Species Act (Fish and Game Code, §§ 2080-2085).**<br><br>~~Mitigation for direct impacts to 4 western Joshua trees that are 5 meters or greater in height, 201 trees 1 meter or greater but less than 5 meters in height, and 78 trees less than 1 meter in height will be fulfilled through a payment of the elected fees as described in Section 1927.3 of the Western Joshua Tree Conservation Act. In conformance with the reduced fee schedule, mitigation will consist of payment of $1,000 for each western Joshua tree 5 meters or greater in height, $200 for each western Joshua tree 1 meter or greater but less than 5 meters in height, and $150 for each western Joshua tree less than 1 meter in height.~~ | **Prior to the initiation of ground disturbing activities** | **Project proponent and Qualified Biologist** |
| MM-BIO-10. Pre-construction Clearence Surveys for Mojave Desert Tortoise and Avoidance.<br><br>**An Incidental Take Permit (ITP) for Desert tortoise (*Gopherus agassizii*) shall be obtained prior to initiation of ground disturbing activities. The Project proponent shall adhere to measures and conditions set forth within the ITP. Mitigation for direct impacts to 165.4 acres shall be fulfilled through conservation of suitable Mojave desert tortoise habitat through the purchase of mitigation bank credits or land acquisition determined through coordination with USFWS and/or the California Department of Fish and Wildlife.** One pre-construction clearance survey in accordance with current U.S. Fish and Wildlife Service (USFWS) protocol shall be conducted to reevaluate locations of potential Mojave desert tortoise burrows within the Project limits so take of Mojave desert tortoise can be avoided. The pre-construction clearance survey shall be conducted **on the Project site** ~~in areas supporting potentially suitable habitat~~ 14 to 21 days prior to the start of construction activities; or alternatively, pre-construction clearance surveys may be conducted at any time following **the installation** ~~construction~~ of a desert tortoise **exclusionary fencing** ~~– proof fence~~ encompassing the Project site that would ensure that tortoises cannot enter the Project after clearance surveys are completed. **Should there be any faults** | **Prior to the initiation of ground disturbing activities** | **Project proponent and Qualified Biologist** |

| | | |
|---|---|---|
| **following the installation of the desert tortoise exclusionary fence that would compromise the efficiency, an additional pre-construction clearance survey shall be conducted throughout the Project site.** If no Mojave desert tortoises are found during the surveys~~, no further mitigation would be required; however,~~ desert tortoise **exclusionary fencing** ~~proof fence~~ encompassing the Project site shall remain in place until Project construction is completed and shall be monitored by a qualified biologist in compliance with current USFWS protocol. Should Mojave desert tortoise be located during the clearance survey, all methods used for handling desert tortoises during the clearance surveys must be in accordance with the USFWS Desert Tortoise Field Manual **and** ~~or~~ Project-specific guidance contained in a habitat conservation plan **and** ~~or~~ **ITP** ~~Incidental Take Permit~~. No take of Mojave desert tortoise shall occur without **prior** authorization in the form of an **ITP** ~~Incidental Take Permit~~ pursuant to California Fish and Game Code Section 2081 and a habitat conservation plan. The Project proponent shall adhere to measures and conditions set forth within the Incidental Take Permit. Anyone who handles desert tortoises during clearance activities must have the appropriate authorizations from USFWS **and CDFW**. The area cleared and number of Mojave desert tortoises found within that area shall be reported to the local USFWS and appropriate state wildlife agency. Notification shall be made in accordance with the conditions of the habitat conservation plan **and** ~~or~~ **ITP** ~~Incidental Take Permit~~. ~~Should Mojave desert tortoise be located during the clearance survey, the Project would result in the loss of 165.4 acres of suitable habitat for Mojave desert tortoise. Mitigation for direct impacts to 165.4 acres shall be fulfilled through conservation of suitable Mojave desert tortoise habitat through the purchase of credits at a minimum of 1:1 in-kind habitat replacement of equal or better functions and values to those impacted by the Project, for a total of 165.4 acres or as otherwise determined through coordination with USFWS and/or the California Department of Fish and Wildlife.~~ | | |
| (MM-BIO-11) **Burrowing Owl. An Incidental Take Permit (ITP) for Burrowing owl (*Athene cunicularia*) shall be obtained prior to initiation of ground disturbing activities. The Project proponent shall adhere to measures and conditions set forth within the ITP. Mitigation for direct impacts to 165.4 acres shall be fulfilled through conservation of suitable Burrowing owl habitat.**<br><br>**(MM-BIO-11.1.) Burrowing Owl Habitat Assessment. Prior to the initiation of ground disturbing activities, The Project proponent shall conduct a burrowing owl habitat assessment consistent with the 2012 Staff Report. A habitat assessment shall be conducted by Designated Biologist(s) knowledgeable of burrowing owl habitat, ecology, and field identification of the species, burrow and burrow surrogates, and burrowing owl sign at least thirty (30) calendar days prior to the initiation of ground disturbing activities. The assessment shall consist of walking the Project site to identify the presence of** | **Prior to the initiation of ground disturbing activities** | **Project proponent and Qualified Biologist** |

| | | |
|---|---|---|
| **burrowing owl habitat. Survey duration shall take into consideration the size of the property; 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. A report summarizing the results of the habitat assessment shall be submitted to CDFW within 10 days of survey completion.**<br><br>**(MM-BIO-11.2.) Burrowing Owl Avoidance. Project proponent shall clearly delineate a no-disturbance buffer of 250 ft radius around all burrowing owl burrows such as roosting and satellite burrows within and adjacent to within approximately 400 feet of the Project area with posted signs demarking the area to avoid, using stakes, flags, and/or rope or cord to minimize the disturbance of burrowing owl habitat. Project proponent shall delineate burrows with different materials than those used to delineate the Project area. Project proponent shall remove and properly dispose of all materials used for delineation immediately upon completion of the Project.**<br><br>**(MM-BIO-11.3.) Burrowing Owl Pre-Construction Surveys. The Project proponent shall have a Designated Biologist(s), pre-approved by CDFW, inspect all burrows that exhibit typical characteristics of owl activity within three (3) days prior to any site-preparation activities. Evidence of owl activity may include presence of owls themselves, burrows, and owl sign at burrow entrances such as pellets, whitewash or other "ornamentation," feathers, prey remains, etc. If it is evident that the burrows are actively being used, the Project proponent 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. CDFW shall be notified in writing of detection of active burrows within three (3) days.**<br><br>**(MM-BIO-11.4.) Burrowing Owl Survey Results. The Project proponent shall submit the survey methodology and results within ten days of survey completion and at least twenty-one days prior to commencement of ground disturbing activities to CDFW Inland Deserts Region.**<br><br>**(MM-BIO-11.5.) Burrowing Owl Plan. If burrowing owls are detected on the Project site, the Project proponent shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval at least 30 days prior to initiation of ground disturbing activities. If burrowing owls are detected after ground disturbing activities have been initiated, a Burrowing Owl Plan shall be submitted to CDFW for review and approval within two weeks of detection and no Project activity shall continue within 1000 feet of the burrowing owls. Project activities shall not occur within 1000 feet of an active burrow until CDFW approves the Burrowing Owl Plan. The Burrowing Owl Plan shall include 1) impact assessment that details the number and location of occupied burrow sites, and acres of burrowing owl habitat with a qualitative description of the habitat vegetation** | | |

| | | |
|---|---|---|
| **characteristics that will be impacted; 2) if avoidance of impacts is proposed details on avoidance actions and monitoring such as proposed buffers, visual barriers and other actions; 3) site monitoring to be conducted prior to, during, and after any exclusion of burrowing owls from their burrows sufficient to ensure take is avoided, daily monitoring with cameras and direct observation for one week to confirm young of the year have fledged if the exclusion will occur immediately after the end of the breeding season, and process to document any excluded burrowing owls are using artificial or natural burrows on an adjoining mitigation site (if able to confirm by band re- sight). If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method, may be a potentially significant impact under CEQA, and has the possibility to result in take. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the "Mitigation Impacts" section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of ground disturbing activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, 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 Project proponent shall implement the Burrowing Owl Plan following CDFW review and approval.**<br><br>**(MM-BIO-11.6.) Burrowing Owls Observed During Construction. If burrowing owls are observed within the Project Site during Project implementation and construction, the Project proponent shall notify CDFW immediately in writing.** | | |
| MM-BIO-12. Pre-construction Nesting Bird Surveys and Avoidance.<br><br>Special-status bird species that have a moderate potential to occur within the Project include burrowing owl, LeConte's thrasher, ~~and~~ loggerhead shrike**, pallid bat, and Townsend's big-eared bat.** The Project also contains trees, shrubs, and other vegetation that provide opportunities for other non-sensitive birds and raptors to nest on site. Construction activities shall avoid the migratory bird nesting season (typically February 1 through August 31) to reduce any potential significant impact to birds that may be nesting in the survey area. ~~If construction activities must occur during the migratory bird nesting season,~~ **Regardless of the time of year, a pre-construction** avian nesting **clearance** survey of the Project site and within 500 feet of all impact areas must be conducted to | **Prior to the initiation of ground disturbing activities** | **Project proponent and Qualified Biologist** |

| | | |
|---|---|---|
| determine the presence/absence of protected migratory birds and active nests. The avian nesting survey shall be performed by a qualified wildlife biologist within 72 hours prior to the start of construction in accordance with the Migratory Bird Treaty Act and California Fish and Game Code Sections 3503, 3503.5, and 3513. If an active bird nest is found **within the Project area or within 500 feet of the Project area**, the nest shall be flagged and mapped on the construction plans, along with an appropriate buffer established around the nest, which shall be determined by the **qualified** biologist based on the species' sensitivity to disturbance ~~(typically 300 feet for passerines and 500 feet for raptors and special status species)~~. The nest area **and buffers** shall be **monitored daily by the qualified biologist and** avoided until the **qualified biologist has determined the** nest is vacated and the juveniles have fledged. The nest area shall be demarcated in the field with flagging and stakes or construction fencing. On-site construction monitoring shall be conducted when construction occurs in close proximately to an active nest buffer. ~~No Project activities shall encroach into established buffers without the consent of a monitoring biologist.~~ The buffer shall remain in place until ~~is~~ determined **by the qualified biologist** that the nestlings have fledged and the nest is no longer active. **If an active nest is encountered during the Project construction, construction shall stop immediately until a qualified biologist can determine (1) the status of the nest, and (2) when work can proceed without risking violation to state or federal laws.** | | |
| **<u>(MM-BIO-16) Pre-construction Clearence Surveys for Mojave Ground Squirrel and Avoidance. (NEW)</u>**<br><br>**Prior to the initiation of ground disturbing activities, focused pre-construction clearance surveys throughout the Project site for Mojave ground squirrel will be conducted by a qualified biologist familiar with the species' behavior and life history. Focused Mohave ground squirrel surveys shall follow the California Department of Fish and Game Mohave Ground Squirrel Survey Guidelines[11] (CDFW 2023). Visual surveys will be conducted prior to ground disturbing activities commencing between March 15 and April 15, visual surveys shall be conducted on the Project site during daylight hours but a qualified biologist who can readily identify Mohave ground squirrel (*Xerospermophilus mohavensis*) and White-tailed antelope squirrel (*Ammospermophilus leucurus*). If the results of the survey confirm absence, then the Qualified Biologist shall ensure Mojave ground squirrels do not enter the Project site. If the survey or monitoring throughout the duration of the Project confirms presence, the Project proponent shall obtain an Incidental Take Permit (ITP) for Mohave ground squirrel. The ITP will specify avoidance, minimization, and mitigation conditions for temporary and/or permanent impacts to Mohave ground squirrel.** | **Prior to the initiation of ground disturbing activities** | **Project proponent and Qualified Biologist** |
| **<u>(MM-BIO.17.1) Surveys for Crotch's bumble bee. (NEW)</u>** | | **Project proponent and** |

[11] California Department of Fish and Wildlife. 2023. Mohave Ground Squirrel Survey Guidelines.

| | | |
|---|---|---|
| **Due to scrub communities that could support the floristic habitat within the Project site, a qualified entomologist familiar with the species behavior and life history shall conduct surveys to determine the presence/absence of Crotch's bumble bee. Surveys should follow CDFW's *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species*[12]. If no CESA-protected bumble bees are found during the surveys, but the habitat assessment identified suitable nesting, foraging, or overwintering habitat within the project site, it is recommended that a biological monitor be onsite during vegetation or ground disturbing activities. Survey results, including negative findings, should be submitted to CDFW prior to implementing Project-related ground disturbing activities. At minimum, a survey report should provide the following:**<br><br>**a) A description and map of the survey area, focusing on areas that could provide suitable habitat for Crotch's bumble bee. CDFW recommends the map show surveyor(s) track lines to document that the entire site was covered during field surveys.**<br><br>**b) Field survey conditions that should include name(s) of qualified entomologist(s) and brief qualifications; date and time of survey; survey duration; general weather conditions; survey goals, and species searched.**<br><br>**c) Map(s) showing the location of nests/colonies.**<br><br>**d) A description of physical (e.g., soil, moisture, slope) and biological (e.g., plant composition) conditions where each nest/colony is found. A sufficient description of biological conditions, primarily impacted habitat, should include native plant composition (e.g., density, cover, and abundance) within impacted habitat (e.g., species list separated by vegetation class; density, cover, and abundance of each species).**<br><br>**(MM-BIO-17.1.2) If Crotch's bumble bee is detected, the Project proponent in consultation with a qualified entomologist shall develop a plan to fully avoid impacts to Crotch's bumble bee. The plan should include effective, specific, enforceable, and feasible measures. An avoidance plan should be submitted to CDFW prior to implementing ground disturbing activities and/or vegetation removal where there may be impacts to Crotch's bumble bee.**<br><br>**(BIO-17.1.3) If Crotch's bumble bee is detected and if impacts to Crotch's bumble bee cannot be feasibly and fully avoided during Project construction and activities, the Project proponent shall coordinate with CDFW to obtain appropriate permits for incidental take of Crotch's bumble bee** | **Prior to the initiation of ground disturbing activities** | **Qualified Entomologist** |

[12] California Department of Fish and Wildlife. 2023. Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species. Bumble Bee Survey Guidelines (ca.gov)

| | | |
|---|---|---|
| **and provide appropriate mitigation for impacts to Crotch's bumble bee habitat.** | | |
| **Mitigation Measure: (MM-BIO-17) Species Connectivity Database Observations. (NEW)**<br><br>**During Project all ground disturbing activities, the Qualified Biologist shall report any collision related mortalities that may occur within adjacent roadways of the Project site to the California Roadkill Observation System (CROS). In addition, the qualified Biologist shall report any identifiable recently sprouted native and nonnative plant species that occur within the Project area during Project activities to the CalFlora Plant Observation database.** | **Prior to the initiation of ground disturbing activities and during Project activities** | **Project proponent and Qualified Biologist** |

ADAMS BROADWELL JOSEPH & CARDOZO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037
TEL: (650) 589-1660
FAX: (650) 589-5062
amarshall@adamsbroadwell.com

SACRAMENTO OFFICE
520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721
TEL: (916) 444-6201
FAX: (916) 444-6209

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
RICHARD M. FRANCO
ANDREW J. GRAF
TANYA A. GULESSERIAN
DARION N. JOHNSTON
RACHAEL E. KOSS
AIDAN P. MARSHALL
ALAURA R. McGUIRE
TARA C. RENGIFO

*Of Counsel*
MARC D. JOSEPH
DANIEL L. CARDOZO

November 13, 2024

**Via Email and Overnight Mail**
Rick Hirsch, Consulting Planner
Town of Apple Valley,
14955 Dale Evans Parkway,
Apple Valley, California 92307.
**Email**: rhirsch@interwestgrp.com

**Via Email Only**
Daniel Alcayaga, Planning Manager
**Email:** dalcayaga@applevalley.org;
planning@applevalley.org

**Re: Comments on the Draft Environmental Impact Report for the Inland Empire North Logistics Center Apple Valley Project (SCH No. 2023090366)**

Dear Mr. Hirsch and Mr. Alcayaga:

We are writing on behalf of Californians Allied for a Responsible Economy ("CARE CA") regarding the Draft Environmental Impact Report ("DEIR") prepared by the Town of Apple Valley ("Town") for the Inland Empire North Logistics Center Apple Valley Project (SCH No. 2023090366), proposed by FGFW IV, LLC ("Applicant"). 10-1

The Project would include construction of two warehouse buildings and associated improvements on approximately 178 acres of land in the Town of Apple Valley, San Bernardino County, California. Building 1 would be approximately 1,507,326 square feet (sf) while Building 2 would be approximately 1,097,120 sf. The Project site is located directly east of I-15, north of Falchion Road and south of Norco Street in the northwestern part of the Town of Apple Valley and consists of Assessor's Parcel Number 0472-031-08.[1] 10-2

[1] DEIR, p. 1-1.

We reviewed the DEIR and its technical appendices with the assistance of air quality and public health expert James Clark, Ph.D.,[2] and transportation expert Norm Marshall.[3] The Town must separately respond to these technical comments.

10-2 Cont.

Based upon our review of the DEIR and supporting documentation, we conclude that the DEIR fails to comply with the requirements of the California Environmental Quality Act ("CEQA").[4] In summary, the DEIR's project description is inadequate because the DEIR fails to analyze impacts from all reasonably foreseeable uses for the speculative warehouses proposed by the Project. The project description is also inadequate because the DEIR fails to analyze impacts from reasonably foreseeable backup generators. Next, the DEIR's impacts analyses are not supported by substantial evidence. The DEIR underestimates the Project's emissions of criteria air pollutants, toxic air contaminants ("TACs"), and greenhouse gases ("GHGs") by failing to analyze emissions from stationary equipment. The DEIR fails to adequately analyze the Project's cumulative health risk and air quality impacts in light of the community's existing pollution burden resulting from similar warehouse projects. The DEIR claims that the Project's air quality and greenhouse gas ("GHG") impacts are significant and unavoidable, but fails to identify all feasible mitigation measures. The DEIR fails to adequately analyze and mitigate health risks from disturbance of Valley Fever cocci, which would result in potentially significant health risk impacts on construction workers and the community. The DEIR fails to analyze all impacts associated with construction of infrastructure improvements. As a result of its shortcomings, the DEIR lacks substantial evidence to support its conclusions, violates CEQA's disclosure and analytical requirements, and fails to properly mitigate the Project's significant environmental impacts.

10-3

CARE CA urges the Town to remedy the deficiencies in the DEIR by preparing a legally adequate revised DEIR and recirculating it for public review

[2] Dr. Clark's technical comments and curricula vitae are attached hereto as **Exhibit A** ("Clark Comments")
[3] Mr. Marshall's technical comments and curricula vitae are attached hereto as **Exhibit B** ("Marshall Comments").
[4] PRC § 21100 et seq.

and comment.[5] CARE CA reserves the right to provide supplemental comments at any and all later proceedings related to this Project.[6]

10-3 Cont.

## I. STATEMENT OF INTEREST

CARE CA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental impacts of the Project. The coalition includes the District Council of Ironworkers and Southern California Pipe Trades DC 16, along with their members, their families, and other individuals who live and work in Apple Valley and in San Bernardino County.

CARE CA advocates for protecting the environment and the health of their communities' workforces. CARE CA seeks to ensure a sustainable construction industry over the long-term by supporting projects that offer genuine economic and employment benefits, and which minimize adverse environmental and other impacts on local communities. CARE CA members live, work, recreate, and raise their families in the Town of Apple Valley and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

10-4

In addition, CARE CA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

[5] We reserve the right to supplement these comments at later hearings on this Project. Gov. Code § 65009(b); Public Resources Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1199–1203; *see Galante Vineyards v. Monterey Water Dist*. (1997) 60 Cal.App.4th 1109, 1121.

[6] Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; *see Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

## II. LEGAL BACKGROUND

CEQA requires public agencies to analyze the potential environmental impacts of their proposed actions in an EIR.[7] "The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."[8]

CEQA has two primary purposes. First, CEQA is designed to inform decisionmakers and the public about the potential significant environmental effects of a project.[9] "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'"[10] The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."[11] As the CEQA Guidelines explain, "[t]he EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected."[12]

10-5

Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring consideration of environmentally superior alternatives and adoption of all feasible mitigation measures.[13] The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to "identify ways that environmental damage can be avoided or significantly reduced."[14] If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment" to

---

[7] PRC § 21100.
[8] *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal ("Laurel Heights I")* (1988) 47 Cal.3d 376, 390 (internal quotations omitted).
[9] Pub. Resources Code § 21061; CEQA Guidelines §§ 15002(a)(1); 15003(b)-(e); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 517 ("[T]he basic purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.").
[10] *Citizens of Goleta Valley,* 52 Cal.3d at p. 564 (quoting *Laurel Heights I*, 47 Cal.3d at 392).
[11] *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810; *see also Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal.App.4th 1344, 1354 ("*Berkeley Jets*") (purpose of EIR is to inform the public and officials of environmental consequences of their decisions *before* they are made).
[12] CEQA Guidelines § 15003(b).
[13] CEQA Guidelines § 15002(a)(2), (3); *see also Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at p. 564.
[14] CEQA Guidelines § 15002(a)(2).

the greatest extent feasible and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns."[15]

While courts review an EIR using an "abuse of discretion" standard, "the reviewing court is not to 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference."[16] As the courts have explained, a prejudicial abuse of discretion occurs "if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process."[17] "The ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail 'to enable who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.'"[18]

10-5 Cont.

