Chemical Composition of MEC and Potential MC
Victorville Precision Bombing Range No. 1

General Munition Type	Type Model	Case Composition	Filler	Potential Constituent
Bomb, 100-lb, Practice	M38A2	Sheet Metal	Sand, wet sand, water, or concrete. Spotting charge contains black powder.	Nitrocellulose, Potassium Nitrate
Signal, Spotting Charge	M1A1	Tin	Black Powder, Smokeless Powder, Primer Mix	Antimony Sulfide, Dinitrotoluene, Diphenylamine, Lead Styphnate, Nitrocellulose, Pentaerythritoltetranitrate, Potassium Nitrate, Tetracene
Signal, Spotting Charge	M7	Tin	Black Powder, Dark Smoke Composition, Primer Mix	Antimony Sulfide, Dinitrotoluene, Diphenylamine, Lead Styphnate, Magnesium, Nitrocellulose, Pentaerythritoltetranitrate, Potassium, Potassium Nitrate, Tetracene
Signal, Spotting Charge	M8	Glass	FM Smoke Mixture	Titanium Tetrachloride

Source – Munitions information for Table 4.1 was supplied by the 1998 ASR, 2004 ASR Supplement, and other government reports

The report documents soil sampling and analysis conducted to evaluate the bombing range site for potential soil contaminants. Eight soil samples were collected from within the bombing range site and analyzed for metals (EPA 6010B/6020) and explosives (SW-846-8321A). No explosives were detected at concentrations greater than the laboratory reporting limit. No metals were detected at concentrations greater than EPA Regional Screening Levels for the residential or commercial scenarios.

"2. *Phase I Environmental Site Assessment, Lots 1-10, Halverson South Assemblage, Apple Valley, California. Northgate Environmental Management, Inc. October 12, 2006.*

A file review of US Army Corp files for the former Victorville PBR No. 1 was conducted during the Phase I Environmental Site Assessment. Based on the file review, the only type of munitions used on the former bombing range was the M38A2 practice bomb (100-pound sheet metal casing filled with sand), using a M1A1 spotting charge. The M1A1 spotting charge contained 3 pounds of black powder.

The files reviewed indicated a potential for select metals and explosives contamination in the soil at the former bombing range. However, soil samples collected within the bombing range did not detect contamination at the site. To further explain and clarify the findings in the IS/MND, this discussion will be added to the IS/MND."

Comment A-4 Mitigation Measure VII.1 and VII.2-These mitigation measures require qualified technical teams to detect and remove any ordnance found within the former bombing range and the area within 300 feet of the bombing target. We recommend that in areas where ordnance is found, representative soil samples be collected after ordnance removal to verify whether residual chemical constituents of concern exist at the surface or

in the subsurface and at what concentrations. Constituents of concern include, but are not limited to, perchlorate, heavy metals, manufacturing byproducts (dioxins and furans), and polycyclic aromatic hydrocarbons (PAHs). Depending on the detected concentrations of these constituents in the soil, additional soils investigations may be warranted to characterize the extent of soil impacts and for cleanup and/or disposal requirements.

Response A-4 As noted in Response A-3, the only type of munitions used at the former bombing range were M38A2 practice bombs filled with sand and a M1A1 spotting charge. The table provided in Response A-3 notes the contents of these items and the potential related constituents (metal, sand, and black power). Also as noted in Response A-3, prior soil sampling within the bombing range (for metals and explosives) did not indicate the presence of contamination at the site. Some of the soil samples were collected near observed ordnance debris, while others were collected elsewhere within the former bombing range.

Based on the potential related constitutes listed in the table above, there is no need for analysis of additional constituents. Thus, the Mitigation Measures do not need to be revised.

Comment A-5 Section V.III, Hydrology and Water Quality- Section VIII, Hydrology and Water Quality, of the IS/MND should be revised to include a full evaluation of the potential water quality impacts posed by construction and implementation of the Project on land where the former bombing range operations are known or suspected to be present.

a. The Site Plan included as Exhibit 3 of the IS/MND shows the engineered diversion channel and several storm water conveyance and retention facilities sited in the area of the former bombing range. An investigation of the soils beneath the engineered diversion channel and storm water conveyance and retention facilities may be warranted depending on the results soils testing performed during ordnance removal activities (see Comment No. 2 above).

b. Due to the potential for the onsite soils to contain elevated concentrations of various chemical constituents that may pose a threat to water quality, as a precaution, we recommendation that the Project proponent consider alternative site plan development configurations such that the engineered diversion channel and storm water conveyance and retention facilities are sited to avoid areas potentially affected by the former bombing range operations.

Response A-5 As noted in Responses A-3 and A-4, the constituents which may be found on site do not pose a threat to water quality and therefore, there is no need to consider alternative site plan development configurations.

B. San Bernardino County Sheriff's Department, May 16, 2016

Comment B-1 I am in receipt of the Notice of Intent for the Project Jupiter Distribution Warehouse with the proposed project site of the southwest comer of Navajo Road and Lafayette Street in the Town of Apple Valley. I have reviewed the notice and, based on the project location and description, do not foresee any significant public safety issues arising as a result of this project.