## III. THE PROJECT DESCRIPTION IS INADEQUATE

The DEIR does not meet CEQA's requirements because it fails to include an accurate and complete Project description, rendering the entire analysis inadequate. California courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR."[19] CEQA requires that a project be described with enough particularity that its impacts can be assessed.[20] Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review.[21] Accordingly, a lead

10-6

[15] PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090(a), 15091(a), 15092(b)(2)(A), (B); *Covington v. Great Basin Unified Air Pollution Control Dist*. (2019) 43 Cal.App.5th 867, 883.
[16] *Berkeley Jets*, 91 Cal.App.4th at p. 1355 (emphasis added) (quoting *Laurel Heights I*, 47 Cal.3d at 391, 409, fn. 12).
[17] *Berkeley Jets*, 91 Cal.App.4th at p. 1355; *see also San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722 (error is prejudicial if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process); *Galante Vineyards*, 60 Cal.App.4th at p. 1117 (decision to approve a project is a nullity if based upon an EIR that does not provide decision-makers and the public with information about the project as required by CEQA); *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946 (prejudicial abuse of discretion results where agency fails to comply with information disclosure provisions of CEQA).
[18] *Sierra Club,* 6 Cal.5th at p. 516 (quoting *Laurel Heights I*, 47 Cal.3d at 405).
[19] *Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 17; *Communities for a Better Environment v. City of Richmond* ("*CBE v. Richmond*") (2010) 184 Cal.App.4th 70, 85–89; *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 193.
[20] 14 CCR § 15124; *see, Laurel Heights I, supra,* 47 Cal.3d 376, 192-193.
[21] *Id.*

agency may not hide behind its failure to obtain a complete and accurate project description.[22]

CEQA Guidelines section 15378 defines "project" to mean "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."[23] "The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term project does not mean each separate governmental approval."[24] Courts have explained that a complete description of a project must "address not only the immediate environmental consequences of going forward with the project, but also all "*reasonably foreseeable* consequence[s] of the initial project."[25] "If a[n]…EIR…does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decision-making cannot occur under CEQA and the final EIR is inadequate as a matter of law."[26]

10-6 Cont.

**A. The DEIR Fails to Analyze Reasonably Foreseeable Warehouse Uses**

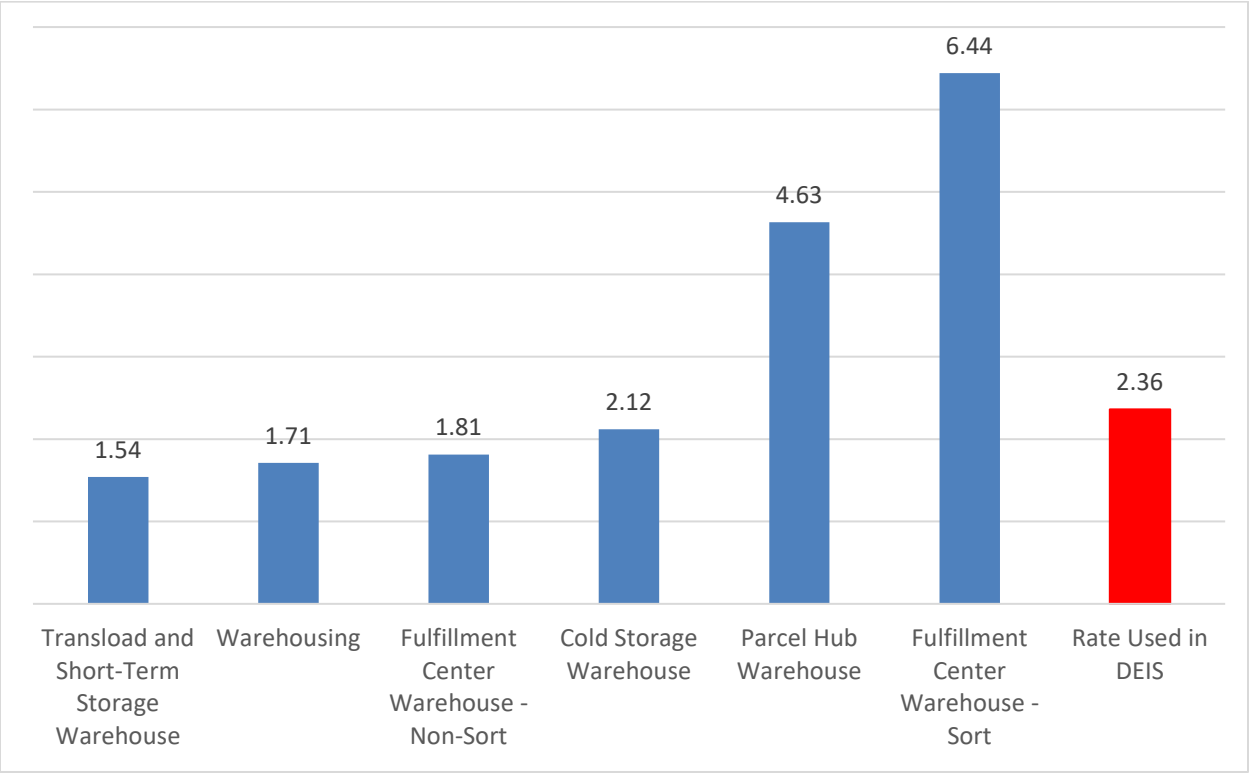
The DEIR explains that the Project is proposed as a speculative warehouse without specific end uses or tenants,[27] yet the DEIR fails to describe or analyze the Project's reasonably foreseeable end uses, in violation of CEQA. In the absence of more specific information or restrictions on the types of warehouse uses that will occur after Project buildout, the Town has a duty to analyze the impacts of *all* reasonably foreseeable uses of the Project site.[28] Instead, the DEIR limits its analysis to low-intensity categories of warehouse use, thereby omitting an analysis of impacts from common warehouse uses that would result in more severe air quality, transportation, energy and noise impacts.

10-7

Transportation expert Norm Marshall explains that warehouse trip generation rates and air quality impacts vary greatly by type of warehouse.[29] In order to determine the trips generated by the proposed Project, the DEIR utilizes

[22] *Sundstrom v. County of Mendocino* ("*Sundstrom*") (1988) 202 Cal.App.3d 296, 311.
[23] CEQA Guidelines § 15378.
[24] *Id*., § 15378(c).
[25] *Laurel Heights I,* 47 Cal. 3d 376, 398 (emphasis added); *see also Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449-50.
[26] *Riverwatch v. Olivenhain Municipal Water Dist*. (2009) 170 Cal. App. 4th 1186, 1201.
[27] DEIR, pg. 1-3.
[28] *Sundstrom,* 202 Cal.App.3d at 311.
[29] Marshall Comments, pg. 2.

statistics published in the Institute of Transportation Engineers ("ITE") Trip Generation Manual for the proposed Project's land uses.[30] The DEIR derived the daily trip generation rate for this Project by averaging several warehouse trip generation rates after excluding the highest rate (Fulfillment Center Warehouse – Sort).[31] Mr. Marshall explains that because this Project is proposed as a speculative warehouse, the DEIR's trip generation rate does not reflect all reasonably foreseeable uses of the Project.[32] The figure below shows other warehousing land use codes and compares trips generated by each land use.[33]




10-7 Cont.

The DEIR lacks evidence to support the Town's assumption that the Project could not be used as a fulfillment warehouse with sorting. The DEIR merely contends that use as a sort fulfillment center "is not expected."[34] Mr. Marshall recommends that in the absence of definitive information about the Project's future use, or a condition of approval restricting the project from operating as a sort

10-8

[30] DEIR, Appendix J, pg. 27.
[31] *Id.*
[32] Marshall Comments, pg. 2.
[33] *Id.* at 2.
[34] DEIR, Appendix J, pg. 27.

fulfillment center, it is inappropriate to rule out this scenario.[35] To reflect the Project's reasonably foreseeable use as a fulfillment center, Mr. Marshall explains that the DEIR should use a trip generation rate of 6.44 trips per 1000 sf per day.[36] The DEIR itself applied this reasoning in MM-AQ-3, which prohibits cold storage unless additional environmental review is conducted.[37]

10-8 Cont.

Courts have held in situations such as this that "the identity of a tenant is irrelevant to CEQA review."[38] In *Maintain Our Desert Environment v. Town of Apple Valley*, petitioners argued that an EIR should disclose the identity of the expected end user and evaluate that end user's specific environmental impacts. The court explained that an EIR does not generally need to disclose the specific end user of a project because "land use entitlements such as conditional use permits and development approvals run with the land and do not belong to the permittee…. had [the developer] developed the Project and then held it out for sale to any interested buyer, no additional CEQA review would have been necessary for the new owner so long as the use was consistent with that that had already been approved."[39] Rather, "CEQA is concerned solely with the potential environmental impacts of a project."[40] Here, the project analyzed in the DEIR is not a specific type of warehouse project – it is a Development Permit Review, General Plan Amendment, Tentative Parcel Map, and Development Agreement to develop a *speculative* warehouse, which could be used for many potential warehousing end uses. As such, the DEIR's claim that a sort fulfillment center "is not expected" is irrelevant to the scope of the analysis required in the DEIR. The DEIR's approach improperly limits the DEIR's analysis to subset of end users expected for the Project, which was disapproved of in *Maintain Our Desert*. As explained in *Maintain Our Desert*, even if the original end user may not be expected to be a sort fulfillment center, is it a use that is authorized by the entitlements and permits that are the subject of the DEIR. Because the DEIR fails to analyze the full range of uses that would be authorized under these entitlements, the DEIR's project description is inadequate.

10-9

The defects in the project description affect the Project's environmental impacts by substantially underestimating the number of car and truck trips generated by the Project, as well as other associated impacts from higher intensity use, such as air quality, health risk, GHG emissions, and energy consumption. With

[35] Marshall Comments, pg. 2.
[36] *Id.*
[37] DEIR, pg. 4.9-23.
[38] *Maintain Our Desert Environment v. Town of Apple Valley* (2004) 124 Cal.App.4th 430, 443–449) (cited by *Am. Canyon Cmty. United for Responsible Growth v. City of Am. Canyon* (2006) 145 Cal. App. 4th 1062, 1074).
[39] *Maintain Our Desert Environment v. Town of Apple Valley, supra,* 124 Cal.App.4th at 444.
[40] *Id. 445.*

regard to vehicle trips, Mr. Marshall calculates that applying the rate of 6.44 per 1000 sf to 2,604.45 sf results in 16,773 trips per day – **over 10,000 more trips per** day than the 6,146 trips per day calculated in the DEIR.[41] By underestimating the overall trips generated by the Project, the DEIR also underestimates the Project's health risk, air quality, GHG, energy, and VMT impacts.

10-9 Cont.

A revised DEIR must be prepared that either analyzes the Project's reasonably foreseeable fulfillment center uses or includes a binding mitigation measure or condition of approval ensuring that the property cannot be used for sort fulfillment center uses.[42]

### B. Use of Back-Up Generators is a Reasonably Foreseeable Consequence of the Project

The DEIR's discussion of the Project's air quality and health risk impacts fails to disclose that the Project is likely to include back-up generators. The DEIR's CalEEMod analysis of criteria air pollutants fails to include emissions from backup generators,[43] and the DEIR's quantitative and qualitative discussion of health risk impacts fails to disclose use of back-up generators. The use of backup generators is a reasonably foreseeable activity during Project operation due to the prevalence of power safety shutoffs, extreme heat events, and other emergencies which lead to temporary losses of power.

10-10

In *East Oakland Stadium Alliance v. City of Oakland*,[44] the Court of Appeal upheld an EIR's analysis of emissions from backup generators. The EIR's analysis assumed that generators would operate for 50 hours of testing and maintenance annually, while allocating no time for actual emergency use. In discussing the lead agency's duty to analyze backup generator emissions, the Court stated that "if the annual need for emergency generator use is reasonably foreseeable, the EIR was not entitled to disregard such use merely because it would occur at unpredictable times."[45] The Court explained that use of a generator was reasonably foreseeable

[41] *Id.;* DEIR, Appendix J, Table 5-2, pg. 28.
[42] *Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act (Updated September 2022)*, pg. 9, available at https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf ("Unless the owner of the facility records a covenant on the title of the underlying property ensuring that the property cannot be used to provide refrigerated warehouse space, constructing electric plugs for electric transport refrigeration units at every dock door and requiring truck operators with transport refrigeration units to use the electric plugs when at loading docks.").
[43] DEIR, Appendix B1, PDF pg. 166.
[44] (2023) 889 Cal. App. 5th 1226.
[45] *Id.* at 1252.

because, "[a]s noted in the EIR, some parts of the Bay Area are subject to predictable, sustained power outages undertaken to reduce the risk of fire."[46] Thus, "[t]he EIR was required to make neither a generally applicable nor a worst-case assumption; rather it was required to make a reasonable estimate of likely annual use of the generators at the project site."[47]

Here, as in *East Oakland Stadium Alliance*, backup generator emissions are a reasonably foreseeable consequence of the Project due to increasingly common Public Safety Power Shutoff ("PSPS") events and extreme heat events ("EHE"). EHEs are defined as periods where in the temperatures throughout California exceed 100 degrees Fahrenheit.[48] From January 2019 through December 2019, Southern California Edison reported 158 of their circuits underwent a PSP event.[49] In Los Angeles County, two circuits had 4 PSPS events during that period, lasting an average of 35 to 38 hours. The total duration of the PSPS events lasted between 141 hours to 154 hours in 2019. According to the California Public Utilities Commission ("CPUC") de-energization report[50] in October 2019, there were almost 806 PSPS events that impacted almost 973,000 customers (~7.5% of households in California). The California Air Resources Board estimates that with 973,000 customers impacted by PSPS events in October 2019, approximately 125,000 back-up generators were used by customers to provide electricity during power outages.[51] The widespread use of back-up generators to adapt to PSPS and EHE events suggests that back-up generators are a reasonably foreseeable consequence of the Project. In addition to emergency use, any generators included in the Project would be operated for routine testing.

10-10 Cont.

Generators can emit criteria air pollutants, greenhouse gases, and toxic air contaminants. This equipment commonly relies on fuels such as natural gas or diesel,[52] and thus can significantly impact public health through diesel particulate

[46] *Id.* at 1253.
[47] *Id.*
[48] Governor of California. 2021. Proclamation of a state of emergency. June 17, 2021.
[49] SCAQMD. 2020. Proposed Amendment To Rules (PARS) 1110.2, 1470, and 1472. Dated December 10, 2020. http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1110.2/1110-2_1470_1472/par1110-2_1470_wgm_121020.pdf?sfvrsn=6.
[50] https://www.cpuc.ca.gov/deenergization/ as cited in CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage.
[51] California Air Resources Board, Emission Impact: Additional Generator Usage Associated with Power Outage (January 30, 2020), available at https://ww2.arb.ca.gov/resources/documents/emissions-impact-generator-usage-during-psps.
[52] SCAQMD, Fact Sheet on Emergency Backup Generators, http://www.aqmd.gov/home/permits/emergency-generators ("Most of the existing emergency backup generators use diesel as fuel").

matter ("DPM") emissions.[53] This equipment can emit significant amounts of NOx, sulfur dioxides ("SO2"), particulate matter ("PM10"), carbon dioxide ("CO2"), carbon monoxide ("CO"), volatile organic compounds ("VOC"), particulate matter less than 10 microns ("$PM_{10}$"), PM less than 2.5 microns ("$PM_{2.5}$"), and air toxins such as DPM.[54] The DEIR's omission of an impact analysis for an onsite generator system thus results in an underestimation of the Project's air quality, greenhouse gas, and health risk impacts.[55]

10-10 Cont.

## IV. THE DEIR FAILS TO DISCLOSE, ANALYZE AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS

10-11

An EIR must fully disclose all potentially significant impacts of a Project and implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.[56] An agency cannot

---

[53] California Air Resources Board, Emission Impact: Additional Generator Usage Associated with Power Outage (January 30, 2020), available at https://ww2.arb.ca.gov/resources/documents/emissions-impact-generator-usage-during-psps (showing that generators commonly rely on gasoline or diesel, and that use of generators during power outages results in excess emissions); California Air Resources Board, Use of Back-up Engines for Electricity Generation During Public Safety Power Shutoff Events (October 25, 2019), available at https://ww2.arb.ca.gov/resources/documents/use-back-engines-electricity-generation-during-public-safety-power-shutoff ("When electric utilities de-energize their electric lines, the demand for back-up power increases. This demand for reliable back-up power has health impacts of its own. Of particular concern are health effects related to emissions from diesel back-up engines. Diesel particulate matter (DPM) has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of DPM is small enough to be inhaled deep into the lungs and make them more susceptible to injury. Much of the back-up power produced during PSPS events is expected to come from engines regulated by CARB and California's 35 air pollution control and air quality management districts (air districts)").

[54] University of California, Riverside Bourns College of Engineering—Center for Environmental Research and Technology, Air Quality Implications Of Backup Generators In California, (March 2005), pg. 8, available at https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=84c8463118e4813a117db3d768151a8622c4bf6b; South Coast AQMD, Fact Sheet on Emergency Backup Generators ("Emissions of Nitrogen Oxides (NOx) from diesel-fired emergency engines are 200 to 600 times greater, per unit of electricity produced, than new or controlled existing central power plants fired on natural gas. Diesel-fired engines also produce significantly greater amounts of fine particulates and toxics emissions compared to natural gas fired equipment."), available at http://www.aqmd.gov/home/permits/emergency-generators#Fact2.

[55] Clark Comments, pg. 9.

[56] CEQA Guidelines § 15064(b).

conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.[57]

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.'"[58]

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.[59] Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.[60] In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."[61]

Additionally, CEQA requires agencies to commit to all feasible mitigation measures to reduce significant environmental impacts.[62] In particular, the lead agency may not make required CEQA findings, including finding that a project impact is significant and unavoidable, unless the administrative record demonstrates that it has adopted all feasible mitigation to reduce significant environmental impacts to the greatest extent feasible.[63]

10-11 Cont.

**A. The DEIR Underestimates Significant Air Quality Impacts**

The DEIR underestimates the Project's emissions of criteria air pollutants during operations by failing to include emissions from stationary equipment, including fire pumps and backup generators, in its operational emissions assessment. Dr. Clark reviewed the CalEEMOD analysis contained in Appendix B of the DEIR and observes that no stationary sources of any kind are included in the

10-12

[57] *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.
[58] *Berkeley Jets*, 91 Cal.App.4th at 1355.
[59] *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.
[60] *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.
[61] *Id., Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.
[62] CEQA Guidelines § 15002(a)(2).
[63] PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090, 15091; *Covington v. Great Basin Unified Air Pollution Control Dist*. (2019) 43 Cal.App.5th 867, 883.

analysis.[64] Fire pump emissions must be analyzed in the air quality analysis, as the DEIR states that the Project would operate one diesel-fueled 300-horsepower (hp) fire pump for a maximum of 50 hours per year for routine testing and maintenance.[65] Backup generator emissions must be included because installation and use of generators (during emergencies and routine testing) is a reasonably foreseeable consequence of the Project. Because these sources of criteria air pollutants were not included in the CalEEMOD analysis, the DEIR underestimates significant air quality impacts. The DEIR must be revised and recirculated to analyze all sources of emissions.

10-12 Cont.

The DEIR underestimates the Project's emissions during construction by failing to account for construction of off-site improvements. These improvements are listed in Table 4.13-1 of the DEIR.[66] Dr. Clark observes that construction of these off-site improvements is not included in the Project's construction schedule.[67] Dr. Clark also observes that there is no evidence that any off-site improvements were included in the CalEEMOD model contained in Appendix B1 of the DEIR.[68] As a result, the DEIR underestimates emissions of criteria air pollutants, toxic air contaminants, and GHGs associated with off-site improvements. The DEIR's analyses must be revised to reflect all Project components.

**B. The DEIR Fails to Adopt All Feasible Air Quality and GHG Measures**

The DEIR identifies several significant impacts relating to the Project's operational emissions of criteria air pollutants and GHGs, which it concludes are unavoidable. The DEIR acknowledges that the Project would result in significant air quality impacts due to emissions of oxides of nitrogen, and particulate matter with an aerodynamic diameter less than or equal to 10 microns. These emissions would exceed Mojave Desert Air Quality Management District ("MDAQMD") numeric thresholds and potentially result in adverse health effects associated with those pollutants.[69] Regarding GHGs, the DEIR acknowledges that construction and operation of the Project would result in the generation of approximately 79,045 metric tons of carbon dioxide (CO2) equivalent, which would exceed the numerical GHG threshold established by the South Coast Air Quality Management District ("SCAQMD") of 3,000 metric tons of CO2 equivalent per year.[70] The DEIR claims

10-13

[64] Clark Comments, pg. 8-9.
[65] *Id.*; DEIR, pg. 4.2-26.
[66] DEIR, pg. 1-2.
[67] Clark Comments, pg. 8-9.
[68] *Id.* at 10.
[69] DEIR, pg. 1-35.
[70] *Id.*

that these impacts would remain significant despite the implementation of air quality mitigation measures MM-AQ-1 through MM-AQ-3 and GHG measures MM-AQ-2, MM-GHG-1, and MM-GHG-2. But the DEIR fails to identify all feasible mitigation measures that would reduce these impacts.

CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring consideration of environmentally superior alternatives and adoption of all feasible mitigation measures.[71] A feasible mitigation measure is one that is capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, legal, and technological factors.[72] If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment" to the greatest extent feasible and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns."[73]

10-13 Cont.

Public Resources Code §21081(a)(3) provides that when an agency rejects any of the mitigation measures for a significant impact recommended in an EIR, it must make specific findings that the rejected measures are "infeasible."[74] These findings must show the agency's reasons for rejecting mitigation measures that the EIR recommends.[75] Section 15091(f) of the CEQA Guidelines provides that a statement of overriding considerations is not a substitute for the required findings on the feasibility of mitigation measures.[76] A finding that the project's benefits override its environmental impacts is insufficient because such a finding has no bearing on whether it was infeasible to adopt the mitigation measures.[77]

Here, the DEIR fails to consider feasible measures proposed in the Town's Climate Action Plan,[78] the Attorney General's guidance document for Warehouse

---

[71] 14 C.C.R. § 15002(a)(2), (3); *see also Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* ("*Berkeley Jets*" (2001) 91 Cal.App.4th 1344, 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.
[72] Pub. Resources Code, § 21061.1; Cal. Code Regs., tit. 14, § 15364.
[73] Public Resources Code § 21081(a)(3), (b); 15091(a), 15092(b)(2)(A), (B); *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883;
*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 565.
[74] Pub Res C §21081(a)(3); 14 Cal Code Regs §15091(a)(3).
[75] 14 Cal Code Regs §15091(c). See *Village Laguna of Laguna Beach, Inc. v Board of Supervisors* (1982) 134 CA3d 1022; *Burger v County of Mendocino* (1975) 45 CA3d 322.
[76] 14 Cal Code Regs §15091(f).
[77] *Village Laguna of Laguna Beach, Inc. v Board of Supervisors* (Cal. Ct. App. 1982) 134 Cal.App.3d 1022
[78] Town of Apple Valley, Climate Action Plan 2019 Update (Adopted May 2021), available at https://www.applevalley.org/home/showpublisheddocument/31233/637623641454430000.

Projects,[79] recommendations in Riverside County Board of Supervisor's "'Good Neighbor' Policy for Logistics and Warehouse/Distribution Uses,"[80] and recommended measures in Dr. Clark's comments.[81] The DEIR is also inconsistent with General Plan policies calling for certain air quality and GHG mitigation measures.

10-13 Cont.

**1. The DEIR Fails to Require Feasible Measures from the Town of Apple Valley Climate Action Plan**

The DEIR fails to implement policies contained in the Town's Climate Action Plan that would mitigate air quality and GHG impacts.[82] Some of these policies include:

> Policy ND-12. Building and site plan designs shall ensure that the project energy efficiencies meet applicable California Title 24 Energy Efficiency Standards. Verification of increased energy efficiencies shall be documented in Title 24 Compliance Reports provided by the applicant, and reviewed and approved by the Town prior to the issuance of the first building permit. Any combination of the following design features may be used to fulfill this measure provided that the total increase in efficiency meets or exceeds Title 24 standards:
>
> • Buildings shall meet or exceed California Title 24 Energy Efficiency performance standards for water heating and space heating and cooling.
> • Increase in insulation such that heat transfer and thermal bridging is minimized.
> • Limit air leakage through the structure or within the heating and cooling distribution system to minimize energy consumption.
> • Incorporate dual-paned or other energy efficient windows.
> • Incorporate energy efficient space heating and cooling equipment.

10-14

[79] State of California Department of Justice, Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act (updated September 2022), available at https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf.
[80] County of Riverside, Board of Supervisors Policy F-3, "Good Neighbor" Policy for Logistics and Warehouse/Distribution Uses", available at https://rivcocob.org/sites/g/files/aldnop311/files/migrated/wp-content-uploads-2020-01-Good-Neighbor-Policy-F-3-Final-Adopted.pdf.
[81] Clark Comments, pg. 10-12.
[82] *See* DEIR, pg. 4.6-20 (The CAP was not subject to CEQA review and does not meet the requirements of Section 15183.5b of the State's CEQA guidelines.)

- Incorporate the use of tankless water heaters in all residential units and community buildings.
- Promote building design that will incorporate solar control in an effort to minimize direct sunlight upon windows. A combination of design features including roof eaves, recessed windows, "eyebrow" shades and shade trees shall be considered.
- Interior and exterior energy efficient lighting which exceeds the California Title 24 Energy Efficiency performance standards shall be installed, as deemed acceptable by Town. Automatic devices to turn off lights when they are not needed shall be implemented.
- To the extent that they are compatible with landscaping guidelines established by the Town, shade producing trees, particularly those that shade paved surfaces such as streets and parking lots and buildings shall be planted at the Project site.
- Paint and surface color palette for the Project shall emphasize light and off-white colors which will reflect heat away from the buildings.
- All buildings shall be designed to accommodate renewable energy sources, such as photovoltaic solar electricity systems, and wind energy systems on properties greater than 2 acres, appropriate to their architectural design.
- Consideration shall be given to using LED lighting for all outdoor uses (i.e. buildings, pathways, landscaping, carports).

10-14 Cont.

ND-14. Use passive solar design by orienting buildings and incorporating landscaping to maximize passive solar heating during the winter, and minimize solar heating during the summer.

ND-15. To reduce energy demand associated with potable water conveyance:

- Landscaping palette emphasizing drought tolerant plants and exceeding Town standards for water conservation.
- For residential uses, limit turf areas to no more than 25% of all landscaped areas. Encourage limiting turf areas to no more than 20% for added water/energy savings. Turf is prohibited in public rights-of-way, including parkways, and in non-residential uses with the exception of Special Landscaping Areas. (Town Municipal Code Chapter 9.75 Water Conservation/Landscaping).
- Use of water-efficient irrigation techniques exceeding Town standards for water conservation.
- U.S. EPA Certified WaterSense labeled or equivalent faucets, high-efficiency toilets (HETs), and water-conserving shower heads.
- Consider use of artificial turf

ND-17. Install all CFL or LED light bulbs.

ND-18. Install common area electric vehicle charging station(s) and secure bicycle racks.

ND-19. To reduce the project's energy use from the grid:
- Install solar panels/photovoltaic systems sufficient to provide electric power and heat water within the project, and/or
- Install other clean energy system sufficient to provide electric power and heat water within the project, and/or

ND-20. Install solar or photovoltaic systems on new roofs whether on residential, commercial or industrial buildings

The DEIR fails to include these measures as binding mitigation measures or demonstrate that these measures are infeasible. For example, the Project fails to implement measures called for in Policy ND-12 because although the DEIR states that the Project would meet California Title 24 Energy Efficiency performance standards,[83] the DEIR fails to require the Project to *exceed* the Title 24 standards, as discussed in Policy ND-12. The DEIR must identify and require specific measures enabling the Project to exceed Title 24 mandatory standards in order to comply with Policy ND-12 and satisfy CEQA's requirement to mitigate significant environmental impacts to the greatest extent feasible. For example, the Project could exceed Title 24 mandatory standards by implementing Tier 2 measures in Appendix A5, Nonresidential Voluntary Measures, of the 2022 California Green Building Standards Code.[84] Tier 1 adds additional requirements beyond the mandatory measures, and Tier 2 further increases the requirements. The Project must implement Tier 2 measures to reduce its significant impacts.

Pursuant to ND-12, ND-19, and ND-20, the DEIR must reduce its GHG impacts by installing solar or photovoltaic systems. MM GHG-1 specifies that the Project would commit to on-site solar generation to meet the Prescriptive Requirements for Photovoltaic Systems (Title 24, Part 6, Section 9.2), but does not require on-site solar generation in excess of the mandatory Title 24 requirements.[85] Because the DEIR identifies a significant GHG impact from Project operations, the Project should install on-site solar facilities capable of meeting 100% of the Project's

10-14 Cont.

[83] DEIR, pg. 4.5-9.
[84] Appendix A5 is available at https://codes.iccsafe.org/content/CAGBC2022P3/appendix-a5-nonresidential-voluntary-measures.
[85] DEIR, pg. 4.6-28

building energy needs to further reduce GHG emissions. The DEIR does not include evidence demonstrating that this measure would be infeasible, in violation of CEQA.

To achieve consistency with CAP policies and meet CEQA's requirement to mitigate significant impacts to the greatest extent feasible, the DEIR must be revised to consider and include the measures above as binding mitigation.

10-14 Cont.

**2. The DEIR Fails to Require Feasible Measures from the Attorney General's Warehouse Guidance**

The DEIR fails to implement several feasible air quality and GHG measures recommended in the Attorney General's guidance document for warehouse projects.[86] These measures include the following:

- Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations
- Forbidding trucks from idling for more than three minutes and requiring operators to turn off engines when not in use
- Installing solar photovoltaic systems on the project site of a specified electrical generation capacity that is equal to or greater than the building's projected energy needs, including all electrical chargers.
- Designing all project building roofs to accommodate the maximum future coverage of solar panels and installing the maximum solar power generation capacity feasible.
- Constructing zero-emission truck charging/fueling stations proportional to the number of dock doors at the project.
- Oversizing electrical rooms by 25 percent or providing a secondary electrical room to accommodate future expansion of electric vehicle charging capability.
- Constructing and maintaining electric light-duty vehicle charging stations proportional to the number of employee parking spaces (for example, requiring at least 10% of all employee parking spaces to be equipped with electric vehicle charging stations of at least Level 2 charging performance)
- Running conduit to an additional proportion of employee parking spaces for a future increase in the number of electric light-duty charging stations.
- Requiring all stand-by emergency generators to be powered by a non-diesel fuel.

10-15

[86] State of California Department of Justice, Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act (updated September 2022).

- Requiring facility operators to train managers and employees on efficient scheduling and load management to eliminate unnecessary queuing and idling of trucks
- Requiring operators to establish and promote a rideshare program that discourages single-occupancy vehicle trips and provides financial incentives for alternate modes of transportation, including carpooling, public transit, and biking.
- Meeting CalGreen Tier 2 green building standards, including all provisions related to designated parking for clean air vehicles, electric vehicle charging, and bicycle parking.
- Designing to LEED green building certification standards.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations.
- Improving and maintaining vegetation and tree canopy for residents in and around the project area.
- 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.
- 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.
- Providing tenants with information on incentive programs, such as the Carl Moyer Program and Voucher Incentive Program, to upgrade their fleets.

10-15 Cont.

The DEIR fails to consider any of the measures listed above. For example, the DEIR fails to require future tenants to use zero-emission light- and medium-duty vehicles as part of business operations. The DEIR fails to require a three-minute idling limit. As discussed earlier, the DEIR also fails to require solar photovoltaic systems with capacity that is equal to or greater than the buildings' projected energy needs and fails to require CalGreen Tier 2 green building standards. MM-GHG-1 provides that the Project would meet LEED Silver standards, but LEED Silver is not the most energy efficient standard. The DEIR fails to evaluate the feasibility of LEED Gold and Platinum, which would achieve greater energy reductions.[87] The DEIR violates CEQA by failing to consider these measures without evidence in the record demonstrating that these measures are infeasible.

[87] LEED Rating System, https://www.usgbc.org/leed.

### 3. The DEIR Fails to Require Feasible Measures from the "Good Neighbor" Policy for Logistics and Warehouse/Distribution Uses

The DEIR fails to implement air quality and GHG measures recommended in Riverside County Board of Supervisors Policy F-3.[88] These measures include the following:

- 2.1 During construction of the warehouse/distribution facility, all heavy duty haul trucks accessing the site shall have CARB-Compliant 2010 engines or newer approved CARB engine standards.
- 2.2 All diesel fueled off-road construction equipment greater than 50 horsepower, including but not limited to excavators, graders, rubber-tired dozers, and similar "off-road" construction equipment shall be equipped with CARB Tier 4 Compliant engines. If the operator lacks Tier 4 equipment, and it is not available for lease or short-term rental within 50 miles of the project site, Tier 3 or cleaner off-road construction equipment may be utilized subject to County approval.
- 2.3 The maximum daily disturbance area (actively graded area) shall not exceed 10 acres per day. Non-Grading construction activity in areas greater than 10 acres is allowed.
- 4.1 Facility operators shall maintain records of their facility owned and operated fleet equipment and ensure that all diesel-fueled Medium-Heavy Duty Trucks ("MHDT") and Heavy-Heavy Duty ("HHD") trucks with a gross vehicle weight rating greater than 19,500 pounds accessing the site use year CARB compliant 2010 or newer engines. The records should be maintained on-site and be made available for inspection by the County.
- 4.8 Facility operators for sites that exceed 250 employees shall establish a rideshare program, in accordance with AQMD rule 2202, with the intent of discouraging single-occupancy vehicle trips and promote alternate modes of transportation, such as carpooling and transit where feasible.

10-16

The DEIR fails to consider or require the measures listed above. Use of CARB-compliant 2010 engines or newer approved CARB engine standards would reduce mobile emissions of criteria air pollutants and GHGs. Use of Tier 4 equipment during construction would reduce the Project's overall emissions of NOx, diesel particulate matter, and other criteria pollutant emissions.[89] A measure

[88] County of Riverside, Board of Supervisors Policy F-3, "Good Neighbor" Policy for Logistics and Warehouse/Distribution Uses".
[89] https://ww2.arb.ca.gov/sites/default/files/2023-10/%232%20Proposed%20Emission%20Standards-ADA-10232023-revised.pdf;

requiring future tenants to establish a rideshare program in accordance with SCAQMD rule 2202 would reduce GHG and criteria pollutant emissions from employee commutes.[90] The DEIR violates CEQA by failing to identify these measures without evidence in the record demonstrating that these measures are infeasible.

10-16 Cont.

**4. The DEIR Fails to Impose Feasible Measures Consistent with General Plan Policies**

The Town's General Plan includes policies designed to reduce emissions of criteria air pollutants and GHGs. Table 4.9-1 of the DEIR addresses the Project's consistency with General Plan policies, but the DEIR fails to demonstrate consistency with the following policies:

> Policy 1.E: The use of clean and/or renewable alternative energy sources for transportation, heating and cooling, and construction shall be encouraged by the Town.
>
> Policy 1.F: The Town shall support, encourage, and facilitate the development of projects that enhance the use of alternative modes of transportation, including pedestrian-oriented retail and activity centers, dedicated bicycle paths and lanes, and community-wide multi-use trails.
>
> Policy 1.G: Future residential, commercial, and industrial development and remodeling projects, shall strive to exceed Title 24 standards by 15% and/or achieve LEED certification or similar performance standards for buildings.
>
> Policy 1.H: Residential, commercial, and industrial projects that reduce vehicle miles traveled (VMTs) by providing alternative transportation options, home office and live/work spaces, and/or promote employees living close to work are preferred.
>
> Policy 1.J: The Town shall promote the use of solar and alternative energies and give priority to projects that include the use of solar cells and other alternative energy sources in their designs.

10-17

The DEIR fails to establish consistency with these policies in light of its failure to identify or require all feasible air quality and GHG mitigation measures.

[90] SCAQMD, Rule 2202 – On-Road Motor Vehicle Mitigation Options Employee Commute Reduction Program Guidelines, available at https://www.aqmd.gov/docs/default-source/transportation/ecrp-guidelines.pdf?sfvrsn=6, https://www.aqmd.gov/home/programs/business/r2202-forms-guidelines.

By not requiring installation of renewable energy facilities with capacity equal to or greater than the Project's energy demands, the Project is inconsistent with Policies 1.E, 1.G, and 1.J. The Project is not fully consistent with Policy 1.G because although the Project would be required to meet LEED Silver standards, there is no requirement for the Project to exceed Title 24 standards by 15%. The Project is inconsistent with Policy 1.H by failing to require transportation demand management measures. The DEIR must be revised and recirculated to ensure that the Project adopts all feasible air quality and GHG mitigation measures, consistent with General Plan policies.

10-17 Cont.

### C. The DEIR Fails to Include Sufficient Investigation into Energy Conservation Measures

The DEIR does not include sufficient investigation into energy conservation measures that might be available or appropriate for the Project, in violation of CEQA. The DEIR concludes that operational energy impacts of the Project would be less than significant because the buildings would be designed and constructed in accordance with the State's Title 24 guidelines and regulations.[91] However, compliance with Title 24 regulations alone does not support a conclusion that energy impacts are less than significant, and the DEIR does not sufficiently consider energy conservation measures like solar facilities, use of alternate fuel sources, or passive energy efficiency measures to ensure the Project's energy consumption would not be wasteful, inefficient, or unnecessary. This lack of analysis violates CEQA.

10-18

CEQA requires an environmental document to discuss mitigation measures for significant environmental impacts, including "measures to reduce the wasteful, inefficient, and unnecessary consumption of energy."[92] The CEQA Guidelines require discussion of energy conservation measures when relevant, and provide examples in Appendix F:[93]

1) Potential measures to reduce wasteful, inefficient and unnecessary consumption of energy during construction, operation, maintenance and/or removal. The discussion should explain why certain measures were incorporated in the project and why other measures were dismissed.

[91] DEIR, pg. 4.5-8 - 4.5-10.
[92] Pub. Resources Code, § 21100(b)(3); *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 930.
[93] 14 Cal. Code Regs., § 15126.4(a)(1)(C) (stating "'Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant.").

2) The potential of siting, orientation, and design to minimize energy consumption, including transportation energy, increase water conservation and reduce solid waste.
3) The potential for reducing peak energy demand.
4) Alternate fuels (particularly renewable ones) or energy systems.
5) Energy conservation which could result from recycling efforts.

Courts have rejected CEQA documents that fail to include adequate analysis investigation into energy conservation measures that might be available or appropriate for a project.[94] In *California Clean Energy Commission v. City of Woodland* ("*CCEC*"),[95] the Court of Appeal reviewed an EIR for a shopping center on undeveloped agricultural land. Similar to the DEIR here, the EIR in *CCEC* concluded that, due to the proposed project's compliance with Title 24 guidelines and regulations, the project would be expected to have a less-than-significant impact regarding the wasteful, inefficient, or unnecessary consumption of energy. But the lead agency's EIR did not include discussion regarding the different renewable energy options that might be available or appropriate for the project. The Court held "the City's EIRs failed to comply with the requirements of Appendix F to the Guidelines by not discussing or analyzing renewable energy options."[96] The lead agency argued that compliance with the Building Code sufficed to address energy impact concerns for the project.[97] But the Court explained:

> Although the Building Code addresses energy savings for components of a new commercial construction, it does not address many of the considerations required under Appendix F of the CEQA Guidelines… These considerations include whether a building should be constructed at all, how large it should be, where it should be located, whether it should incorporate renewable energy resources, or anything else external to the building's envelope. Here, a requirement that Gateway II comply with the Building Code does not, by itself, constitute an adequate assessment of mitigation measures that can be taken to address the energy impacts during construction and operation of the project.[98]

The Supreme Court of California agreed with the *CCEC* court's decision in *League to Save Lake Tahoe Mtn. Area Preservation Found. v County of Placer*,

10-18 Cont.

[94] *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 CA4th 256; *Spring Valley Lake Ass'n v. City of Victorville* (2016) 248 CA4th 91.
[95] (2014) 225 CA4th 173.
[96] *Id.* at 213.
[97] *Id.* at 210, 211.
[98] *CECC* (2014) 225 CA4th 173, 213.

holding that even projects that find a less-than-significant energy impact must "discuss whether any renewable energy features could be incorporated into the project."[99] In *Save Lake Tahoe*, the Court considered an EIR for a land use specific plan and rezoning to permit residential and commercial development and preserve forest land near Truckee and Lake Tahoe. The EIR did not consider whether it was feasible to power the project on 100 percent renewable electrical energy or some lesser percentage, nor evaluate strategies for reducing reliance on fossil fuels, increasing reliance on renewable resources, reducing peak loads, and reducing the impacts of relying on remote generation facilities. The lead agency reasoned that this analysis was not required because energy impacts would be less than significant. Citing CEQA Guidelines Section 15126.2, subdivision (b) and the decision in *CCEC*, the Court held that when an EIR analyzes the project's energy use to determine if it creates significant effects, it should discuss whether any renewable energy features could be incorporated into the project. The Court found that the EIR violated CEQA for not discussing whether the project could increase its reliance on renewable energy sources to meet its energy demand.

Here, the DEIR lacks basic analysis of energy consumption measures in violation of CEQA Guidelines Appendix F. The DEIR states that "the Project would support increased usage of renewable electricity through the installation of on-site solar panels to meet the Prescriptive Requirements for Photovoltaic Systems (Title 24, Part 6, Section 9.2) at a minimum."[100] But the DEIR fails to adequately analyze the feasibility of installing onsite solar facilities *in excess* of the Title 24 mandatory standards. The DEIR fails to analyze which aspects of the Project could support solar facilities, such as rooftop, parking lot, or ground-level solar photovoltaics. The DEIR's analysis must address considerations such as the technical and economic feasibility of installing solar facilities on the Project site, the potential size of the Project's solar zone, and the potential magnitude of mitigation provided by installing solar facilities.

10-18 Cont.

The DEIR also fails to evaluate the extent to which mobile source energy consumption could be reduced during Project operations through electric vehicle charging infrastructure (above what is required by existing regulations). Increased provision of EV charging infrastructure is required by the Tier 2 measures in Appendix A5, Nonresidential Voluntary Measures, of the 2022 California Green Building Standards Code.[101] The DEIR also fails to consider a transportation demand management program to reduce energy consumption from commuter trips.

[99] (2022) 75 CA5th 63, 167–68.
[100] DEIR, pg. 4.6-32
[101] *see* CALGreen Section A5.106.5.1.2 (Tier 2 standards require 50% of spaces to be reserved for clean air vehicles, and Tier 1 standards require 35%); *see* Section A5.106.5.3.2 (Tier 2 standards

In sum, the DEIR's energy analysis fails adequately analyze measures to reduce the wasteful, inefficient, and unnecessary consumption of energy, and fails to meaningfully address Appendix F's considerations of whether a building should be constructed at all, how large it should be, where it should be located, whether it should incorporate renewable energy resources, or anything else external to the building's envelope.[102] This analysis must be provided in a revised and recirculated EIR.

10-18 Cont.

### D. The DEIR Fails to Adequately Disclose, Analyze and Mitigate the Project's Cumulative Impacts

An EIR must evaluate a cumulative impact if the project's incremental effect combined with the effects of other projects is "cumulatively considerable."[103] This determination is based on an assessment of the project's incremental impacts "viewed in connection with the effects of past project, the effects of other current projects, and the effects of probable future projects."[104] Proper cumulative impact analysis is vital because "the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact."[105]

10-19

#### 1. The DEIR's Cumulative Air Emissions Analysis Does Not Comply with CEQA or Attorney General Warehouse Guidance

The DEIR fails to adequately analyze the significance of the Project's cumulative air quality emissions. The DEIR asserts that, under MDAQMD guidance, any exceedance of a project-level threshold for criteria pollutants also is considered to be a cumulatively-considerable effect, while air pollutant emissions that fall below applicable project-level thresholds are not considered cumulatively-considerable.[106] The DEIR concludes that this Project's construction emissions of criteria air pollutants would be less-than-significant because they would not exceed

10-20

require large projects with 201 or more parking spaces to provide 45% to be EV capable, and Tier 1 standards would require 30% of the total spaces to be EV capable.)

[102] *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 CA4th 256, 264.

[103] CEQA Guidelines § 15130(a).

[104] *Id.,* §§ 15065(a)(3), 15355(b).

[105] *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 114.

[106] DEIR, pg. 4.2-40 – 4.2-41.

the project-level thresholds.[107] The DEIR's analysis of cumulative health risks is flawed for the same reason as the air quality analysis. The DEIR reasons that health risk impacts from exposure to toxic air contaminants during construction and operation would be less than significant because project-level thresholds would not be exceeded.[108] This approach is inadequate because it fails to analyze the Project's cumulative effects with the existing and proposed warehouses surrounding the Project site.

The DEIR's approach has been rejected by the courts for failing to comply with CEQA's requirement that a project mitigate impacts that are "cumulatively considerable."[109] The leading case on this issue is *Kings County Farm Bureau v. City of Hanford*.[110] In *Kings County*, the city prepared an EIR for a 26.4-megawatt coal-fired cogeneration plant. Notwithstanding the fact that the EIR found that the project region was out of attainment for $PM_{10}$ and ozone, the city failed to incorporate mitigation for the project's cumulative air quality impacts from project emissions because it concluded that the Project would contribute "less than one percent of area emissions for all criteria pollutants."[111] The city reasoned that, because the project's air emissions were small in ratio to existing air quality problems, that this necessarily rendered the project's "incremental contribution" minimal under CEQA. The court rejected this approach, finding it "contrary to the intent of CEQA." The court stated:

> We find the analysis used in the EIR and urged by GWF avoids analyzing the severity of the problem and allows the approval of projects which, when taken in isolation, appear insignificant, but when viewed together, appear startling. Under GWF's "ratio" theory, the greater the over-all problem, the less significance a project has in a cumulative impacts analysis. We conclude the standard for a cumulative impacts analysis is defined by the use of the term "collectively significant" in Guidelines section 15355 and the analysis must assess the collective or combined effect of energy development. The EIR improperly focused upon the individual project's relative effects and omitted facts relevant to an analysis of

10-20 Cont.

[107] *Id.*
[108] DEIR, pg. 4.2-39.
[109] PRC § 21083(b)(2); 14 CCR § 15130; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 719-21.
[110] *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692 ("Kings County"); *see also, Friends of Oroville v. City of Oroville* (2013) 219 Cal. App. 4th 832, 841-42.
[111] *Kings County, supra,* at 719.

> the collective effect this and other sources will have upon air quality.[112]

This DEIR's analysis is also flawed because it improperly focuses upon the individual project's relative effects and omits facts relevant to an analysis of the collective effect this and other sources will have upon air quality. Dr. Clark identifies nine existing warehouse projects within 10 kilometers of the Project, and five proposed warehouse projects, including this Project, which would add 15.777 million square feet of warehouse space.[113] Data from the Redford Conservancy at Pitzer College and Radical Research LLC shows that the existing projects generate 6,000 daily truck trips, producing 8.3 pounds (lbs) of diesel particulate matter (DPM) and 935 lbs of oxides of nitrogen (NOx) per day.[114] The two approved projects will add 5,000 daily truck trips, contributing 6.9 lbs of DPM and 779 lbs of NOx per day. Dr. Clark calculates that the projects under review, inclusive of the Project, will add 11,000 daily truck trips, contributing 15.2 lbs of DPM and 1,714 lbs of NOx per day.[115] Dr. Clark calculates that the amount of DPM that will be released in the community will increase DPM in the community by a factor of 3.66 (a 366 percent increase).[116] This cumulative impact is not disclosed in the DEIR, in violation of the principles articulated in *Kings County*.

10-20 Cont.

In addition to violating CEQA, the MDAQMD approach used in the DEIR also directly conflicts with the recent Attorney General guidance document setting forth best practices for evaluating the environmental impacts of warehouse projects like this one under CEQA.[117] With respect to cumulative air quality and GHG emissions analysis, the Attorney General's guidance states that best practices include "[w]hen analyzing cumulative impacts, thoroughly considering the project's

---

[112] *Id.* at 721; *see also People of the State of California v. City of Fontana,* Case No. CIVSB2121829, Petition for Writ of Mandate, available at https://climatecasechart.com/wp-content/uploads/case-documents/2021/20210723_docket-CIVSB2121829_petition-for-writ-of-mandate.pdf ("The MND's cumulative air quality impact analysis does not account for—or even acknowledge—the multitude of other warehouses near the Project. Rather than consider the environmental setting within which the Project will be situated, the MND simply states that the Project will not result in a cumulatively considerable increase in emissions because the Project's individual air quality impacts will be less than significant. The MND even applies this reasoning to its analysis of health impacts from localized emissions, despite making no attempt to determine or disclose the severity of the existing health impacts from localized emissions in the community")

[113] Clark Comments, pg. 5.

[114] *Id.* at 6.

[115] *Id.*

[116] *Id.* at 7.

[117] *Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act* (Updated September 2022), available at https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf .

incremental impact in combination with past, present, and reasonably foreseeable future projects, *even if the project's individual impacts alone do not exceed the applicable significance threshold* [emphasis added]."[118]

10-20 Cont.

In sum, the DEIR's cumulative air quality impacts analysis fails to comply with CEQA. The Town must prepare a revised EIR that properly evaluates and mitigates such impacts.

### E. The Project May Result in Potentially Significant Public Utilities Impacts.

Under CEQA, a public utilities impact is considered significant if a project would "[r]equire or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities the construction or relocation of which could cause significant environmental effects."[119] The DEIR states that "[f]ire water would be provided to the Project site via the 8-inch mains along Norco Road and Falchion Road."[120] The DEIR claims that "[t]he water pipeline improvements have been considered as part of the Project, and their disturbance footprints and construction techniques, as well as their associated impacts, have been accounted for within this Draft EIR."[121] The DEIR concludes that, as a result, impacts associated with water facilities would be less than significant.[122] This conclusion is not supported by substantial evidence because the DEIR fails to analyze the Project's fire flow requirement or the ability of existing infrastructure to supply adequate fire flow. If the 8-inch mains relied on by the Project are inadequate to provide the requisite fire flow, the 8-inch mains may need to be upsized. These improvements would result in construction-related impacts greater than analyzed in the DEIR. Without an evaluation of the Project's fire flow requirement or the ability of existing infrastructure to supply adequate fire flow, this Project's public utility impact remains unanalyzed and potentially significant.

10-21

### F. The DEIR Fails to Disclose and Mitigate Potentially Significant Valley Fever Impacts

10-22

The DEIR fails to disclose, analyze, and mitigate exposure to *Coccidiodes Immitis* (Valley Fever cocci) on the Project site. Dr. Clark explains that when soil

[118] *Id.*, pg. 7.
[119] DEIR, pg. 4.14-12.
[120] DEIR, pg. 4.14-3.
[121] DEIR, pg. 4.14-13.
[122] *Id.*

containing the cocci spores are disturbed by construction activities, the fungal spores become airborne, exposing construction workers and other nearby sensitive receptors.[123] Valley fever is the initial form of coccidioidomycosis infection, and can develop into a more serious disease, including chronic and disseminated coccidioidomycosis.[124]

The DEIR argues, without supporting evidence, that construction activities would not likely result in increased incidence of Valley Fever:

> Valley Fever is not highly endemic to San Bernardino County with an incident rate of 1.8 cases per 100,000 people (CDPH 2022). In contrast, in 2016 the statewide annual incident rate was 13.7 per 100,000 people. The California counties considered highly endemic for Valley Fever include Kern (251.7 per 100,000), Kings (157.3 per 100,000), San Luis Obispo (82.8 per 100,000), Fresno (60.8 per 100,000), Tulare (45.3 per 100,000), Madera (31.5 per 100,000), and San Joaquin (25.3 per 100,000), and accounted for 70% of the reported cases in 2016 (CDPH 2022).[125]

10-22 Cont.

But the DEIR relies on outdated data from 2016. The DEIR unjustifiably cites a 2016 incident rate of 1.8 cases per 100,000 when more recent data shows that the number of cases of Valley Fever in San Bernardino County has increased significantly.[126] This data is contained in the same 2022 California Department of Public Health ("CDPH") document cited in the DEIR. Dr. Clark's review of this data shows that since 2016, the number of cases of Valley Fever in San Bernardino County has increased from 1.8 per 100,000 in 2016 to 10.5 in 2022 (an increase of 583%).[127] In 2021, the number of cases of Valley Fever in San Bernardino County reached a high of 250 cases. In the first 8 months of 2024, San Bernardino County reported 210 cases, representing a nearly 552% increase over the baseline year of 2016 in only three quarters of the year.

Because Valley Fever incident rates are far higher than assumed in the DEIR, the DEIR fails to accurately describe the environmental setting. CEQA requires that a lead agency include a description of the physical environmental conditions in the vicinity of the Project as they exist at the time environmental

---

[123] Clark Comments, pg. 12.
[124] *Id.* at 15.
[125] DEIR, pg. 4.2-39.
[126] Epidemiologic Summary Of Valley Fever (Coccidioidomycosis) In California, 2022, pg. 5, available at https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CocciEpiSummary2022.pdf.
[127] Clark Comments, pg. 13.

review commences.[128] Use of the proper baseline is critical to a meaningful assessment of a project's environmental impacts.[129] By analyzing outdated baseline conditions, the DEIR fails to accurately evaluate the likelihood of exposure to Valley Fever cocci on the Project site. The DEIR's conclusion that this impact would be less than significant is not supported by substantial evidence.

The DEIR also fails to mitigate this potentially significant impact. The DEIR states that the Project would employ dust control measures in accordance with the MDAQMD Rules 401 and 403.2, which limit the amount of fugitive dust generated during construction.[130] Dr. Clark explains that the Town cannot assume that compliance with standard fugitive dust mitigation measures is adequate to protect construction workers and nearby sensitive receptors from Valley Fever.[131] Conventional dust control measures do not prevent the spread Valley Fever because they largely focus on visible dust or larger dust particles—the $PM_{10}$ fraction—not the very fine particles where the Valley Fever spores are found.[132] Dr. Clark proposes feasible and effective mitigation measures that must be considered in a revised DEIR that acknowledges the potentially significant risk of exposure to Valley Fever.[133]

10-22 Cont.

## V. CONCLUSION

For the reasons discussed above, the DEIR for the Project is inadequate under CEQA. It must be revised to provide legally adequate analysis of, and mitigation for, all of the Project's potentially significant impacts. These revisions will necessarily require that the DEIR be recirculated for additional public review. Until the DEIR has been revised and recirculated, as described herein, the Town may not lawfully approve the Project.

10-23

[128] CEQA Guidelines, § 15125, subd. (a).
[129] *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Ca.4th 310, 320.
[130] DEIR, pg. 4.2-40.
[131] DEIR, pg. 13.
[132] Clark Comments, pg. 16.
[133] *Id.* at 17-19.

Thank you for your consideration of these comments. Please include them in the record of proceedings for the Project. 10-24

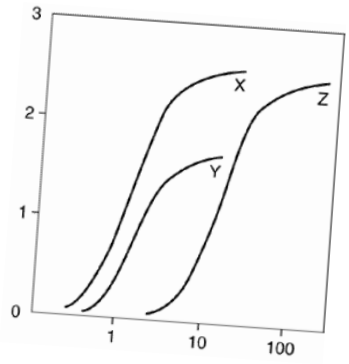
Sincerely,

Aidan P. Marshall

Attachments
APM:acp

**Comments continue below**

# EXHIBIT A




Clark & Associates
Environmental Consulting, Inc.

**OFFICE**
12405 Venice Blvd
Suite 331
Los Angeles, CA 90066

**PHONE**
310-907-6165

**FAX**
310-398-7626

**EMAIL**
jclark.assoc@gmail.com

November 12, 2024

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

**Attn: Mr. Aidan Marshall**

**Subject: Comments On Draft Environmental Impact Report (DEIR) For Inland Empire North Logistics Center, Apple Valley, California**

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed the materials related to the Town of Apple Valley's (the Town) DEIR for the above referenced project.

Clark's review does not constitute validation or endorsement of the conclusions or content presented in the DEIR. Any lack of comment on specific items should not be interpreted as acceptance or approval of those items.

10-25

**Project Description:**

According to the DEIR,[1] the Project would include construction and operation of two industrial/warehouse buildings totaling approximately 2,604,446 square feet on approximately 177.74 acres. Building 1, the northernmost building, would be approximately 1,507,326 square feet, and Building 2, the southernmost building, would be approximately 1,097,120 square feet. The Project would involve associated improvements, including loading docks, truck and vehicle parking, and landscaped areas.

10-26

[1] Dudek. 2024. Draft Environmental Impact Report (DEIR) For Inland Empire North Logistics Center, Apple Valley, California. Prepared for Synergy Consulting CA. Dated September 2024. Pg. 1-1

Construction is expected to commence in 2024 and would last through 2026. The duration of construction activity was estimated based on consultation with the Project Applicant and past project experience. The construction schedule used in the analysis is assumed to commence in or around September 2024 and last approximately 21 months, ending towards the end of May 2026.


**Figure 1: Regional Location Map**

10-26 Cont.


10-26
Cont.

**Figure 2: Project Site Location (Aerial Photo )**

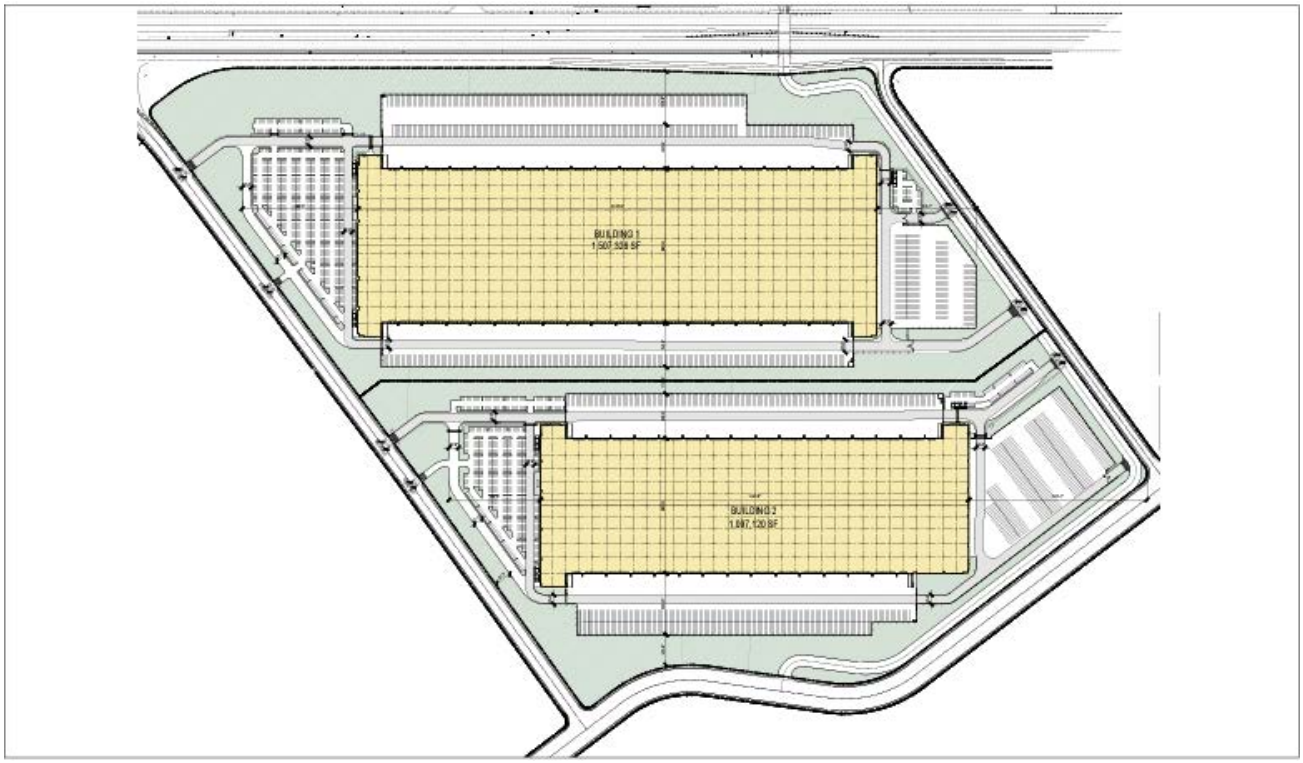



**Figure 3: Proposed Project Site Plan**

The DEIR assumes that construction is based on the following schedule assumptions (duration of phases is approximate):

- Site preparation: September 2024 -- November 2024
- Grading: November 2024 – April 2025
- Building construction: April 2025 – December 2025
- Paving: December 2025 – March 2026
- Architectural coating: March 2026 – May 2026

10-26 Cont.

For the air quality analysis, the Town assumed that heavy-duty construction equipment would be operating at the site 5 days per week. For on-site development, it was assumed that approximately 1,500,000 cubic yards of cut and 1,500,000 cubic yards of fill would be required during the grading phase. It was also assumed that the Project would balance cut and fill onsite, thus not requiring any haul truck trips for import or export of cut and fill.

10-27

The DEIR concludes that all air quality impacts would be significant and unavoidable even after the incorporation of mitigation measures AIR Mitigation #1 through AIR Mitigation #3. These

mitigation measures focus on VOC emissions from architectural coatings, the use of near-zero or zero emission equipment on site, and the restriction of cold and/or refrigerated spaces onsite. There are clear flaws in the DEIR's analysis that must be corrected in a revised DEIR.

10-27 Cont.

**Specific Comments**

**1. The Town's Cumulative Impact Analysis Fails To Incorporate A Quantitative Analysis Of The Substantial Impacts From Nearby Warehouse Projects.**

The Project is located within the Mojave Desert Air Quality Management District's (MDAQMD's) boundaries, an area currently in severe non-attainment for ozone ($O_3$), and moderate non-attainment for respirable particles ($PM_{10}$), and unclassifiable/ in attainment for fine particulate matter ($PM_{2.5}$). The Town[2] concludes that MDAQMD believes that local sources contribute to $PM_{10}$ concentrations in the Mojave Desert Planning Area as the monitoring sites are located in and around anthropogenic sources of dust (e.g., primary PM); however, $O_3$ precursor transport from upwind air basins include some nitrate and sulfate aerosol or secondary particulates, which contribute to PM concentrations. the Project will not result in substantial cumulative impacts, yet no quantitative analysis has been conducted on existing and planned projects to support this claim.

10-28

Within 10 kilometers of the project site, there are 9 existing warehouse projects (1 of which is vacant) totaling 9.038 million square feet. The Town is currently reviewing 5 new warehouse projects, including this Project, adding 15.777 million square feet of warehouse space. The Town approved two projects that total 7.667 million square feet of warehouse space.

[2] Dudek. 2024. Draft Environmental Impact Report (DEIR) For Inland Empire North Logistics Center, Apple Valley, California. Prepared for Synergy Consulting CA. Dated September 2024. Pg. 4.2-10 through 4.2.-11.