Response B-1 The Town thanks the Sheriff's Department for reviewing the MND and for its comment. Comment noted.

C. San Bernardino County Department of Public Works, May 24, 2016

Comment C-1 The MND/IS does not specifically address the requirement to comply with both the State (of California) Water Resources Control Board Construction General Permit (Order 2010-0014- DWQ) or the General Permit for WDR for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (Order 2013-001-DWQ). These discussions need to be included.

Response C-1 The required approvals from the State Water Resources Control Board/Regional Water Quality Control Board in regards to waste discharge requirements and the Construction General Permit are disclosed on Page 3 of the IS/MND under the heading "Other public agencies whose approval is required." The Initial Study explicitly states that the project will be required to comply with "the requirements of the State Regional Water Quality Control Board relating to water quality standards and wastewater discharge requirements." (page 41) The Initial Study further describes the pollution control measures contained in the Stormwater Management Plan for the proposed project, and compliance with the "State Water Board's General Construction Stormwater Permit." (page 42)

The Town has and will continue to assure that all applicants comply with these standards. The project is required to comply with Development Code 9.28.050.C through its conditions of approval, and that development code section also requires compliance with the applicant MS4 and General Construction Stormwater Permit.

To further clarify the requirements related to water quality. Item a,f) on IS/MND Page 41 is amended as follows:

"The proposed project will be required to connect to the Town's domestic water and sanitary sewer systems. Liberty Utilities, formerly Apple Valley Ranchos Water Company, provides water service to the site, and the Victor Valley Wastewater Reclamation Authority provides sanitary sewage treatment for the site. Both these agencies are required to comply with the requirements of the State Regional

Water Quality Control Board relating to water quality standards and wastewater discharge requirements. Furthermore, as a development project with a disturbance area of greater than 1 acre, and a significant increase in impervious surfaces, the Applicant will be required to obtain coverage under the State Water Resources Control Board (SWRCB) Construction General Permit (SWRCB Order 2010-0014-DWQ) and be consistent with the General Permit for Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (SWRCB Order 2013-0001 DWQ, or Small MS4 Permit). Each of these permits are described below:

The Construction General Permit requires the development and implementation of a stormwater pollution prevention plan (SWPPP), which would include and specify water quality best management practices (BMPs) designed to prevent pollutants from contacting stormwater and keep all products of erosion from moving off site into receiving waters. Routine inspection of all BMPs is required under the provisions of the Construction General Permit, and the SWPPP must be prepared and implemented by qualified individuals as defined by the SWRCB. The project applicant must submit a Notice of Intent (NOI) to the SWRCB to be covered by a NPDES permit and prepare the SWPPP prior to the beginning of construction. The applicant will be required to provide the Town of Apple Valley with its waste discharge identification number (WDID) as evidence that it has met the requirements of the Construction General Permit prior to beginning construction activities.

Furthermore, the SWRCB has designated the Town of Apple Valley as a Traditional Small MS4. As part of Phase II regulations promulgated by the U.S. Environmental Protection Agency, the SWRCB adopted the Small MS4 Permit, which requires MS4s serving populations of 100,000 people or less to develop and implement a stormwater management plan with the goal of reducing the discharge of pollutants to the maximum extent possible. As a permittee under the Small MS4 Permit, the Town of Apple Valley is required to condition development projects to be compliant with the standards contained in Section E.12 of the Small MS4 Permit. All development projects (that create or replace more than 5,000 square feet of impervious surfaces) seeking approvals from the Town are required integrate source control BMPs and low impact development (LID) designs into the proposed project to the maximum extent feasible to reduce the potential for pollutants to enter stormwater runoff. This includes site design best management practices (as applicable), such as minimizing impervious areas, maximizing permeability, minimizing directly connected impervious areas, creating reduced or "zero discharge" areas, incorporating trees and

landscaping, and conserving natural areas. Facilities must be designed to evapotranspire, infiltrate, harvest/use, and/or biotreat storm water to meet at least one of the hydraulic sizing design criteria contained in the Phase II Small MS4 Permit.

The Mitigation Monitoring and Reporting Program for the Specific Plan EIR requires project compliance with these water quality laws and regulations (e.g., Clean Water Act, Waste Discharge Requirements, SWRCB permits) through a combination of specific plan design standards, drainage impact fees, and general Mitigation Measures. As compliance with these permits would be required as a condition to receive authorization to construct, no impact is expected."

Comment C-2 Mitigated Negative Declaration Biological Resources section is confusing and contradictory. For example, mitigation measure IV.1 lists 29 measures, with desert tortoise fencing provisions mentioned in 11, 13, 25-29 and IV.3, along with generic measures (fueling, equipment speed, etc.), nest avoidance, and desert tortoise avoidance. To provide clarity, similar measures should be included either together, or under their own heading.

Response C-2 The commenter is incorrect. The performance standards listed in the Initial Study each identify a different component of desert tortoise avoidance and minimization techniques, and are appropriate as listed. Please note that Mitigation Measure IV.1 references the education program to be conducted for construction personnel prior to the initiation of project activities; while Mitigation Measure IV-3 references actions to be taken following the pre-construction survey by the project biologist or others.