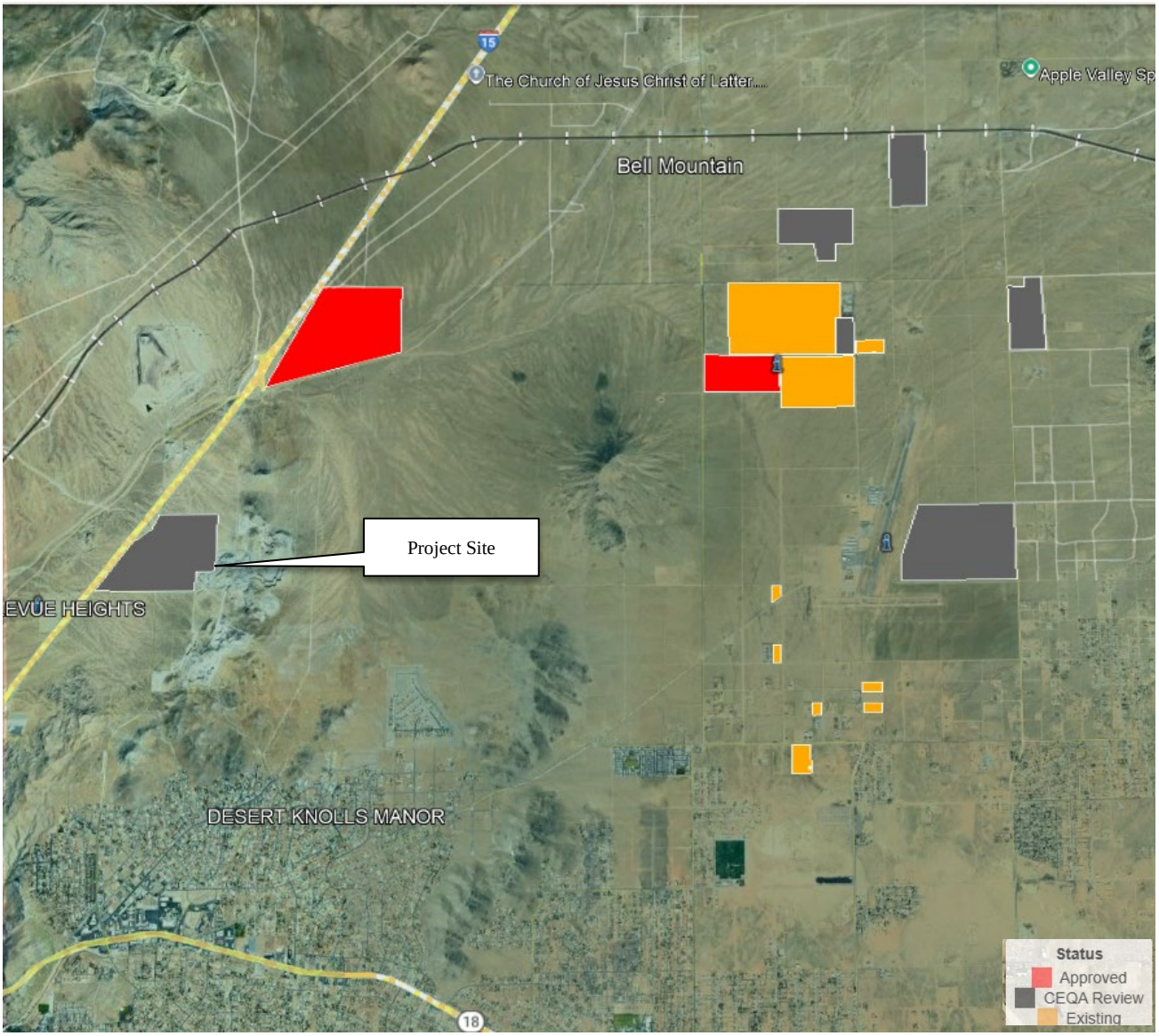



**Figure 4: Existing And Approved Warehouse Projects Near Project**

10-28 Cont.

According to data from the Redford Conservancy at Pitzer College and Radical Research LLC (presented on the Warehouse CITY website)[3], the existing projects generate 6,000 daily truck trips, producing 8.3 pounds (lbs) of diesel particulate matter (DPM) and 935 lbs of oxides of nitrogen ($NO_x$) per day. The 2 approved projects will add 5,000 daily truck trips, contributing 6.9 lbs of DPM and 779 lbs of $NO_x$ per day. The projects under review, inclusive of the Project, will add 11,000 daily truck trips, contributing 15.2 lbs of DPM and 1,714 lbs of $NO_x$ per day. The Project itself will further

[3] Warehouse City v. 1.21. Accessed November 6, 2024. https://radicalresearch.shinyapps.io/WarehouseCITY/

contribute to air pollution during both construction and operation. Based on the calculated emissions above, it is clear that the amount of DPM that will be released in the community will increase DPM in the community by a factor of 3.66 (a 366 percent increase).

The cumulative analysis demonstrates that the Project will exacerbate regional issues with ozone and particulate matter, introducing additional toxic air contaminants (TACs) to an already impacted area. A RDEIR is necessary to ensure that the cumulative air quality and public health impacts from the Project are fully evaluated and appropriately mitigated, providing transparency and protection for the public.

10-28 Cont.

**2. The Air Quality Analysis Is Deficient Since The Project Description And Input Values For The CalEEMOD Analysis Do No Match.**

According to the DEIR, Building 1 would be approximately 1,507,326 square feet while Building 2 would be approximately 1,097,120 square feet.[4] The total square footage of Building 1 and Building 2 would therefore be 2,604,446 square feet. A review of the CalEEMOD analysis presented in the Air Quality Analysis shows a building of 1,933,000 sq ft and a second building of 672,000 sq ft. The total value is 2,604,795 square feet. The square footage is off by 0.01% in the analysis.

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 | 1,933 | 1000sqft | 44.4 | 1,932,795 | 1,522,047 | — | — | — |

9 / 86

Apple Valley IENL Detailed Report, 7/16/2024

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Parking Lot | 2,721 | Space | 24.5 | 0.00 | 0.00 | — | — | — |
| Unrefrigerated Warehouse-Rail | 672 | 1000sqft | 0.00 | 0.00 | 528,953 | — | — | — |

**Figure 5: CalEEMOD Input Values For Project**

10-29

More importantly that the discrepancy in the square footage, in table 1.2 of the CalEEMOD analysis[5] the building area for the second building is not included in the air quality analysis. The

[4] Dudek. 2024. Draft Environmental Impact Report (DEIR) For Inland Empire North Logistics Center, Apple Valley, California. Prepared for Synergy Consulting CA. Dated September 2024. Pg. 1-1

[5] Dudek. 2024. Appendix B to DEIR. Pgs 11-12 of 855.

failure to include the square footage of the second building in the CalEEMOD analysis will result in a model that only calculates the operational emissions for one of the two buildings. The Air Quality Analysis is therefore flawed, underestimates operational emissions, and must be corrected to include all of the emissions from the Project. A revised draft environmental impact report (RDEIR) is necessary to ensure that the cumulative air quality and public health impacts from the Project are fully evaluated and appropriately mitigated, providing transparency and protection for the public.

10-29 Cont.

**3. The Town's Air Quality Analysis Is Not Consistent In Its Analysis Of Stationary Source Emissions.**

The DEIR is contradictory on the issue of stationary sources of emissions on site. On page 4.2-26 of the DEIR, [6] it states the Project would operate one diesel-fueled 300-horsepower (hp) fire pump for a maximum of 50 hours per year for routine testing and maintenance. The DEIR goes on to state that the fire pump is included in the operational health risk assessment.[7] Table 4.2-8 states that "The fire pump was modeled as a point source at the southeast corner of the building. The 300-hp fire pump was assumed to have a vertical stack with a height of 2.50 meters, inside stack diameter of 12.19 centimeters, gas exhaust temperature of 931 degrees Fahrenheit, and gas exhaust of 51.79 cubic meters per minute."

10-30

However, the Town's air quality analysis (presented in Appendix B as a CalEEMOD analysis output) fails to include emissions from this or any other stationary equipment (i.e., fire pumps and or BUGs) in its operational emissions assessment.

[6] Dudek. 2024. Draft Environmental Impact Report (DEIR) For Inland Empire North Logistics Center, Apple Valley, California. Prepared for Synergy Consulting CA. Dated September 2024. Pg. 4.2-26.

[7] *ibid*. Pg. 4.2-28.

Apple Valley IENL Detailed Report, 7/16/2024

5.15. Operational Off-Road Equipment

5.15.1. Unmitigated

| Equipment Type | Fuel Type | Engine Tier | Number per Day | Hours Per Day | Horsepower | Load Factor |
|---|---|---|---|---|---|---|
| Forklifts | Electric | Average | 308 | 24.0 | 82.0 | 0.20 |
| Forklifts | Diesel | Average | 3.00 | 24.0 | 200 | 0.20 |

5.15.2. Mitigated

| Equipment Type | Fuel Type | Engine Tier | Number per Day | Hours Per Day | Horsepower | Load Factor |
|---|---|---|---|---|---|---|
| Forklifts | Electric | Average | 308 | 24.0 | 82.0 | 0.20 |
| Forklifts | Diesel | Average | 3.00 | 24.0 | 200 | 0.20 |

5.16. Stationary Sources

5.16.1. Emergency Generators and Fire Pumps

| Equipment Type | Fuel Type | Number per Day | Hours per Day | Hours per Year | Horsepower | Load Factor |
|---|---|---|---|---|---|---|

5.16.2. Process Boilers

| Equipment Type | Fuel Type | Number | Boiler Rating (MMBtu/hr) | Daily Heat Input (MMBtu/day) | Annual Heat Input (MMBtu/yr) |
|---|---|---|---|---|---|

**Figure 6: CalEEMOD Analysis Of Stationary Operational Emissions**

The omission of fire pump and BUG emissions is a significant gap in the Project's emissions inventory, leaving a major source of operational emissions undisclosed. A RDEIR is necessary to provide a complete and accurate analysis of the Project's emissions, ensuring that these sources are appropriately evaluated and mitigated.

10-30 Cont.

**4. The Air Quality Analysis Is Incomplete And Does Not Include The Emissions From The Off-Site Improvements In The Construction Phase Of The Project.**

The DEIR states on page 1-2 "The Project would also involve the re-alignment of Apple Valley Road to the eastern Project boundary and off-site improvements to roadways located within the vicinity of the Project. Improvements would occur at Falchion Road from Outer Highway 15 to Apple Valley Road, Norco Street from Outer Highway 15 to Apple Valley Road, Outer Highway 15 between Falchion Road and Norco Street, and Apple Valley Road between Falchion Road and Norco Street." Later, the DEIR (page 3-8) goes on to explicitly state that off-site improvements were accounted for in the construction schedule. However, the schedule includes only the following:

10-31

- Site preparation: September 2024 -- November 2024

- Grading: November 2024 – April 2025
- Building construction: April 2025 – December 2025
- Paving: December 2025 – March 2026
- Architectural coating: March 2026 – May 2026

Nowhere in the schedule is there a line item that accounts for the off-site improvements that will be required for the Project. In the Section 4.13 (Transportation) of the DEIR the specific improvements required are listed in Table 4.13-1.

**Table 4.13-1. Apple Valley General Plan Recommended Improvements**

| Roadway | Recommended Improvement |
|---|---|
| I-15 | ▪ A future interchange at I-15 and Quarry Road |
| Outer Highway 15 | ▪ Extend Outer Highway 15 along the east side of I-15 between Stoddard Wells Road and Dale Evans Parkway. Extension would be classified as a Secondary Road (88-ft. ROW) |
| Stoddard Wells Road | ▪ Between I-15 Freeway and Alembic Street – upgrade from Major Road (104-ft. ROW) to Major Divided Arterial (128-ft. ROW)<br>▪ between Alembic Street and Johnson Street – upgrade from Major Road to Major Divided Arterial |
| Quarry Road | ▪ Between I-15 Freeway and Stoddard Wells Road – upgrade from Secondary Road (88-ft. ROW) to Major Divided Arterial (128-ft. ROW)<br>▪ Between Stoddard Wells Road and Dale Evans Road – upgrade from Secondary Road (88' ROW) to Major Divided Arterial (128-ft. ROW) |
| Falchion Road | ▪ Between Apple Valley Road and Tao Road – upgrade from Secondary Road to Major Road |

**Source:** Town of Apple Valley 2009.
**Notes:** ROW = right-of-way; ft. = foot.

**Figure 7: Required Off-Site Improvements**

Although the body of the DEIR claims that all off-site improvements were included in the air quality analysis, there is also no evidence of that in CalEEMOD model provided in Appendix B1 to the DEIR. It is evident that the off-site improvements were not actually incorporated into the DEIR's project schedule or the air quality analysis for the Project. This flaw must be corrected in a revised DEIR for the Project.

10-31 Cont.

**5. The DEIR Fails To Incorporate Adequate Mitigation Measures To Reduce NOx, DPM, and DPM Emissions Associated With The Project.**

Mitigation measures that have previously been recommended by the California Air Resources Board and the Air Quality Management Districts in California to reduce operational $NO_x$, DPM and GHG emissions not included in the DEIR include:

10-32

1. Include contractual language in tenant lease agreements that requires tenants to use the cleanest technologies available, and to provide the necessary infrastructure to support zero-emission vehicles and equipment that will be operating on site.
2. Include contractual language in tenant lease agreements that requires future tenants to exclusively use zero-emission light and medium-duty delivery trucks and vans.
3. If Zero-emission trucks and vans are not utilized include contractual language in tenant lease agreements that requires future tenants to use vehicles produced after 2018. These vehicles produce 37 percent to 45 percent less emission of NOx, DPM, and reactive organic gases (ROGs) that contribute to GHG formation.
4. Include contractual language in tenant lease agreements requiring all onsite cargo handling equipment to be zero-emission.
5. Include contractual language in tenant lease agreements that requires the tenant be in, and monitor compliance with, all current air quality regulations for on-road trucks including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation,[8] Periodic Smoke Inspection Program (PSIP),[9] and the Statewide Truck and Bus Regulation.[10]
6. Include contractual language in tenant lease agreements restricting trucks and support equipment from idling longer than three minutes while on site.
7. Include rooftop solar panels for each proposed warehouse to the extent feasible, with a capacity that matches the maximum allowed for distributed solar connections to the grid.
8. Limit the daily number of trucks allowed at the Proposed Project to levels analyzed in the CEQA document. If higher daily truck volumes are anticipated to visit the site, the Port as the

10-32 Cont.

[8] In December 2008, CARB adopted a regulation to reduce greenhouse gas emissions by improving the fuel efficiency of heavy-duty tractors that pull 53-foot or longer box-type trailers. The regulation applies primarily to owners of 53-foot or longer box-type trailers, including both dry-van and refrigerated-van trailers, and owners of the heavy-duty tractors that pull them on California highways. CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation is available at: https://www.arb.ca.gov/cc/hdghg/hdghg.htm.

[9] The PSIP program requires that diesel and bus fleet owners conduct annual smoke opacity inspections of their vehicles and repair those with excessive smoke emissions to ensure compliance. CARB's PSIP program is available at: https://www.arb.ca.gov/enf/hdvip/hdvip.htm.

[10] The regulation requires that newer heavier trucks and buses must meet particulate matter filter requirements beginning January 1, 2012. Lighter and older heavier trucks must be replaced starting January 1, 2015. By January 1, 2023, nearly all trucks and buses will need to have 201 0 model year engines or equivalent. CARB's Statewide Truck and Bus Regulation is available at: https://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm

Lead Agency should commit to re-evaluating the Proposed Project through CEQA prior to allowing this land use or higher activity level.

9. Ensure that any check-in point for trucks is well inside the Proposed Project site to ensure that there are no trucks queuing outside of the facility.
10. Establish overnight parking within the industrial building where trucks can rest overnight.
11. Establish area(s) within the Proposed Project site for repair needs.

10-32 Cont.

**6. The DEIR Fails To Address Valley Fever Risks From Particulate Matter Released During Project Construction.**

The DEIR fails to adequately address the known presence and significant risk of *Coccidiodes Immitis* (Valley Fever fungus) in Southern California in the vicinity of the Project site. Dust exposure is a primary risk factor for contracting Valley Fever (via *Coccidiodes imimitis (cocci)* exposure). When soil containing the *cocci* spores are disturbed by construction activities, the fungal spores become airborne, exposing construction workers and other nearby sensitive receptors. The DEIR incorrectly assumes that meeting MDAQMD Rule 403 (Fugitive Dust Control For The Mojave Desert Planning Area) would be sufficient to control the impacts from Valley Fever exposure from the Project Site.

10-33

The fungus lives in the top 2 to 12 inches of soil. When soil containing this fungus is disturbed by activities such as digging, vehicles, construction activities, dust storms, or during earthquakes, the fungal spores become airborne. The most at-risk populations are construction and agricultural workers.[11] Here, construction workers are the very population that would be most directly exposed by the Project. A refereed journal article on occupational exposures notes that "[l]abor groups where occupation involves close contact with the soil are at greater risk, especially if the work involves dusty digging operations."[12]

The potentially exposed population in surrounding areas is much larger than construction workers because the nonselective raising of dust during Project construction will carry the very small

[11] Lawrence L. Schmelzer and R. Tabershaw, Exposure Factors in Occupational Coccidioidomycosis, *American Journal of Public Health and the Nation's Health*, v. 58, no. 1, 1968, pp. 107–113, Table 3; available at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1228046/?page=1.

[12] *Ibid.*, p. 110.

spores, 0.002–0.005 millimeters ("mm"), into nonendemic areas, potentially exposing large non-Project-related populations.[13],[14] These very small particles are not controlled by conventional construction dust control mitigation measures.

Recent data from the California Department of Public Health underscore the severity of this public health issue. Since 2016, the number of cases of Valley Fever in San Bernardino County has increased from 1.8 per 100,000 in 2016 to 10.5 in 2022 (an increase of 583%).[15] In 2021, the number of cases of Valley Fever in San Bernardino County reached a high of 250 cases. In the first 8 months of 2024, San Bernardino County reported 210 cases, representing a nearly 552% increase over the baseline year of 2016 in only three quarters of the year. Since Valley Fever cases are directly related to the disturbance of soils in the area, the Town must directly address the impacts that the project's construction phase will have on the community.

A study in Antelope Valley identified a clear link between soil disturbance - due to large-scale renewable energy construction projects, agricultural management practices and $PM_{10}$ fugitive dust emissions - and increased incidence of coccidioidomycosis.[16]

10-33 Cont.

[13] Schmelzer and Tabershaw, 1968, p. 110; Pappagianis and Einstein, 1978

[14] Pappagianis and Einstein, 1978, p. 527 ("The northern areas were not directly affected by the ground level windstorm that had struck Kern County but the dust was lifted to several thousand feet elevation and, borne on high currents, the soil and arthrospores along with some moisture were gently deposited on sidewalks and automobiles as 'a mud storm' that vexed the residents of much of California." The storm originating in Kern County, for example, had major impacts in the San Francisco Bay Area and Sacramento).

[15] CDPH. 2022. Epidemiologic Summary of Valley Fever (Coccidiodomycosis) In California, 2022. Surveillance and Statistics Section, Infection Diseases Branch, Division of Communicable Disease Control, Center For Infectious Diseases, California Department of Public Health. https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CocciEpiSummary2022.pdf

[16] Colson. 2017. Large-Scale Land Development, Fugitive Dust, and Increased Coccidioidomycosis Incidence in the Antelope Valley of California, 1999-2014. https://knowthecause.com/wp-content/uploads/2017/03/Colson2017FugitiveDustCoccidiodes.pdf

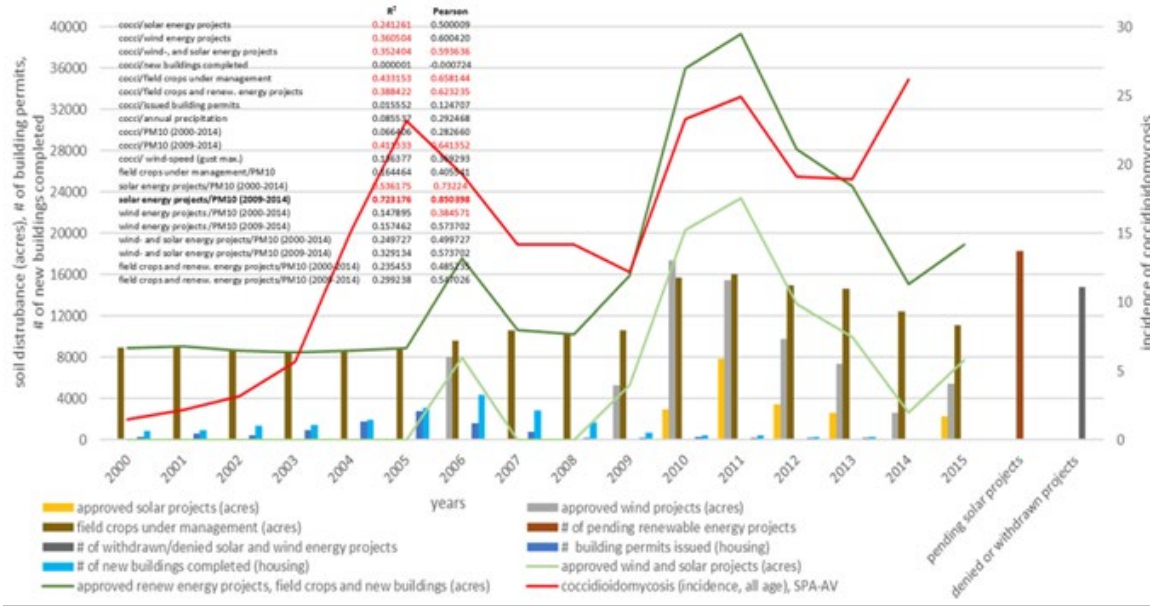



**Figure 8: Valley Fever Incidence And Soil Disturbance**

It is evident from the figure above that, as the number of acres of soil in the Antelope Valley were disturbed, the incidence rate of Valley Fever also increased. The mass disturbance of soils anticipated by the proposed Project will create the same conditions that were detailed in the study by Colson. [17]

The Project site's desert location and exposure to desert winds amplify these risks. Even when standard dust control measures are in place, high winds can mobilize substantial amounts of dust from graded areas generating $PM_{10}$ and $PM_{2.5}$ emissions that carry Valley Fever spores and silica dust into surrounding communities. Alerts from air pollution control districts frequently accompany such wind events, underlining the inadequacy of typical dust suppression methods in preventing airborne spore exposure.

According to research on Valley Fever, outbreaks in populations with intense exposure to aerosolized arthroconidia are at greater risk for infection. These groups include agricultural or construction workers, or persons who participate in outdoor activities such as hunting or digging in the soil. Outbreaks of coccidioidomycosis have been linked to a variety of activities involving

10-33 Cont.

[17] *ibid*

disturbance of impacted soils.[18,19,20] Since Valley Fever cases are directly related to the disturbance of soils in the area, the Town must directly address the impacts that the project's construction phase will have on the community.

Valley Fever often manifests as a mild respiratory illness, but it can progress to serious chronic forms, especially in immunocompromised individuals, and may even become disseminated, impacting organs including the skin, bones, brain, and spinal cord. Disseminated Valley Fever is associated with severe symptoms like meningitis, painful lesions, and swollen joints.

Given the significant public health risks associated with airborne Valley Fever spores, the Town must prepare an EIR to accurately disclose the Project's impacts on local air quality and public health, especially for nearby and downwind receptors. The EIR should include effective mitigation measures specifically tailored to Valley Fever, as standard dust controls are inadequate for managing the risks posed by this pathogen. Ensuring robust protections for both on-site workers and off-site receptors is essential to prevent potentially severe health consequences for the surrounding community.

10-33 Cont.

**7. The Proposed Dust Control Measures In The DEIR Fail To Effectively Mitigate Significant Valley Fever Exposure Risks.**

The standard fugitive dust mitigation measures proposed in the DEIR are not adequate to protect construction workers and nearby sensitive receptors from exposure to Valley Fever spores. Rule 403 includes requirements for a Dust Control Plan, signage and fencing requirements, as well as surface watering and stabilization with chemicals, gravel and asphaltic pavement to eliminate visible fugitive dust from vehicular travel and wind erosion. All of the mitigation measures outlined

10-34

[18] Brown. Et al. 2013. Coccidioidomycosis: epidemiology. *Clinical Epidemiology*. 5:185-197.

[19] Rafael Laniado-Laborin, Expanding Understanding of Epidemiology of Coccidioidomycosis in the Western Hemisphere, Annals of the New York Academy of Sciences, v. 111, 2007, pp. 20–22, available at https://nyaspubs.onlinelibrary.wiley.com/doi/abs/10.1196/annals.1406.004; Frederick S. Fisher, Mark

W. Bultman, Suzanne M. Johnson, Demosthenes Pappagianis, and Erik Zaborsky, Coccidioides Niches and Habitat Parameters in the Southwestern United States, a Matter of Scale, Annals of the New York Academy of Sciences, v. 111, 2007, pp. 47–72 ("All of the examined soil locations are noteworthy as generally 50% of the individuals who were exposed to the dust or were excavating dirt at the sites were infected."), available at https://nyaspubs.onlinelibrary.wiley.com/doi/abs/10.1196/annals.1406.031.

[20] Lawrence L. Schmelzer and R. Tabershaw, Exposure Factors in Occupational Coccidioidomycosis, American Journal of Public Health and the Nation's Health, v. 58, no. 1, 1968, pp. 107–113, Table 3; available at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1228046/?page=1.

above allow for a percentage of the dust that could be generated to be migrate offsite. Based on the Mitigation Measures outlined in the CalEEMOD model (utilized in the DEIR) watering exposed areas twice a day would reduce $PM_{10}$ and $PM_{2.5}$ emissions by 61 percent (61%). Increasing the watering frequency to 3 times per day would reduce $PM_{10}$ and $PM_{2.5}$ emissions by 74%. Conventional dust control measures primarily focus on visible dust or larger dust particles—the $PM_{10}$ fraction—and fail to address the very fine particles that transport Valley Fever spores, which are approximately 5 times smaller than typical $PM_{10}$ particles and remain airborne much longer.[21] These fine particles, when disturbed by soil-disturbing activities, spread widely beyond site, posing a significant risk to both onsite workers and nearby communities.

The proposed compliance with MDAQMD Rule 403.2, which relies on a visual opacity readings for dust control, is insufficient to prevent exposure to Valley Fever spores. This rule is based on smoke-monitoring methods (U.S. EPA Methods 9 and 22) that require active monitoring by certified observers, rely on subjective observation, and are affected by variable such as lighting, distance, and weather conditions. Due to these limitations, opacity readings do not provide accurate, continuous data on fine airborne particles.

10-34 Cont.

To address these shortcomings, the Town should require active monitoring with dust monitors (particle measuring devices) immediately outside of the facility and around its perimeter. Continuous particle measures would offer several advantages. It eliminates the subjectivity inherent in visual opacity readings, leading to more reliable and consistent data. It allows for real-time tracking of dust particle levels, enabling prompt corrective actions if thresholds are exceeded. And it offers robust data sets that can be used for repeatability test and to validate compliance with air quality standards. Incorporating active dust monitoring systems would ensure that air quality impacts are accurately assessed and mitigated, fulfilling the intent of the mitigation measures and conditions of compliance to protect public health and the environment.

Additionally, sampling for and removal of impacted soils is the best solution to *Coccidiodes immitis* spores. Since *Coccidiodes immitis* resides in soils and are not subject to degradation, entrainment of the potentially impacted soils may cause additional issues to further development of the site.

[21] See, e.g., Cummings and others, 2010, p. 509; Schneider et al., 1997, p. 908 ("Primary prevention strategies (e.g., dust-control measures) for coccidioidomycosis in endemic areas have limited effectiveness.").

The Town should require that the Proponent implement mitigation measures to actively suppress the spread of Valley Fever by:

1. Include specific requirements in the Project's Injury and Illness Prevention Program (as required by Title 8, Section 3203) regarding safeguards to prevent Valley Fever.
2. Control dust exposure:
    - Apply chemical stabilizers at least 24-hours prior to high wind event;
    - Apply water to all disturbed areas a minimum of three times per day. Watering frequency should be increased to a minimum of *four times per day* if there is any evidence of visible wind-driven fugitive dust;
    - Provide National Institute for Occupational Safety and Health (NIOSH)-approved respirators for workers with a prior history of Valley Fever.
    - Half-face respirators equipped with a minimum N-95 protection factor for use during worker collocation with surface disturbance activities. Half-face respirators equipped with N-100 or P-100 filters should be used during digging activities. Employees should wear respirators when working near earth-moving machinery.
    - Prohibit eating and smoking at the worksite, and provide separate, clean eating areas with hand-washing facilities.
    - Avoid outdoor construction operations during unusually windy conditions or in dust storms.
    - Consider limiting outdoor construction during the fall to essential jobs only, as the risk of cocci infection is higher during this season.
3. Prevent transport of cocci outside endemic areas:
    - Thoroughly clean equipment, vehicles, and other items before they are moved off-site to other work locations.
    - Prevent spillage or loss of bulk material from holes or other openings in the cargo compartment's floor, sides, and/or tailgate;
    - Load all haul trucks such that the freeboard is not less than six inches when material is transported on any paved public access road and apply water to the top of the load sufficient to limit VDE to 20 percent opacity; or cover haul trucks with a tarp or other suitable cover.

10-34 Cont.

- Provide workers with coveralls daily, lockers (or other systems for keeping work and street clothing and shoes separate), daily changing and showering facilities.
- Clothing should be changed after work every day, preferably at the work site.
- Train workers to recognize that cocci may be transported offsite on contaminated equipment, clothing, and shoes; alternatively, consider installing boot-washing.
- Post warnings onsite and consider limiting access to visitors, especially those without adequate training and respiratory protection.

4. Improve medical surveillance for employees:
    - Employees should have prompt access to medical care, including suspected work-related illnesses and injuries.
    - Work with a medical professional to develop a protocol to medically evaluate employees who have symptoms of Valley Fever.
    - Consider preferentially contracting with 1-2 clinics in the area and communicate with the health care providers in those clinics to ensure that providers are aware that Valley Fever has been reported in the area. This will increase the likelihood that ill workers will receive prompt, proper and consistent medical care.
    - Respirator clearance should include medical evaluation for all new employees, annual re-evaluation for changes in medical status, and annual training, and fit-testing.
    - Skin testing is not recommended for evaluation of Valley Fever.[22]
    - If an employee is diagnosed with Valley Fever, a physician must determine if the employee should be taken off work, when they may return to work, and what type of work activities they may perform.

10-34 Cont.

The Town must adopt these evidence-based mitigation measures – proven effective in similar construction projects in endemic areas – in a RDEIR to ensure comprehensive protection of public health. Standard dust control measures are insufficient for preventing Valley Fever exposure, and only concrete, enforceable steps like those listed above will safeguard both onsite workers and surrounding communities.

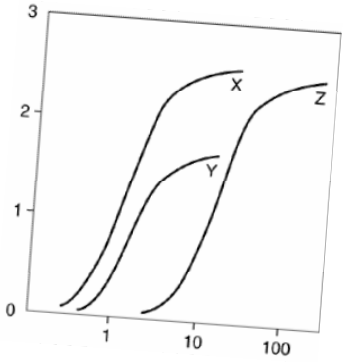
[22] Short-term skin tests that produce results within 48 hours are now available. See Kerry Klein, NPR for Central California, New Valley Fever Skin Test Shows Promise, But Obstacles Remain, November 21, 2016; available at http://kvpr.org/post/new-valley-fever-skin-test-shows-promise-obstacles-remain.

## Conclusion

The facts presented in this comment letter lead me to reasonably conclude that the Project could result in significant impacts. A RDEIR is necessary to address these substantial concerns fully and transparently. 10-35

Sincerely,

**Comments continue below.**




Clark & Associates
Environmental Consulting, Inc

**OFFICE**
12405 Venice Blvd.
Suite 331
Los Angeles, CA 90066

**PHONE**
310-907-6165

**FAX**
310-398-7626

**EMAIL**
jclark.assoc@gmail.com

# *James J. J. Clark, Ph.D.*

*Principal Toxicologist*

**Toxicology/Exposure Assessment Modeling**

**Risk Assessment/Analysis/Dispersion Modeling**

**Education:**

Ph.D., Environmental Health Science, University of California, 1995

M.S., Environmental Health Science, University of California, 1993

B.S., Biophysical and Biochemical Sciences, University of Houston, 1987

**Professional Experience:**

Dr. Clark is a well recognized toxicologist, air modeler, and health scientist. He has 20 years of experience in researching the effects of environmental contaminants on human health including environmental fate and transport modeling (SCREEN3, AEROMOD, ISCST3, Johnson-Ettinger Vapor Intrusion Modeling); exposure assessment modeling (partitioning of contaminants in the environment as well as PBPK modeling); conducting and managing human health risk assessments for regulatory compliance and risk-based clean-up levels; and toxicological and medical literature research.

Significant projects performed by Dr. Clark include the following:

## LITIGATION SUPPORT

**Case: James Harold Caygle, et al, v. Drummond Company, Inc. Circuit Court for the Tenth Judicial Circuit, Jefferson County, Alabama. Civil Action. CV-2009**

**Client: Environmental Litgation Group, Birmingham, Alabama**

Dr. Clark performed an air quality assessment of emissions from a coke factory located in Tarrant, Alabama. The assessment reviewed include a comprehensive review of air quality standards, measured concentrations of pollutants from factory, an inspection of the facility and detailed assessment of the impacts on the community. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Rose Roper V. Nissan North America, et al. Superior Court of the State Of California for the County Of Los Angeles – Central Civil West. Civil Action. NC041739**

**Client: Rose, Klein, Marias, LLP, Long Beach, California**

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to multiple chemicals, including benzene, who later developed a respiratory distress. A review of the individual's medical and occupational history was performed to prepare an exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to respiratory irritants. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: O'Neil V. Sherwin Williams, et al. United States District Court Central District of California**

**Client: Rose, Klein, Marias, LLP, Long Beach, California**

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to petroleum distillates who later developed a bladder cancer. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Summary judgment for defendants.**

**Case: Moore V., Shell Oil Company, et al. Superior Court of the State Of California for the County Of Los Angeles**

**Client: Rose, Klein, Marias, LLP, Long Beach, California**

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to chemicals while benzene who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Raymond Saltonstall V. Fuller O'Brien, KILZ, and Zinsser, et al. United States District Court Central District of California**

**Client: Rose, Klein, Marias, LLP, Long Beach, California**

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to benzene who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Richard Boyer and Elizabeth Boyer, husband and wife, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-7G.**

**Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.**

Dr. Clark performed a toxicological assessment of a family exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: JoAnne R. Cook, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-9R**

**Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.**

Dr. Clark performed a toxicological assessment of an individual exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Patrick Allen And Susan Allen, husband and wife, and Andrew Allen, a minor, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-W**

**Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.**

Dr. Clark performed a toxicological assessment of a family exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Michael Fahey, Susan Fahey V. Atlantic Richfield Company, et al. United States District Court Central District of California Civil Action Number CV-06 7109 JCL.**

**Client: Rose, Klein, Marias, LLP, Long Beach, California**

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to refined petroleum hydrocarbons who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Constance Acevedo, et al., V. California Spray-Chemical Company, et al., Superior Court of the State Of California, County Of Santa Cruz. Case No. CV 146344**

Dr. Clark performed a comprehensive exposure assessment of community members exposed to toxic metals from a former lead arsenate manufacturing facility. The former manufacturing site had undergone a DTSC mandated removal action/remediation for the presence of the toxic metals at the site. Opinions were presented regarding the elevated levels of arsenic and lead (in attic dust and soils) found throughout the community and the potential for harm to the plaintiffs in question.

**Case Result: Settlement in favor of defendant.**

**Case: Michael Nawrocki V. The Coastal Corporation, Kurk Fuel Company, Pautler Oil Service, State of New York Supreme Court, County of Erie, Index Number I2001-11247**

**Client: Richard G. Berger Attorney At Law, Buffalo, New York**

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to refined petroleum hydrocarbons who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the

known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Judgement in favor of defendant.**

## SELECTED AIR MODELING RESEARCH/PROJECTS

**Client – Confidential**

Dr. Clark performed a comprehensive evaluation of criteria pollutants, air toxins, and particulate matter emissions from a carbon black production facility to determine the impacts on the surrounding communities. The results of the dispersion model will be used to estimate acute and chronic exposure concentrations to multiple contaminants and will be incorporated into a comprehensive risk evaluation.

**Client – Confidential**

Dr. Clark performed a comprehensive evaluation of air toxins and particulate matter emissions from a railroad tie manufacturing facility to determine the impacts on the surrounding communities. The results of the dispersion model have been used to estimate acute and chronic exposure concentrations to multiple contaminants and have been incorporated into a comprehensive risk evaluation.

**Client – Los Angeles Alliance for a New Economy (LAANE), Los Angeles, California**

Dr. Clark is advising the LAANE on air quality issues related to current flight operations at the Los Angeles International Airport (LAX) operated by the Los Angeles World Airport (LAWA) Authority. He is working with the LAANE and LAX staff to develop a comprehensive strategy for meeting local community concerns over emissions from flight operations and to engage federal agencies on the issue of local impacts of community airports.

**Client – City of Santa Monica, Santa Monica, California**

Dr. Clark is advising the City of Santa Monica on air quality issues related to current flight operations at the facility. He is working with the City staff to develop a comprehensive strategy for meeting local community concerns over emissions from flight operations and to engage federal agencies on the issue of local impacts of community airports.

**Client: Omnitrans, San Bernardino, California**

Dr. Clark managed a public health survey of three communities near transit fueling facilities in San Bernardino and Montclair California in compliance with California Senate Bill 1927. The survey included an epidemiological survey of the effected communities, emission surveys of local businesses, dispersion modeling to determine potential emission concentrations within the communities, and a comprehensive risk assessment of each community. The results of the study were presented to the Governor as mandated by Senate Bill 1927.

**Client: Confidential, San Francisco, California**

Summarized cancer types associated with exposure to metals and smoking. Researched the specific types of cancers associated with exposure to metals and smoking. Provided causation analysis of the association between cancer types and exposure for use by non-public health professionals.

**Client: Confidential, Minneapolis, Minnesota**

Prepared human health risk assessment of workers exposed to VOCs from neighboring petroleum storage/transport facility. Reviewed the systems in place for distribution of petroleum hydrocarbons to identify chemicals of concern (COCs), prepared comprehensive toxicological summaries of COCs, and quantified potential risks from carcinogens and non-carcinogens to receptors at or adjacent to site. This evaluation was used in the support of litigation.

**Client – United Kingdom Environmental Agency**

Dr. Clark is part of team that performed comprehensive evaluation of soil vapor intrusion of VOCs from former landfill adjacent residences for the United Kingdom's Environment

Agency. The evaluation included collection of liquid and soil vapor samples at site, modeling of vapor migration using the Johnson Ettinger Vapor Intrusion model, and calculation of site-specific health based vapor thresholds for chlorinated solvents, aromatic hydrocarbons, and semi-volatile organic compounds. The evaluation also included a detailed evaluation of the use, chemical characteristics, fate and transport, and toxicology of chemicals of concern (COC). The results of the evaluation have been used as a briefing tool for public health professionals.

## EMERGING/PERSISTENT CONTAMINANT RESEARCH/PROJECTS

**Client: Ameren Services, St. Louis, Missouri**

Managed the preparation of a comprehensive human health risk assessment of workers and residents at or near an NPL site in Missouri. The former operations at the Property included the servicing and repair of electrical transformers, which resulted in soils and groundwater beneath the Property and adjacent land becoming impacted with PCB and chlorinated solvent compounds. The results were submitted to U.S. EPA for evaluation and will be used in the final ROD.

**Client: City of Santa Clarita, Santa Clarita, California**

Dr. Clark is managing the oversight of the characterization, remediation and development activities of a former 1,000 acre munitions manufacturing facility for the City of Santa Clarita. The site is impacted with a number of contaminants including perchlorate, unexploded ordinance, and volatile organic compounds (VOCs). The site is currently under a number of regulatory consent orders, including an Immanent and Substantial Endangerment Order. Dr. Clark is assisting the impacted municipality with the development of remediation strategies, interaction with the responsible parties and stakeholders, as well as interfacing with the regulatory agency responsible for oversight of the site cleanup.

**Client: Confidential, Los Angeles, California**

Prepared comprehensive evaluation of perchlorate in environment. Dr. Clark evaluated the production, use, chemical characteristics, fate and transport, toxicology, and remediation of perchlorate. Perchlorates form the basis of solid rocket fuels and have recently been detected in water supplies in the United States. The results of this research

were presented to the USEPA, National GroundWater, and ultimately published in a recent book entitled *Perchlorate in the Environment.*

**Client – Confidential, Los Angeles, California**

Dr. Clark is performing a comprehensive review of the potential for pharmaceuticals and their by-products to impact groundwater and surface water supplies. This evaluation will include a review if available data on the history of pharmaceutical production in the United States; the chemical characteristics of various pharmaceuticals; environmental fate and transport; uptake by xenobiotics; the potential effects of pharmaceuticals on water treatment systems; and the potential threat to public health. The results of the evaluation may be used as a briefing tool for non-public health professionals.

## PUBLIC HEALTH/TOXICOLOGY

**Client: Brayton Purcell, Novato, California**

Dr. Clark performed a toxicological assessment of residents exposed to methyl-tertiary butyl ether (MTBE) from leaking underground storage tanks (LUSTs) adjacent to the subject property. The symptomology of residents and guests of the subject property were evaluated against the known outcomes in published literature to exposure to MTBE. The study found that residents had been exposed to MTBE in their drinking water; that concentrations of MTBE detected at the site were above regulatory guidelines; and, that the symptoms and outcomes expressed by residents and guests were consistent with symptoms and outcomes documented in published literature.

**Client: Confidential, San Francisco, California**

Identified and analyzed fifty years of epidemiological literature on workplace exposures to heavy metals. This research resulted in a summary of the types of cancer and non-cancer diseases associated with occupational exposure to chromium as well as the mortality and morbidity rates.

**Client: Confidential, San Francisco, California**

Summarized major public health research in United States. Identified major public health research efforts within United States over last twenty years. Results were used as a briefing tool for non-public health professionals.

**Client: Confidential, San Francisco, California**

Quantified the potential multi-pathway dose received by humans from a pesticide applied indoors. Part of team that developed exposure model and evaluated exposure concentrations in a comprehensive report on the plausible range of doses received by a specific person. This evaluation was used in the support of litigation.

**Client: Covanta Energy, Westwood, California**

Evaluated health risk from metals in biosolids applied as soil amendment on agricultural lands. The biosolids were created at a forest waste cogeneration facility using 96% whole tree wood chips and 4 percent green waste. Mass loading calculations were used to estimate Cr(VI) concentrations in agricultural soils based on a maximum loading rate of 40 tons of biomass per acre of agricultural soil. The results of the study were used by the Regulatory agency to determine that the application of biosolids did not constitute a health risk to workers applying the biosolids or to residences near the agricultural lands.