Comment C-3 There is also conflicting information throughout the document. Section IV.1 MM 5 states that bird nests encountered would be relocated, yet most of IV.2 discusses establishing buffers. In addition, the project site is described as having "considerable barren ground as a result of site disturbance and previous sheep grazing on the site (Discussion of Impacts Section a); page 20)". However, in the third paragraph, the report suggests that the site is not suitable to burrowing owl because "they prefer open terrain".

Response C-3 Please note that Mitigation Measure IV.1 references the education program to be conducted for construction personnel prior to the initiation of project activities, while Mitigation Measure IV-2 references specific actions to be taken as part of the pre-construction survey by the project biologist or others. Furthermore, Mitigation Measure IV.1, subsection 5 addresses the unanticipated discovery of "any other animals or bird nests," and confirms that relocation would only be permitted "if possible." Thus, the measure clearly anticipates that the education program requires the biologist to be notified, and *for the biologist* to assess what animal was located and whether relocation is appropriate. In the case of bird nests, the more

specific provisions of Mitigation Measure IV-2 would apply, and that measure requires the implementation of buffers and other mitigation to protect against impacts. Contrary to the commenter's assertion, these measures are not contradictory.

To clarify and ensure no ambiguity exists, Mitigation Measure IV.1, item 5 will be revised as follows (italics indicate new text):

> Notify biologist of any other animals or birds nest encountered on site. ~~And~~ *Special status animals encountered* ~~they~~ will be relocated as needed, if possible *and as allowed under existing regulations.*

The site is not densely vegetated and does include areas of barren ground, but also includes native brush scattered across the site that rise to a height of two to four feet. Regarding the burrowing owl habitat, the biological report provides further clarification that, although there is considerable barren ground in between the creosote bushes, the height of the bushes are not conducive to burrowing owl use. Burrowing owl generally perch at their burrows, on the ground, and prefer areas where they have clear line of sight for some distance all around their burrow. The presence of relatively tall brush (when compared to the size of the owl) even where scattered intermittently across the site, lowers the quality of the habitat for the species. Accordingly, the Initial Study is not contradictory as the commenter asserts.

Despite the relatively low quality habitat, a habitat assessment for burrowing owl, including a burrow survey, was conducted and had negative results (i.e., no owls or burrows were located). Further, the requirements of the SAA are incorporated as project design features (as stated under criteria b and c of Section IV, Biological Resources, of the IS/MND) and condition 2.12 of the SAA requires a habitat assessment and, if suitable habitat is present, focused surveys in accordance with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) no more than one year prior to initiation of project activities.

Comment C-4 Along with a need for reorganization, some of the mitigation measures should be reconsidered. The California Burrowing Owl Consortium developed the Survey Protocol and Mitigation Guidelines. The process begins with a four-step survey protocol to document the presence of burrowing owl habitat, and evaluate burrowing owl use of the project site and a surrounding buffer zone. Thus, to determine the presence of burrowing owl, four survey visits should be conducted: 1) at least one site visit between 15 February and 15 April, and 2) a minimum of three survey visits, at least three weeks apart, between 15 April and 15 July with at least one visit after 15 June. If surveys confirm occupied habitat, the avoidance and mitigation measures to minimize impacts to burrowing owls,

their burrows and foraging habitat on the site should be followed with oversight from the California Department of Fish and Wildlife.

Response C-4 Please see "Jupiter Project Updated Biological Resources Report," prepared by AMEC Foster Wheeler, January 2016 and referenced in the Initial Study. As described in the Report, the proposed project followed the measures recommended in the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game March 2012), which is the CDFW official guidance that is based in part on the Guidelines recommended in the comment. The first step under this approach is to conduct a habitat assessment to assist investigators in determining whether or not occupancy surveys are needed. As described in the Report, a habitat assessment for burrowing owl was conducted following the transect and buffer method outlined in the survey protocol. The only suitable burrows on the site or the buffer were kit fox burrows, which were collapsed in coordination with CDFW. There were no other small mammal burrows suitable for burrowing owl documented and there was no burrowing owl sign present on site. Under the protocol, no surveys were therefore required as the site does not contain habitat and there was no sign present. Further, the requirements of the SAA are incorporated as project design features (as stated under criteria b and c of Section IV, Biological Resources, of the IS/MND) and condition 2.12 of the SAA requires a habitat assessment and, if suitable habitat is present, focused surveys in accordance with the Staff Report no more than one year prior to initiation of project activities. Accordingly, nothing more is required.

Comment C-5 Finally, MM IV.2 states that a preconstruction survey will be performed not more than 7 days prior to any earth moving activity from March 1 through September 15. It should be kept in mind that although most species of birds do nest between March and September, a few, namely hummingbirds, owls, and some raptors, have been documented to nest earlier. Therefore, a more conservative approach would be to use February 1 to begin nesting bird surveys. Also, a survey conducted seven days before ground disturbing activities does not afford enough protection to nests, with nests being built in less time and other construction activities (grading roads, staging equipment, etc.) having similar potential to disturb nests. Thus, a more appropriate measure would be that a nesting bird survey will be conducted no more than three days prior of any construction activity.