**Client – United Kingdom Environmental Agency**

Oversaw a comprehensive toxicological evaluation of methyl-*tertiary* butyl ether (M*t*BE) for the United Kingdom's Environment Agency. The evaluation included available data on the production, use, chemical characteristics, fate and transport, toxicology, and remediation of M*t*BE. The results of the evaluation have been used as a briefing tool for public health professionals.

**Client – Confidential, Los Angeles, California**

Prepared comprehensive evaluation of *tertiary* butyl alcohol (TBA) in municipal drinking water system. TBA is the primary breakdown product of M*t*BE, and is suspected to be the primary cause of M*t*BE toxicity. This evaluation will include available information on the production, use, chemical characteristics, fate and transport in the environment, absorption, distribution, routes of detoxification, metabolites, carcinogenic potential, and remediation of TBA. The results of the evaluation were used as a briefing tool for non-public health professionals.

**Client – Confidential, Los Angeles, California**

Prepared comprehensive evaluation of methyl *tertiary* butyl ether (MTBE) in municipal drinking water system. MTBE is a chemical added to gasoline to increase the octane

rating and to meet Federally mandated emission criteria. The evaluation included available data on the production, use, chemical characteristics, fate and transport, toxicology, and remediation of MTBE. The results of the evaluation have been were used as a briefing tool for non-public health professionals.

**Client – Ministry of Environment, Lands & Parks, British Columbia**

Dr. Clark assisted in the development of water quality guidelines for methyl tertiary-butyl ether (MTBE) to protect water uses in British Columbia (BC). The water uses to be considered includes freshwater and marine life, wildlife, industrial, and agricultural (e.g., irrigation and livestock watering) water uses. Guidelines from other jurisdictions for the protection of drinking water, recreation and aesthetics were to be identified.

**Client: Confidential, Los Angeles, California**

Prepared physiologically based pharmacokinetic (PBPK) assessment of lead risk of receptors at middle school built over former industrial facility. This evaluation is being used to determine cleanup goals and will be basis for regulatory closure of site.

**Client: Kaiser Venture Incorporated, Fontana, California**

Prepared PBPK assessment of lead risk of receptors at a 1,100-acre former steel mill. This evaluation was used as the basis for granting closure of the site by lead regulatory agency.

**RISK ASSESSMENTS/REMEDIAL INVESTIGATIONS**

**Client: Confidential, Atlanta, Georgia**

Researched potential exposure and health risks to community members potentially exposed to creosote, polycyclic aromatic hydrocarbons, pentachlorophenol, and dioxin compounds used at a former wood treatment facility. Prepared a comprehensive toxicological summary of the chemicals of concern, including the chemical characteristics, absorption, distribution, and carcinogenic potential. Prepared risk characterization of the carcinogenic and non-carcinogenic chemicals based on the exposure assessment to quantify the potential risk to members of the surrounding community. This evaluation was used to help settle class-action tort.

**Client: Confidential, Escondido, California**

Prepared comprehensive Preliminary Endangerment Assessment (PEA) of dense non-aqueous liquid phase hydrocarbon (chlorinated solvents) contamination at a former printed circuit board manufacturing facility. This evaluation was used for litigation support and may be used as the basis for reaching closure of the site with the lead regulatory agency.

**Client: Confidential, San Francisco, California**

Summarized epidemiological evidence for connective tissue and autoimmune diseases for product liability litigation. Identified epidemiological research efforts on the health effects of medical prostheses. This research was used in a meta-analysis of the health effects and as a briefing tool for non-public health professionals.

**Client: Confidential, Bogotá, Columbia**

Prepared comprehensive evaluation of the potential health risks associated with the redevelopment of a 13.7 hectares plastic manufacturing facility in Bogotá, Colombia The risk assessment was used as the basis for the remedial goals and closure of the site.

**Client: Confidential, Los Angeles, California**

Prepared comprehensive human health risk assessment of students, staff, and residents potentially exposed to heavy metals (principally cadmium) and VOCs from soil and soil vapor at 12-acre former crude oilfield and municipal landfill. The site is currently used as a middle school housing approximately 3,000 children. The evaluation determined that the site was safe for the current and future uses and was used as the basis for regulatory closure of site.

**Client: Confidential, Los Angeles, California**

Managed remedial investigation (RI) of heavy metals and volatile organic chemicals (VOCs) for a 15-acre former manufacturing facility. The RI investigation of the site included over 800 different sampling locations and the collection of soil, soil gas, and groundwater samples. The site is currently used as a year round school housing approximately 3,000 children. The Remedial Investigation was performed in a manner

that did not interrupt school activities and met the time restrictions placed on the project by the overseeing regulatory agency. The RI Report identified the off-site source of metals that impacted groundwater beneath the site and the sources of VOCs in soil gas and groundwater. The RI included a numerical model of vapor intrusion into the buildings at the site from the vadose zone to determine exposure concentrations and an air dispersion model of VOCs from the proposed soil vapor treatment system. The Feasibility Study for the Site is currently being drafted and may be used as the basis for granting closure of the site by DTSC.

**Client: Confidential, Los Angeles, California**

Prepared comprehensive human health risk assessment of students, staff, and residents potentially exposed to heavy metals (principally lead), VOCs, SVOCs, and PCBs from soil, soil vapor, and groundwater at 15-acre former manufacturing facility. The site is currently used as a year round school housing approximately 3,000 children. The evaluation determined that the site was safe for the current and future uses and will be basis for regulatory closure of site.

**Client: Confidential, Los Angeles, California**

Prepared comprehensive evaluation of VOC vapor intrusion into classrooms of middle school that was former 15-acre industrial facility. Using the Johnson-Ettinger Vapor Intrusion model, the evaluation determined acceptable soil gas concentrations at the site that did not pose health threat to students, staff, and residents. This evaluation is being used to determine cleanup goals and will be basis for regulatory closure of site.

Client –Dominguez Energy, Carson, California

Prepared comprehensive evaluation of the potential health risks associated with the redevelopment of 6-acre portion of a 500-acre oil and natural gas production facility in Carson, California. The risk assessment was used as the basis for closure of the site.

**Kaiser Ventures Incorporated, Fontana, California**

Prepared health risk assessment of semi-volatile organic chemicals and metals for a fifty-year old wastewater treatment facility used at a 1,100-acre former steel mill. This evaluation was used as the basis for granting closure of the site by lead regulatory agency.

ANR Freight - Los Angeles, California

Prepared a comprehensive Preliminary Endangerment Assessment (PEA) of petroleum hydrocarbon and metal contamination of a former freight depot. This evaluation was as the basis for reaching closure of the site with lead regulatory agency.

**Kaiser Ventures Incorporated, Fontana, California**

Prepared comprehensive health risk assessment of semi-volatile organic chemicals and metals for 23-acre parcel of a 1,100-acre former steel mill. The health risk assessment was used to determine clean up goals and as the basis for granting closure of the site by lead regulatory agency. Air dispersion modeling using ISCST3 was performed to determine downwind exposure point concentrations at sensitive receptors within a 1 kilometer radius of the site. The results of the health risk assessment were presented at a public meeting sponsored by the Department of Toxic Substances Control (DTSC) in the community potentially affected by the site.

**Unocal Corporation - Los Angeles, California**

Prepared comprehensive assessment of petroleum hydrocarbons and metals for a former petroleum service station located next to sensitive population center (elementary school). The assessment used a probabilistic approach to estimate risks to the community and was used as the basis for granting closure of the site by lead regulatory agency.

**Client: Confidential, Los Angeles, California**

Managed oversight of remedial investigation most contaminated heavy metal site in California. Lead concentrations in soil excess of 68,000,000 parts per billion (ppb) have been measured at the site. This State Superfund Site was a former hard chrome plating operation that operated for approximately 40-years.

**Client: Confidential, San Francisco, California**

Coordinator of regional monitoring program to determine background concentrations of metals in air. Acted as liaison with SCAQMD and CARB to perform co-location sampling and comparison of accepted regulatory method with ASTM methodology.

**Client: Confidential, San Francisco, California**

Analyzed historical air monitoring data for South Coast Air Basin in Southern California and potential health risks related to ambient concentrations of carcinogenic metals and volatile organic compounds. Identified and reviewed the available literature and calculated risks from toxins in South Coast Air Basin.

**IT Corporation, North Carolina**

Prepared comprehensive evaluation of potential exposure of workers to air-borne VOCs at hazardous waste storage facility under SUPERFUND cleanup decree. Assessment used in developing health based clean-up levels.

## Professional Associations

American Public Health Association (APHA)
Association for Environmental Health and Sciences (AEHS)
American Chemical Society (ACS)
California Redevelopment Association (CRA)
International Society of Environmental Forensics (ISEF)
Society of Environmental Toxicology and Chemistry (SETAC)

## Publications and Presentations:

### Books and Book Chapters

Sullivan, P., **J.J. J. Clark,** F.J. Agardy, and P.E. Rosenfeld. (2007). *Synthetic Toxins In The Food, Water and Air of American Cities*. Elsevier, Inc. Burlington, MA.

Sullivan, P. and **J.J. J. Clark**. 2006. *Choosing Safer Foods, A Guide To Minimizing Synthetic Chemicals In Your Diet*. Elsevier, Inc. Burlington, MA.

Sullivan, P., Agardy, F.J., and **J.J.J. Clark**. 2005. *The Environmental Science of Drinking Water*. Elsevier, Inc. Burlington, MA.

Sullivan, P.J., Agardy, F.J., **Clark, J.J.J.** 2002. *America's Threatened Drinking Water: Hazards and Solutions*. Trafford Publishing, Victoria B.C.

**Clark, J.J.J.** 2001. "TBA: Chemical Properties, Production & Use, Fate and Transport, Toxicology, Detection in Groundwater, and Regulatory Standards" in *Oxygenates in the Environment.* Art Diaz, Ed.. Oxford University Press: New York.

**Clark, J.J.J.** 2000. "Toxicology of Perchlorate" in *Perchlorate in the Environment.* Edward Urbansky, Ed. Kluwer/Plenum: New York.

**Clark, J.J.J.** 1995. Probabilistic Forecasting of Volatile Organic Compound Concentrations At The Soil Surface From Contaminated Groundwater. UMI.

Baker, J.; **Clark, J.J.J.**; Stanford, J.T. 1994. Ex Situ Remediation of Diesel Contaminated Railroad Sand by Soil Washing. Principles and Practices for Diesel Contaminated Soils, Volume III. P.T. Kostecki, E.J. Calabrese, and C.P.L. Barkan, eds. Amherst Scientific Publishers, Amherst, MA. pp 89-96.

**Journal and Proceeding Articles**

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 Equialency Quotients (TEQ) In Two Populations Near Wood Treatment Facilities. Organohalogen Compounds, Volume 70 (2008) page 002254.

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, Volume 70 (2008) page 000527

Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** (2007). "Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." *Environmental Research.* 105:194-199.

Rosenfeld, P.E., **Clark, J. J.,** Hensley, A.R., and Suffet, I.H. 2007. "The Use Of An Odor Wheel Classification For The Evaluation of Human Health Risk Criteria For Compost Facilities" Water Science & Technology. 55(5): 345-357.

Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** 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, August 21 – 25, 2006. Radisson SAS Scandinavia Hotel in Oslo Norway.

Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2005. "The Value Of An Odor Quality Classification Scheme For Compost Facility Evaluations" The U.S. Composting Council's 13th Annual Conference January 23 - 26, 2005, Crowne Plaza Riverwalk, San Antonio, TX.

Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2004. "The Value Of An Odor Quality Classification Scheme For Urban Odor" WEFTEC 2004. 77th Annual Technical Exhibition & Conference October 2 - 6, 2004, Ernest N. Morial Convention Center, New Orleans, Louisiana.

**Clark, J.J.J**. 2003. "Manufacturing, Use, Regulation, and Occurrence of a Known Endocrine Disrupting Chemical (EDC), 2,4-Dichlorophnoxyacetic Acid (2,4-D) in California Drinking Water Supplies." National Groundwater Association Southwest Focus Conference: Water Supply and Emerging Contaminants. Minneapolis, MN. March 20, 2003.

Rosenfeld, P. and **J.J.J. Clark**. 2003. "Understanding Historical Use, Chemical Properties, Toxicity, and Regulatory Guidance" National Groundwater Association Southwest Focus Conference: Water Supply and Emerging Contaminants. Phoenix, AZ. February 21, 2003.

**Clark, J.J.J.**, Brown A. 1999. Perchlorate Contamination: Fate in the Environment and Treatment Options. In Situ and On-Site Bioremediation, Fifth International Symposium. San Diego, CA, April, 1999.

**Clark, J.J.J.** 1998. Health Effects of Perchlorate and the New Reference Dose (RfD). Proceedings From the Groundwater Resource Association Seventh Annual Meeting, Walnut Creek, CA, October 23, 1998.

Browne, T., **Clark, J.J.J.** 1998. Treatment Options For Perchlorate In Drinking Water. Proceedings From the Groundwater Resource Association Seventh Annual Meeting, Walnut Creek, CA, October 23, 1998.

**Clark, J.J.J.**, Brown, A., Rodriguez, R. 1998. The Public Health Implications of MtBE and Perchlorate in Water: Risk Management Decisions for Water Purveyors. Proceedings of the National Ground Water Association, Anaheim, CA, June 3-4, 1998.

**Clark J.J.J.**, Brown, A., Ulrey, A. 1997. Impacts of Perchlorate On Drinking Water In The Western United States. U.S. EPA Symposium on Biological and Chemical Reduction of Chlorate and Perchlorate, Cincinnati, OH, December 5, 1997.

**Clark, J.J.J.**; Corbett, G.E.; Kerger, B.D.; Finley, B.L.; Paustenbach, D.J. 1996. Dermal Uptake of Hexavalent Chromium In Human Volunteers: Measures of Systemic Uptake From Immersion in Water At 22 PPM. Toxicologist. 30(1):14.

Dodge, D.G.; **Clark, J.J.J.**; Kerger, B.D.; Richter, R.O.; Finley, B.L.; Paustenbach, D.J. 1996. Assessment of Airborne Hexavalent Chromium In The Home Following Use of Contaminated Tapwater. Toxicologist. 30(1):117-118.

Paulo, M.T.; Gong, H., Jr.; **Clark, J.J.J.** (1992). Effects of Pretreatment with Ipratroprium Bromide in COPD Patients Exposed to Ozone. American Review of Respiratory Disease. 145(4):A96.

Harber, P.H.; Gong, H., Jr.; Lachenbruch, A.; **Clark, J.**; Hsu, P. (1992). Respiratory Pattern Effect of Acute Sulfur Dioxide Exposure in Asthmatics. American Review of Respiratory Disease. 145(4):A88.

McManus, M.S.; Gong, H., Jr.; Clements, P.; **Clark, J.J.J.** (1991). Respiratory Response of Patients With Interstitial Lung Disease To Inhaled Ozone. American Review of Respiratory Disease. 143(4):A91.

Gong, H., Jr.; Simmons, M.S.; McManus, M.S.; Tashkin, D.P.; Clark, V.A.; Detels, R.; **Clark, J.J.** (1990). Relationship Between Responses to Chronic Oxidant and Acute

Ozone Exposures in Residents of Los Angeles County. American Review of Respiratory Disease. 141(4):A70.

Tierney, D.F. and **J.J.J. Clark.** (1990). Lung Polyamine Content Can Be Increased By Spermidine Infusions Into Hyperoxic Rats. American Review of Respiratory Disease. 139(4):A41.

# EXHIBIT B

794 Sawnee Bean Road
Thetford Center VT 05075

Norman Marshall, President
(802) 356-2969

nmarshall@smartmobility.com

November 5, 2024

Aidan P. Marshall
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

**Subject: Inland Empire North Logistics Center**

Dear Mr. Marshall,

I have reviewed trip generation, traffic, greenhouse gas (GHG) and vehicle miles traveled (VMT) impacts of the proposed Inland Empire North Logistics Center in the Town of Apple Valley as presented in a Draft Environmental Impact Report dated September 2024 ("DEIR"). I make the following findings:

1) Trip generation could be significantly higher than assumed in the DEIR, particularly given the speculative nature of its future use.

2) If trip generation is underestimated in the DEIR, traffic impacts also are underestimated. This could result in additional deficiencies at other locations and/or more extensive mitigation required at the intersections where the DEIR proposes mitigation.

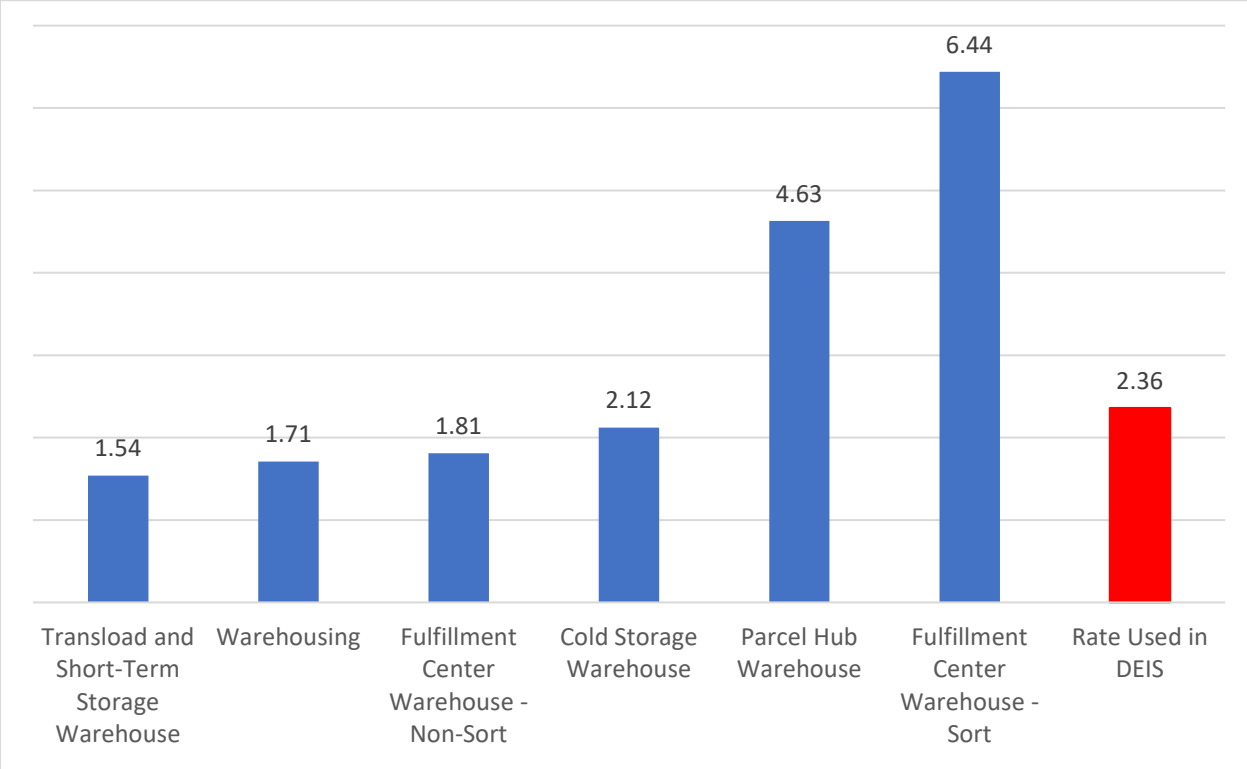
3) If trip generation is underestimated in the DEIR, air pollution and GHG impacts also are underestimated.

4) The DEIR applies the San Bernadino Countywide Traffic Analysis Model (SBTAM) to estimate project VMT and concludes that the project would not result in a significant VMT impact. The DEIR analysis follows Town and County guidelines. However, the SBTAM estimates are not very reliable in this transitional area between an urbanized area and a mostly unpopulated desert.

10-36

Trip Generation – The DEIR states: "The proposed project is a speculative warehouse where the tenant(s) and function as a potential short term storage facility, distribution center, fulfillment center, etc. is unknown." (DEIR, Appendix J, Traffic Impact Analysis, p. 27) Warehouse trip generation rates vary greatly by type of warehouse. DEIR Appendix J gives a range of potential warehouse trip generation rates in Table 5.1 (p. 27). These rates are reproduced in the figure below.

*Figure 1: Warehouse Trip Generation Rates*




The DEIR contends that the highest rate is not applicable to this project because "the most intensive type of warehouse" use – a sort fulfillment center "is not expected." However, given that the DEIR describes the project as "speculative" with an "unknown" function, its assertion that this high intensity usage is "not expected" lacks a sufficient factual basis. In the absence of definitive information about the project's future use, or a condition of approval restricting the project from operating as a sort fulfillment center, it is inappropriate to rule out this scenario.

The daily trip generation rate applied - 2.36 per 1000 sq. ft. - is derived by averaging the other rates after excluding the highest rate. This approach produces a rate that does not correspond to any established category and likely underestimates the project's potential impact. Instead, the MND should use the highest rate, 6.44 trips per 1000 sq. ft. per day to account for the possibility of intensive use. Alternatively, a condition of approval could require that actual trip generation not exceed the rate assumed in the DEIR, with verification of compliance prior to the start of construction.