Response C-5 The project is conditioned on complying with the timing requirements proposed in this comment. The requirements of the SAA are incorporated as project designed features (as stated under criteria b and c of Section IV, Biological Resources, of the MND). Condition 2.10 of the SAA requires that a Nesting Bird/Burrowing Owl Plan be submitted to CDFW for review and approval prior to construction and the Plan must address avoidance and minimization measures for nesting birds. Therefore, the timing of the Nesting Bird/Burrowing Owl surveys will be per CDFW requirements.

Additionally, SAA condition 2.11 specifically requires that the surveys be conducted no more than 3 days prior to construction activities and, as previously noted, this measure is incorporated in the project as a design feature. To clarify this timing requirement, Mitigation Measure IV.2 is modified as follows:

> "A pre-construction survey shall be completed by a qualified biologist not more than ~~7~~ 3 days of initiation of any earth moving activity on site."

Further, the North Apple Valley Industrial Specific Plan (NAVISP) Environmental Impact Report (EIR) Mitigation Measure number 3 requires nesting bird surveys between February 1st and June 30th. To clarify the timing requirements for these surveys, Mitigation Measure IV.2, item 1 is modified as follows:

> ". . .If project activities cannot be avoided between ~~March~~ *February* 1 and 15 September . . .".

D. San Bernardino County Department of Airports, May 18, 2016

Comment D-1 The Department of Airports has reviewed the Notice of Intent to Adopt a Mitigated Negative Declaration for the project noted above. The proposed site is located under the horizontal surface of the airport as defined by Federal Aviation Regulations Part 77. The horizontal surface is an imaginary surface located 150 feet above the elevation of the runways. Due to topography the proposal for structures on this property should be coordinated with the Federal Aviation Administration (FAA) through the Form 7460 process for the review of potential obstructions to airspace. The Town should obtain the results of the FAA review prior to issuing any building permits. The website for the obstruction review process is located at:https://oeaaa.faa.gov/oeaaa/external/portal.jsp

There is a possibility of overflight across the project site. While not expected to be a safety concern, the developer should be aware of this possibility. The following requirement should be applied to the development:

1. Developer shall submit an avigation easement to the County Department of Airports for review, and the avigation easement shall be recorded in favor of the Apple Valley Airport prior to occupancy.

The County Department of Airports will provide a template and a sample of a recorded avigation easement.

Response D-2 As stated in the Initial Study, page 39 and as required in the EIR, the Town will require compliance with airport requirements for this project and will

assure that this requirement is met through consultation with the County. Here, the Town will impose the following conditions of approval:

San Bernardino County Dept. of Airports (Apple Valley Airport) Conditions of Approval

AVA1. Developer shall submit an avigation easement to the County Department of Airports for review, and the avigation easement shall be recorded in favor of the Apple Valley Airport prior to permit issuance. (Dept. will provide template and a sample of recorded easement)

AVA2. Developer shall complete and submit FAA Form 7460-1 "Notice of Proposed Construction or Alteration" to the federal Aviation Administration, Airports Division, and provide evidence of compliance with any requirements prior to occupancy.

E. Mojave Desert Air Quality Management District, April 25, 2016

Comment E-1 The District has reviewed the Initial Study and concurs with the finding of "Less Than Significant Impact" and "No Impact" for Air Quality. Based on the information provided in the Initial Study, the District recommends the Town of Apple Valley to require submittal of a Dust Control Plan in compliance with the provisions of District Rule 403.2 - *Fugitive Dust Control for the Mojave Desert Planning Area.* There is also equipment that may require application for permits. The District recommends that the Town of Apple Valley require the submission of applicable permit applications and the associated application and permit fees to the District as a condition of approval.

Response E-1 As the regional air management agency for the project site, the Town appreciates the District's concurrence with the Town's findings. As stated in the Initial Study, the project is required to prepare a dust control plan, as was required in the Specific Plan EIR and is reiterated in the Initial Study. The performance standards for that plan shall be compliance with District Rule 403.2, as identified by the commenters. As a non-refrigerated distribution warehouse, it is not expected that any special equipment subject to separate permitting will be required for the operation of the project. However, the Town has also included a requirement in the conditions of approval for the project that, should equipment used on the project site require permits from the District, the developer shall demonstrate compliance with District permitting requirements in writing.

F. California Department of Fish and Wildlife, May 23, 2016

Comment F-1 The Department has discretionary authority over activities that could result in the "take" of any species listed as candidate, threatened, or endangered,

pursuant to the California Endangered Species Act (CESA; Fish and Game Code,§ 2050 *et* seq.). The Department considers adverse impacts to CESA-listed species, for the purposes of CEQA, to be significant without mitigation. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Consequently, if a Project, including Project construction or any Project-related activity during the life of the Project, results in take of CESA-listed species, the Department recommends that the Project proponent seek appropriate authorization prior to Project implementation. This may include an incidental take permit {ITP) or a consistency determination in certain circumstances (Fish and Game Code,§§ 2080.1 & 2081).

Please note that the Department must comply with CEQA prior to issuance of an ITP for a Project. As such, the Department may consider the lead agency's CEQA documentation for the Project. To minimize additional requirements by the Department and/or under CEQA, the CEQA avoidance, minimization, mitigation, monitoring and reporting measures for issuance of the ITP.

IV. Biological Resources. Discussion of Impacts a)- The Department conducted a site visit on September 10, 2015. While on site the Department did not notice "considerable barren ground as a result of site disturbance..." as described in the MND on page 20. If the site was previously disturbed the Department feels that the native vegetation has grown back and the site has suitable habit for multiple listed and none (sic) listed desert species.

Response F-1 Comment noted. The Initial Study includes all feasible mitigation measures, including avoidance, minimization, mitigation, monitoring and reporting measures required to enable the Department to issue an ITP. The description of the site's ground cover was taken from the biological resource study for the proposed project which indicates the creosote bushes present are widely spaced with open space in between as a result of sheep grazing at the site. The Town defers to the Department's observation and agrees that the site supports desert vegetation typical of the area and supports habitat for multiple species despite any previous disturbance at the site. The biological report prepared for the proposed project and the IS/MND also recognizes and addresses the potential for the site to support special status species. In the IS/MND, the Town analyzed all the potential impacts to species.

Comment F-2 Although many of the kit fox burrows have been collapsed to the Departments specifications, the Department recommends the Applicant complete pre-construction surveys to confirm that the kit foxes have not returned to the site. Biological Monitors shall conduct the pre-construction surveys for desert kit fox and American badger no more than 30 days prior to initiation of construction activities, including pre-construction site mobilization. Surveys shall also address the potential presence of active

dens within 100 feet of the project boundary (including utility corridors and access roads). If dens are detected, each den shall be classified as inactive, potentially active, or definitely active den and a report shall be submitted to the Department for review prior to collapsing the burrows.

Response F-2 As provided in the Initial Study, Mitigation Measure IV.2 requires the completion of pre-construction surveys for Desert kit fox, and several other species. Should they be identified, the procedures for identification as active or inactive, and collapse will continue to comply with the Department's requirements, as was done and acknowledged by the Department in its letter. To further clarify these requirements for the preconstruction surveys, the following is added to Mitigation Measures IV.2:

"10. Biological Monitors shall conduct the pre-construction surveys for desert kit fox and American badger no more than 30 days prior to initiation of construction activities, including pre-construction site mobilization. Surveys shall also address the potential presence of active dens within 100 feet of the project boundary (including utility corridors and access roads). If dens are detected, each den shall be classified as inactive, potentially active, or definitely active den and a report shall be submitted to the Department for review prior to collapsing the burrows."

Comment F-3 Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5 and 3513. Take is defined in FGC Section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill."

The Department recommends that the Lead Agency follow the recommendations and guidelines provided in the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012); available for download from the Department's website: https://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html. The Department expects that City of Hesperia (sic) will follow the Staff Report on Burrowing Owl Mitigation, which specifies that the steps for project impact evaluations include:

a. A habitat assessment;

b. Surveys; and

c. An impact assessment

If burrowing owls and/or their habitat may be impacted from the project, the Department recommends that the Lead Agency include specific mitigation in the environmental document for public review. Please note that mitigation must be roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (CEQA Guidelines, §§

15126.4(a)(4)(B), 15064, 15065, and 16355). Furthermore, in order for mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions. Current scientific literature supports the conclusion that mitigation for permanent burrowing owl habitat loss necessitates replacement with an equivalent or greater habitat area for breeding, foraging, wintering, dispersal, presence of burrows, burrow surrogates, presence of fossorial mammal dens, well drained soils, and abundant and available prey within close proximity to the burrow.

Response F-3 Comment noted. The Town notes that the biological report completed for the Project included a habitat assessment for burrow owl. In accordance with the referenced 2012 Staff Report, transects were walked throughout the proposed project site as well as the required buffer and all suitable burrows documented. The only suitable burrows within the site or the buffer were potential kit fox burrows, which were collapsed in coordination with CDFW. There were no other small mammal burrows suitable for burrowing owl documented on the site and no burrowing owl sign was observed. The Initial Study provided, in Mitigation Measure IV.2, not only a requirement for pre-construction surveys, but a comprehensive list of performance standards for burrowing owl mitigation, all taken from the Staff Report on Burrowing Owl Mitigation cited by the Department in its letter. Further. The requirements of the Streambed Alteration Agreement (SAA) are incorporated as project design features (as stated under criteria b and c of Section IV, Biological Resources, of the IS/MND) and condition 2.12 of the SAA required a habitat assessment and, if suitable habitat is present, focused surveys in accordance with the referenced Staff Report no more than one year prior to initiation of the project activities. If focused surveys are positive, avoidance, minimization and mitigation measures will be implemented in accordance with the 2012 guidelines and in coordination with CDFW. Accordingly, this issue is adequately addressed in the analysis and the potential impact is mitigated to a less than significant level with mitigation incorporated.

Comment F-4 The applicant should implement sweeps within the proposed project site, the sweeps shall be conducted before construction, to ensure that desert tortoises are absent from the project area. Additionally, biological monitors will be on site during construction of the desert tortoise exclusion fencing. Upon completion of construction of the desert tortoise exclusion fencing, an on-call biologist will be available should desert tortoise be encountered during construction activities. No desert tortoises may be moved or handled without an Incidental Take Permit (ITP).Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Consequently, if a project, including project construction or any project-related activity during the life of the project, results in take of CESA-listed species, the Department recommends that the project proponent seek

appropriate authorization prior to project implementation. This may include an incidental take permit (ITP) or a consistency determination (Fish and Game Code, §§ 2080.1 & 2081).