Applying the rate of 6.44 per 1000 sq. ft., to 2,604.45 sq. ft. results in 16,773 trips per day, i.e., over 10,000 more trips per day than the 6,146 trips per day calculated in the DEIR. (DEIR, Appendix J, Table 5-2, p. 28)

10-37

Traffic Impacts – The DEIR traffic analysis (Appendix J) forecasts traffic impacts from the project using the trip generation estimate discussed in the previous section. These impacts are forecast to result in level-of-service ("LOS") deficiencies at multiple locations. In order to address the deficiencies, the DEIR proposes a set of intersection improvements and calculates Fair Share contributions based on the percentage of traffic contributed by the project. (DEIR, Appendix J, p. 10)

If trip generation is underestimated in the DEIR, traffic impacts also are underestimated. This could result in additional deficiencies at other locations and/or more extensive mitigation required at the intersections where the DEIR proposes mitigation.

10-38

Air Pollution and GHG Emissions – The CalEEMod air pollution and GHG estimates presented in DEIR Appendix B1 also are based on the trip generation estimate discussed above. If trip generation is underestimated in the DEIR, air pollution and GHG impacts also are underestimated.

10-39

Vehicle Miles Traveled ("VMT") – The DEIR applies the San Bernadino Countywide Traffic Analysis Model (SBTAM) to estimate project VMT and concludes that the project would not result in a significant VMT impact. (DEIR, Appendix J, p. 15).

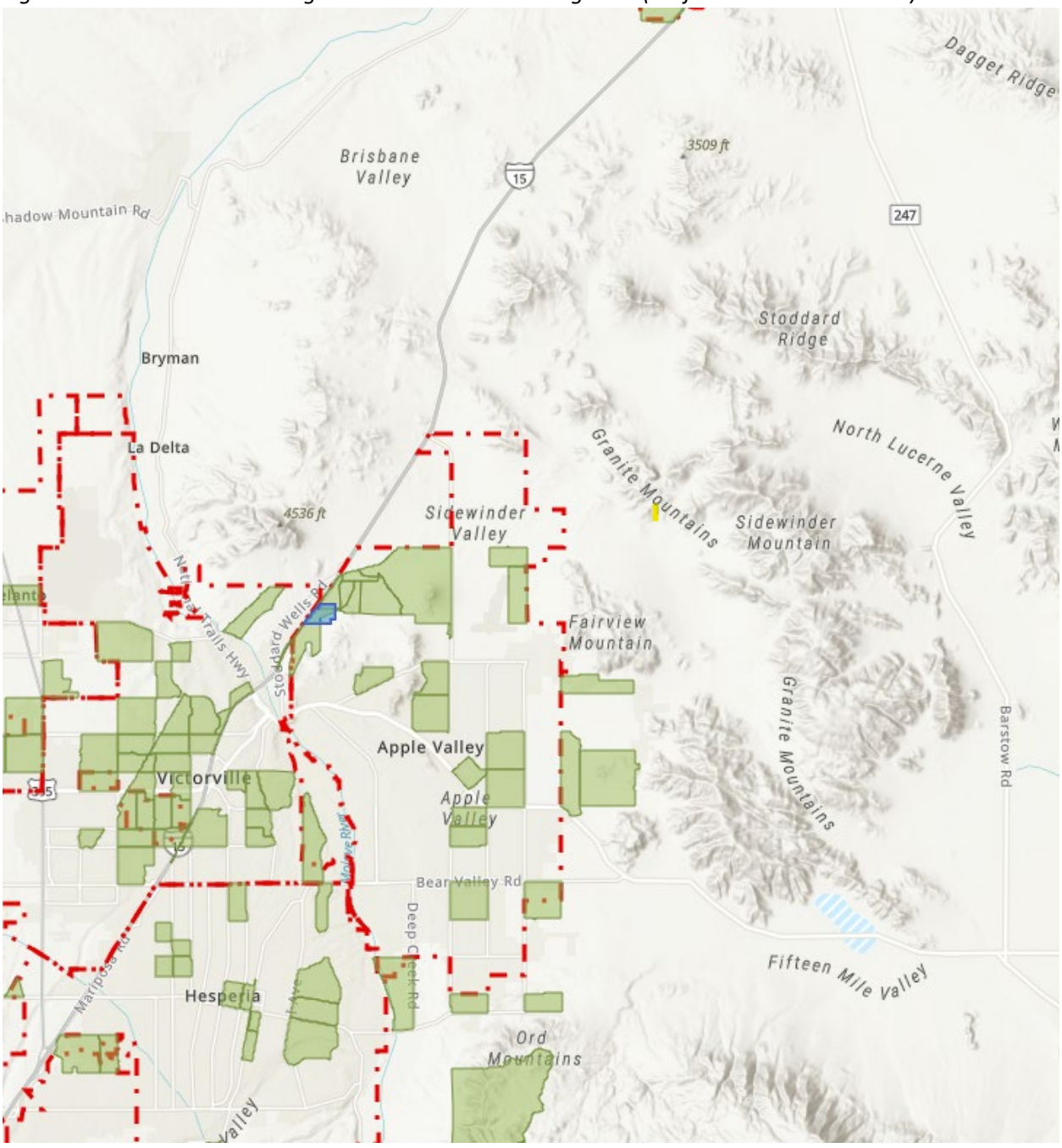
There are significant limitations in the ability of SBTAM to accurately estimate VMT at the project location because it is at the edge of an urbanized area adjacent to a large mostly unpopulated desert area. In the model, Transportation Analysis Zones ("TAZs") in the vicinity of the project vary greatly in size, which complicates estimating VMT. Much of the VMT in the larger TAZs is "intrazonal,", i.e. VMT representing trips completed within a single TAZ, and intrazonal VMT is only estimated crudely in the model.

The SBCTA VMT Screening Tool[1] is based on SBTAM and shares the same TAZ structure. Figure 2 shows Low-VMT Generating TAZs for the Town of Apple Valley's designated VMT metric, OD VMT Per Service Population.

10-40

[1] https://sbcta-gis.sanbag.ca.gov/gisportal/apps/webappviewer/index.html?id=3cd02c669e3442e79f732be92d26d320

*Figure 2: SBCTA VMT Screening Tool Low VMT Generating TAZs (Project Site Shown in Blue)*




10-40 Cont.

In Figure 2, most of the project site, shown in blue, is shown as within a low-VMT generation TAZ, but some of the site is not, and the site is bordered by large areas that are not in low VMT-generating TAZs. In this transitional area between an urbanized area and a mostly unpopulated desert, the model distinctions between adjacent TAZs are not reliable.

10-40 Cont.

Sincerely,

Norman L. Marshall

Norman L. Marshall

**Resume**

## NORMAN L. MARSHALL, PRESIDENT

nmarshall@smartmobility.com

**EDUCATION:**

Master of Science in Engineering Sciences, Dartmouth College, Hanover, NH, 1982
Bachelor of Science in Mathematics, Worcester Polytechnic Institute, Worcester, MA, 1977

**PROFESSIONAL EXPERIENCE: (37 Years, 23 at Smart Mobility, Inc.)**

Norm Marshall helped found Smart Mobility, Inc. in 2001. Prior to this, he was at RSG for 14 years where he developed a national practice in travel demand modeling. He specializes in analyzing the relationships between the built environment and travel behavior and doing planning that coordinates multi-modal transportation with land use and community needs.

### Regional Land Use/Transportation Scenario Planning

Portland Area Comprehensive Transportation System (PACTS) – the Portland Maine Metropolitan Planning Organization. Updating regional travel demand model with new data (including AirSage), adding a truck model, and multiclass assignment including differentiation between cash toll and transponder payments.

Loudoun County Virginia Dynamic Traffic Assignment – Enhanced subarea travel demand model to include Dynamic Traffic Assignment (Cube). Model being used to better understand impacts of roadway expansion on induced travel.

Vermont Agency of Transportation-Enhanced statewide travel demand model to evaluate travel impacts of closures and delays resulting from severe storm events. Model uses innovate Monte Carlo simulations process to account for combinations of failures.

California Air Resources Board – Led team including the University of California in $250k project that reviewed the ability of the new generation of regional activity-based models and land use models to accurately account for greenhouse gas emissions from alternative scenarios including more compact walkable land use and roadway pricing. This work included hands-on testing of the most complex travel demand models in use in the U.S. today.

Climate Plan (California statewide) – Assisted large coalition of groups in reviewing and participating in the target setting process required by Senate Bill 375 and administered by the California Air Resources Board to reduce future greenhouse gas emissions through land use measures and other regional initiatives.

Chittenden County (2060 Land use and Transportation Vision Burlington Vermont region) – led extensive public visioning project as part of MPO's long-range transportation plan update.

Flagstaff Metropolitan Planning Organization – Implemented walk, transit and bike models within regional travel demand model. The bike model includes skimming bike networks including on-road and off-road bicycle facilities with a bike level of service established for each segment.

Chicago Metropolis Plan and Chicago Metropolis Freight Plan (6-county region)— developed alternative transportation scenarios, made enhancements in the regional travel demand model, and used the enhanced

model to evaluate alternative scenarios including development of alternative regional transit concepts. Developed multi-class assignment model and used it to analyze freight alternatives including congestion pricing and other peak shifting strategies.

**Municipal Planning**

City of Grand Rapids – Michigan Street Corridor – developed peak period subarea model including non-motorized trips based on urban form. Model is being used to develop traffic volumes for several alternatives that are being additional analyzed using the City's Synchro model

City of Omaha - Modified regional travel demand model to properly account for non-motorized trips, transit trips and shorter auto trips that would result from more compact mixed-use development. Scenarios with different roadway, transit, and land use alternatives were modeled.

City of Dublin (Columbus region) – Modified regional travel demand model to properly account for non-motorized trips and shorter auto trips that would result from more compact mixed-use development. The model was applied in analyses for a new downtown to be constructed in the Bridge Street corridor on both sides of an historic village center.

City of Portland, Maine – Implemented model improvements that better account for non-motorized trips and interactions between land use and transportation and applied the enhanced model to two subarea studies.

City of Honolulu – Kaka'ako Transit Oriented Development (TOD) – applied regional travel demand model in estimating impacts of proposed TOD including estimating internal trip capture.

City of Burlington (Vermont) Transportation Plan – Led team that developing Transportation Plan focused on supporting increased population and employment without increases in traffic by focusing investments and policies on transit, walking, biking and Transportation Demand Management.

**Transit Planning**

Regional Transportation Authority (Chicago) and Chicago Metropolis 2020 – evaluated alternative 2020 and 2030 system-wide transit scenarios including deterioration and enhance/expand under alternative land use and energy pricing assumptions in support of initiatives for increased public funding.

Capital Metropolitan Transportation Authority (Austin, TX) Transit Vision – analyzed the regional effects of implementing the transit vision in concert with an aggressive transit-oriented development plan developed by Calthorpe Associates. Transit vision includes commuter rail and BRT.

Bus Rapid Transit for Northern Virginia HOT Lanes (Breakthrough Technologies, Inc and Environmental Defense.) – analyzed alternative Bus Rapid Transit (BRT) strategies for proposed privately-developing High Occupancy Toll lanes on I-95 and I-495 (Capital Beltway) including different service alternatives (point-to-point services, trunk lines intersecting connecting routes at in-line stations, and hybrid).

**Roadway Corridor Planning**

I-30 Little Rock Arkansas – Developed enhanced version of regional travel demand model that integrates TransCAD with open source Dynamic Traffic Assignment (DTA) software, and used to model I-30 alternatives. Freeway bottlenecks are modeled much more accurately than in the base TransCAD model.

South Evacuation Lifeline (SELL) – In work for the South Carolina Coastal Conservation League, used Dynamic Travel Assignment (DTA) to estimate evaluation times with different transportation alternatives in coastal South Caroline including a new proposed freeway.

Hudson River Crossing Study (Capital District Transportation Committee and NYSDOT) – Analyzing long term capacity needs for Hudson River bridges which a special focus on the I-90 Patroon Island Bridge where a microsimulation VISSIM model was developed and applied.

**PUBLICATIONS AND PRESENTATIONS (partial list)**

DTA Love: Co-leader of workshop on Dynamic Traffic Assignment at the June 2019 Transportation Research Board Planning Applications Conference.

Forecasting the Impossible: The Status Quo of Estimating Traffic Flows with Static Traffic Assignment and the Future of Dynamic Traffic Assignment. *Research in Transportation Business and Management* 2018.

Assessing Freeway Expansion Projects with Regional Dynamic Traffic Assignment. Presented at the August 2018 Transportation Research Board Tools of the Trade Conference on Transportation Planning for Small and Medium Sized Communities.

Vermont Statewide Resilience Modeling. With Joseph Segale, James Sullivan and Roy Schiff. Presented at the May 2017 Transportation Research Board Planning Applications Conference.

Assessing Freeway Expansion Projects with Regional Dynamic Traffic Assignment. Presented at the May 2017 Transportation Research Board Planning Applications Conference.

Pre-Destination Choice Walk Mode Choice Modeling. Presented at the May 2017 Transportation Research Board Planning Applications Conference.

A Statistical Model of Regional Traffic Congestion in the United States, presented at the 2016 Annual Meeting of the Transportation Research Board.

**MEMBERSHIPS/AFFILIATIONS**

Associate Member, Transportation Research Board (TRB)

Member and Co-Leader Project for Transportation Modeling Reform, Congress for the New Urbanism (CNU)

**Mojave Desert Air Quality Management District**
**Brad Poiriez, *Executive Director***
14306 Park Avenue, Victorville, CA 92392-2310
760.245.1661 • Fax 760.245.2022
www.MDAQMD.ca.gov • @MDAQMD

November 6, 2024

Rick Hirsch, Planner
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307

**Project: Inland Empire North Logistics Center Apple Valley Project**

Dear Mr. Hirsch:

The Mojave Desert Air Quality Management District (District) has received a request for comments on the Draft Environmental Impact Report (DEIR) for the proposed Inland Empire North Logistics Center Project in Apple Valley. The Project includes the construction and operation of two industrial/warehouse buildings totaling approximately 2,604,446 square feet on approximately 177.74 acres (Figure 2, Site Plan). Building 1, the northernmost building, would be approximately 1,507,326 square feet, and Building 2, the southernmost building, would be approximately 1,097,120 square feet. The Project would involve associated improvements, including loading docks, truck and vehicle parking, and landscaped areas. 12-1

The District has reviewed the project notice and agrees with the findings of the DEIR that the even after implementation of various mitigation measures, the Project operation would still exceed the MDAQMD thresholds forNOx and PM10. There are no additional feasible mitigation measures beyond those already identified exist that would reduce these emissions to levels that are less than significant. Therefore, even with the incorporation of mitigation, long-term impacts associated with a cumulatively considerable net increase of criteria pollutants for which the Project region is non-attainment would be significant and unavoidable. Although MDAQMD applauds the City for including mitigation measures that promote the use of zero-emission on-site equipment, vehicles, and trucks, the District is concerned that the Project's operation may negatively impact air quality in the surrounding community. In order further mitigate emissions the project may generate in the future; the District recommends the City to require the development of an electric vehicle and heavy-duty truck charging station to incentivize and accommodate battery electric zero-emission trucks to provide freight services. 12-2

Thank you for the opportunity to review this planning document. If you have any questions regarding this letter, please contact me at (760) 245-1661, extension 6726, or Bertrand Gaschot at extension 4020. 12-3

Sincerely,

**Chris Anderson**
Planning and Air Monitoring Supervisor

CA/bg Apple Valley Inland Empire North Logistics Center 2024 06 Nov

ADAMS BROADWELL JOSEPH & CARDOZO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037
TEL: (650) 589-1660
FAX: (650) 589-5062
ssannadan@adamsbroadwell.com

SACRAMENTO OFFICE
520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721
TEL: (916) 444-6201
FAX: (916) 444-6209

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
RICHARD M. FRANCO
ANDREW J. GRAF
TANYA A. GULESSERIAN
DARION N. JOHNSTON
RACHAEL E. KOSS
AIDAN P. MARSHALL
ALAURA R. McGUIRE
TARA C. RENGIFO

*Of Counsel*
MARC D. JOSEPH
DANIEL L. CARDOZO

October 10, 2024

**VIA EMAIL AND U.S. MAIL**

Daniel Alcayaga, AICP, Planning Manager
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307
**Email:** dalcayaga@applevalley.org; planning@applevalley.org

La Vonda M. Pearson, Town Clerk
Town of Apple Valley
14955 Dale Evans Pkwy
Apple Valley, CA 92307
**Email:** townclerk@applevalley.org

**VIA EMAIL ONLY**

Richard Hirsch, Planning Manager
**Email:** rhirsch@interwestgrp.com

**Re: Request for Mailed Notice of Actions and Hearings – Inland Empire North Logistics Center Apple Valley Project (SCH No. 2023090366)**

Dear Mr. Alcayaga, Ms. Pearson, and Mr. Hirsch:

We are writing on behalf of 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 Inland Empire North Logistics Center Apple Valley Project (SCH No. 2023090366), proposed by FGFW IV, LLC ("Applicant"), as well as a copy of the environmental review document when it is made available for public review.

13-1

The Project would include construction of two industrial/warehouse buildings and associated improvements on approximately 178 acres of land in the Town of Apple Valley, San Bernardino County, California. Building 1 would be approximately 1,507,326 square feet (SF) while Building 2 would be approximately 1,097,120 SF. The Project site is located directly east of I-15, north of Falchion Road and south of Norco Street in the northwestern part of the Town of Apple Valley and consists of Assessor's Parcel Number 0472-031-08.

**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, 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.

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

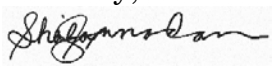
13-1 Cont.

**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

If you have any questions, please call me at (650) 589-1660 or email me at ssannadan@adamsbroadwell.com. Thank you for your assistance with this matter.

Sincerely,



Sheila M. Sannadan
Legal Assistant

SMS:acp

ADAMS BROADWELL JOSEPH & CARDOZO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037
TEL: (650) 589-1660
FAX: (650) 589-5062
ssannadan@adamsbroadwell.com

SACRAMENTO OFFICE
520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721
TEL: (916) 444-6201
FAX: (916) 444-6209

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
RICHARD M. FRANCO
ANDREW J. GRAF
TANYA A. GULESSERIAN
DARION N. JOHNSTON
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO

*Of Counsel*
MARC D. JOSEPH
DANIEL L. CARDOZO

October 10, 2024

**VIA EMAIL AND U.S. MAIL**

Daniel Alcayaga, AICP, Planning Manager
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307
**Email:** dalcayaga@applevalley.org; planning@applevalley.org

La Vonda M. Pearson, Town Clerk
Town of Apple Valley
14955 Dale Evans Pkwy
Apple Valley, CA 92307
**Email:** townclerk@applevalley.org

**VIA EMAIL ONLY**

Richard Hirsch, Planning Manager
**Email:** rhirsch@interwestgrp.com

Public Records Act Coordinator
**Email:** records@applevalley.org

**Re**: **Request for Immediate Access to Public Records – Inland Empire North Logistics Center Apple Valley Project (SCH No. 2023090366)**

Dear Mr. Alcayaga, Ms. Pearson, Mr. Hirsch, and Public Records Act Coordinator:

We are writing on behalf of Californians Allied for a Responsible Economy ("CARE CA") to request ***immediate access*** to any and all public records referring or related to the Inland Empire North Logistics Center Apple Valley Project (SCH No. 2023090366), proposed by FGFW IV, LLC ("Applicant"). This request includes, but is not limited to, any and all file materials, applications, correspondence, resolutions, memos, notes, analysis, email messages, files, maps, charts, and any other documents related to the Project. *This request does not include the Draft Environmental Impact Report ("DEIR") or documents referenced or relied upon in the DEIR, which we have requested in a separate letter pursuant to the California Environmental Quality Act.* 14-1

The Project would include construction of two industrial/warehouse buildings and associated improvements on approximately 178 acres of land in the Town of Apple Valley, San Bernardino County, California. Building 1 would be approximately 1,507,326 square feet (SF) while Building 2 would be approximately 1,097,120 SF. The Project site is located directly east of I-15, north of Falchion

Road and south of Norco Street in the northwestern part of the Town of Apple Valley and consists of Assessor's Parcel Number 0472-031-08.

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 request ***immediate access*** to review the above documents pursuant to section 7922.525 of the Public Records Act, which requires public records to be "open to inspection at all times during the office hours of a state or local agency" and provides that "every person has a right to inspect any public record." Therefore, the 10-day response period applicable to a "request for a copy of records" under Section 7922.535(a) does not apply to this request.

We request access to the above records in their original form, as maintained by the agency. Pursuant to Government Code Section 7922.570, if the requested documents are in electronic format, please upload them to a file hosting program such as Dropbox, NextRequest or a similar program. Alternatively, if the electronic documents are 10 MB or less (or can be easily broken into sections of 10 MB or less), they may be emailed to me as attachments.

14-1 Cont.

We will pay for any direct costs of duplication associated with filling this request up to $200. However, please contact me at (650) 589-1660 with a cost estimate before copying/scanning the materials.

Please use the following contact information for all correspondence:

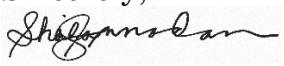
**U.S. Mail**
Sheila M. Sannadan
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

**Email**
ssannadan@adamsbroadwell.com

If you have any questions, please call me at (650) 589-1660 or email me at ssannadan@adamsbroadwell.com. Thank you for your assistance with this matter.

14-1 Cont.

Sincerely,



Sheila M. Sannadan
Legal Assistant

SMS:acp

# Appendix B

Confidential Comment Letters