Response F-4 Comment noted. The mitigation measure cited by the commenter is included in the Initial Study, Mitigation Measure IV.2. The Initial Study requires pre-construction surveys, the construction of a tortoise exclusion fence, and on-going monitoring for the species. The Town modifies Mitigation Measure IV-1, item 13 as follows (italics indicate addition) to clarify the requirements related to the fence construction: " . . . Authorized biologist or desert tortoise monitors will not be required to be present at the site at all times; *however, will be present during the installation of the exclusion fence . . .*" Mitigation Measure IV.1 requires construction worker education, including warnings against handling or moving the species, except as allowed by law by a qualified biologist. The Town recognizes and agrees that no desert tortoise may be moved or handled without an ITP. To clarify this point, the following is added to item 10 under Mitigation Measures IV.1: "No one is authorized to handle or move any desert tortoise." The Initial Study therefore fully implements the Department's requirements, and the appropriate sections of the Fish and Game Code.

Comment F-5 Please note that it is the Lead Agency's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game native bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 et seq.). In addition, sections 3503, 3503.5, and 3513 of the Fish and Game Code (FGC) stipulate the following: Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by FGC or any regulation made pursuant thereto; Section 3503.5 states that it is 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 FGC or any regulation adopted pursuant thereto; and Section 3513 states that it is 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 MBTA.

Breeding bird season is usually February 15 through August 31, but note that some species of raptors (e.g., owls) may commence nesting activities in January, and passerines may nest later than August 31. The Department recommends that the Lead Agency complete nesting bird surveys and consult with a qualified ornithologist for advice in developing specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur and that the Project complies with all applicable laws related to nesting birds and birds of prey, including Burrowing Owl. The Department recommends that Project-specific avoidance and minimization measures include, but not be limited to: Project phasing and timing,

monitoring of project-related noise (where applicable), sound walls, and buffers, where appropriate.

Response F-5 The Town notes that the requirements of the SAA are incorporated as project design features (as stated under criteria b and c of Section IV, Biological Resources, of the IS/MND) Condition 2.10 of the SAA requires that a Nesting Bird/Burrowing Owl Plan be submitted to CDFW for review and approval prior to construction and address avoidance and minimization measures for nesting birds. Therefore, the timing and scope of the Nesting Bird/Burrowing Owl will be per CDFW requirements. Further, avoidance of nesting birds will be accomplished through implementation of Mitigation Measure IV.2, which requires nesting bird surveys, implementation of buffers, monitoring and implementation of other measures if needed based on monitoring. The North Apple Valley Industrial Specific Plan EIR Mitigation Measure number 3 requires nesting bird surveys between February 1st and June 30th. As noted previously, Mitigation Measure IV.2, item 1 has been modified to clarify the timing requirements (surveys required between February 1 and September 15). These performance standards assure that impacts to nesting birds will be less than significant.

Comment F-6 The Department's jurisdiction includes any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of a river or stream or use material from a streambed, the project applicant (or "entity") must provide written notification to the Department pursuant to Section 1602 of the Fish and Game Code. Based on this notification and other information, the Department then determines whether a Lake and Streambed Alteration (LSA) Agreement is required. The Department's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if necessary, the environmental document should fully identify the potential impacts to the lake, stream or riparian resources and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with the Department is recommended, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to http://www.dfg.ca.gov/habcon/1600/forms.html.

Response F-6 As stated in the Initial Study, the applicant and the Town have already consulted with the Department regarding the need for a SAA. The Initial Study identifies that the site contains 0.23 acres classified as waters of the State. The Initial Study further describes that the applicant and the Department negotiated a SAA (Notification No. 1600-2015-0086-R6), which includes a number of requirements imposed by the Department. The Department will require that the Agreement is implemented fully throughout the development of the site. The avoidance, minimization and mitigation measures required in the SAA are incorporated as project design features,

as indicated under criteria b and c of Section IV, Biological Resources, of the IS/MND. The SAA is provided as Appendix E of the Project's Biological Resources Report.

G. Blum Collins LLP, May 19, 2016

Comment G-1 The California Environmental Quality Act ("CEQA") requires an Environmental Impact Report ("EIR") "whenever it considers approval of a proposed project that '*may* have a *significant* effect on the environment.'" *Quail Botanical Gardens Found, Inc. v. City of Encinitas* (1994) 29 Cal. App. 4th 1597, 1601, *quoting* Pub. Resources Code § 21100. As you also know, CEQA requires the preparation of an EIR "whenever it can be *fairly argued* on the basis of substantial evidence that the project *may* have significant environmental impact." *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75 (emphasis added); *see also Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal. 4th 1112, 1123. There is a fair argument that the Jupiter Project may have a significant impact on biological resources, cultural and paleontological resources, and hazards.

Response G-1 The commenter asserts that the "fair argument" test applies to determinations of whether the Project may result in potentially significant environmental impacts. Specifically, the commenter implies that that where substantial evidence supports a fair argument of significant environmental impacts, that an EIR must be prepared. However, this comment misstates the appropriate standard of review and is legally incorrect for at least three reasons.

First, the Town's MND is not a stand-alone CEQA document. Instead, it is subsequent MND undertaken pursuant to State CEQA Guidelines section 15162 to confirm whether implementation of the North Apple Valley Industrial Specific Plan Project on this specific site will result in different or substantially greater impacts than those already analyzed in the Specific Plan EIR. (MND p. 3.) Accordingly, it is the substantial evidence test, not the fair argument test that governs what level of CEQA review is required. Specifically, case law confirms that where an EIR has previously been prepared and the subsequent environmental review is within the scope of the previously certified EIR, that the relevant standard of review asks only whether the lead agency's conclusions concerning a subsequent approval are supported by substantial evidence. (See *Coastal Hills Rural Preservation v. County of Sonoma* (2016) 2 Cal.App.5th 1234; *Long Beach Savings & Loan Association v. Long Beach Redevelopment Agency* (1986) 188 Cal.App.3d 249, 266 [where an EIR "already had been certified and a negative declaration has been prepared in lieu of a subsequent supplemental or site specific EIR, the test is whether the record as a whole contains substantial evidence to support the agency's determination that a particular project will not have a significant adverse effect on the environment"]; *Citizens for a Sustainable Treasure Island v. City & County of*

San Francisco (2014) 227 Cal.App.4th 1036, 1049 [finding that the "substantial evidence standard applies to subsequent environmental review for a project reviewed in a program EIR or project EIR"]; *Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598, 610 ["[o]nce an agency has prepared [a program] EIR, its decision not to prepare a supplemental or subsequent EIR for a later project is reviewed under the deferential substantial evidence standard"]; *Latinos Unidos de Napa v. City of Napa* (2013) 221 Cal.App.4th 192, 201-202, 204 [substantial evidence standard applies in reviewing an agency's determination that a project's potential environmental impacts were adequately analyzed in a prior program EIR].)

Second, even if the "fair argument" test applied, the commenter fails to provide any substantial evidence of site-specific significant impacts that may result from the Project. Indeed, substantial evidence under CEQA "includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (State CEQA Guidelines, § 15384(b).) In contrast, substantial evidence does not include ["[a]rgument, speculation, unsubstantiated opinion, or narrative, evidence which is clearly erroneous, or inaccurate." (State CEQA Guidelines, § 15384(a).) Substantial evidence of significant impacts also does not include generalized information that fails to connect a project to the alleged impacts identified by a commenter. (*Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 528 [an agency "cannot be expected to pore through thousands of documents to find something that arguably supports [the commenter's] belief the project should not go forward"]; see also State CEQA Guidelines, § 15204(c) [commenters "should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments"].) Here, the reports attached to the commenter's letter do not contain any facts regarding the Project or its potential impacts, nor does the commenter explain with facts how those reports demonstrate that a potentially significant impact may result. Thus, even under the less deferential "fair argument" test, the commenter is still incorrect that an EIR is required.

Third, even if there were substantial evidence showing that some level of impact may occur, the commenter fails to address why those impacts are potentially significant and beyond those already analyzed and disclosed in the EIR previously prepared for the North Apple Valley Industrial Specific Plan. Indeed, not every impact is necessarily significant. (State CEQA Guidelines, § 15382; *National Parks & Conservation Association v. County of Riverside* (1999) 71 Cal.App.4th 1341, 1359 [the standard of review under CEQA "allow[s] for a finding of an insignificant degree of impact, [even where there is] not necessarily a zero impact"]; *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 899 ["[a] less than

significant impact does not necessarily mean no impact at all"].) Further, it is only those significant impacts resulting from the Project that are beyond those already fully analyzed and disclosed in the prior EIR that are relevant. (See, e.g., *Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598, 617 [confirming appropriateness of foregoing *any* further CEQA review where "cumulative impacts would not be greater than those identified in the [previous] EIR"].)

Comment G-2 The IS notes that the EIR for the North Apple Valley Industrial Specific Plan required site-specific surveys.

Threshold a. Will the Project have a substantial adverse effect, directly or through habitat modifications, on any species listed as a candidate, sensitive, or special status . . . You conclude the impact will be less than significant with mitigation, but we disagree with several assumptions. Specifically, you indicate there were eight inactive kit fox burrows detected and collapsed onsite, and that though those burrows might provide habitat for the burrowing owl, they would not since they had been collapsed. You neglect to mention that the site could be re-colonized by the kit fox or other burrowing species, which would make the site amenable to the owl. You also state that the height of the vegetation is not conducive to the owls' preferred terrain. From what we understand, typical burrowing owl habitat is open, dry, sparsely vegetated terrain such as the Project site.

Response G-2 As stated in the Initial Study and biological resource surveys conducted on the project site, the potential for burrowing owl and kit fox to occur on the site remains. As a result, the Initial Study correctly requires that a pre-construction survey for these species and several others be conducted, including an intensive survey for burrowing owl. The Initial Study further describes in detail the performance standards associated with that survey, including what is to be implemented should either burrowing owl or Desert kit fox be identified on the property. Further, the requirements of the SAA are incorporated as project design features (as stated under criteria B and c of Section IV, Biological Resources, of the IS/MND) and condition 2.12 of the SAA requires a habitat assessment and, if suitable habitat is present, focused surveys in accordance with the *Staff Report on Burrowing Owl Mitigation* (Department of Fish and Game, March 2012) no more than one year prior to initiation of project activities and condition 2.11 requires that preconstruction surveys be conducted no more than 3 days prior to initiation of construction activities. The Initial Study correctly assesses all the potential impacts associated with construction on these two species, and provides all feasible mitigation measures to assure that impacts are reduced to less than significant levels. Regarding the site's suitability for burrowing owl, see Response to C-3, above.

Comment G-3 Regarding the desert tortoise, you state that "the likelihood of the species moving onto the property is low," but you don't provide support for this assumption. The site is, as you note, within the range for the tortoise.

Regarding migratory birds, you concede they may be present on the site.

Because of the potential wildlife on site, you adopt several mitigation measures, but we think they are inadequate in several respects. First, mitigation measure ("MM") IV.1 indicates "Prior to the initiation of any earth moving or construction activities on the project site, the project proponent shall conduct environmental awareness training for construction staff, including a presentation by a qualified biologist on desert tortoise, project-specific protective measures, and instructions for actions that must be taken if a tortoise is encountered during construction." We are not sure if the MM requires a presentation on "project-specific protective measures" or implementation of them. The MM then provides "These measures *could* include:" before coming up with a laundry list of suggested and sometimes contradictory steps. There is nothing enforceable about this MM, so you cannot rely upon it to reduce impacts to less than significant levels.

Response G-3 A focused survey for desert tortoise was conducted in April 2015 and a focused desert tortoise survey report was prepared by Amec Foster Wheeler. This study determined the potential for tortoise to move onto the site was low based on a combination of literature review, documented occurrences, habitat suitability and adjacent land uses.

As regards the presence of migratory birds, the biologist correctly determined that the habitat present on the project site has the potential to accommodate migratory birds, and recommended mitigation measures, specifically the preparation of MBTA compliant surveys immediately prior to construction. The implementation of this mitigation measure will reduce impacts to this species to less than significant levels.

The commenter's statement that there "is nothing enforceable about this MM" is not supported. The mitigation measure is entirely enforceable, and clearly states that pre-construction environmental awareness will be conducted; when it will be conducted; and provides a comprehensive list of performance standards that could be included in this education program. The mitigation measure is further supported by the associated Mitigation Monitoring Program item IV.A, which requires that all course materials and attendance records be provided to the Town prior to the issuance of building permits. Further, the SAA, which is incorporated as project design features (as stated under criteria b and C of Section IV, Biological Resources of the IS/MND), requires that this information be provided in the worker training program. To clarify this requirement, Mitigation Measure IV.1 is modified as follows:

IV.1 Prior to initiation of any earth moving or construction activities on the project site, the project proponent shall conduct environmental awareness training for construction staff, including a presentation by a qualified biologist on desert tortoise, project-specific protective measures, and instructions for actions that must be taken if a tortoise is encountered during construction. These measures ~~could~~ include:

Comment G-4 MM IV.1 Item 2 provides for a daily sweep of the work site by a qualified biologist. This sweep should include visual observation off-site. Item 3 provides that if a desert tortoise, desert kit fox or burrowing owl are found on site, work will immediately cease until the animal has left the site and is at least 250 feet away. It provides that "Listed species may not be handled by anyone," but (a) only the desert tortoise is listed, and (b) regarding the desert tortoise, this conflicts with Item 10 below, which *calls for* handling by authorized biologists. Item 5 provides that someone (it is not specified who) must notify the biologist of any other animals *or bird nests* encountered on the site and they will be relocated as needed. This is actually illegal under the Migratory Bird Treaty Act. Item 11 provides that immediately prior to the start of any ground-disturbing activities and prior to the installation of any desert tortoise exclusion fencing, there should be clearance surveys by the authorized biologist "as appropriate," and that "If the authorized biologist determines clearance surveys are not needed, clearance surveys would not be required." Again, the entire mitigation measure is unenforceable but Item 11 is as well based on this language.

Response G-4 The daily sweeps for the project footprint were determined adequate for general biological resources. Resources that require buffers adjacent to the project footprint (such as desert tortoise, kit fox, burrowing owl and nesting birds) are addressed in specific Mitigation Measures. As stated in Response G-3, the numerically listed items under Mitigation Measure IV.1 are performance standards that describe the course work that could be included in the environmental education program. The description of the course work includes informing construction personnel that they are not handle the species, which is the correct protocol for desert tortoise. Should the species be found at any time, it is appropriate to state that a qualified biologist would be the only person who could, based on State and federal requirements, handle the species if necessary. See Response F-4 for clarification regarding the need to obtain an ITP before moving handling any Desert Tortoise. Specific mitigation for potential impacts to Desert tortoise is provided in Mitigation Measures IV.2, IV.3 and IV.4.

As regards mitigation measure IV.1.5., the performance standard references the educational course work, and the fact that construction personnel must notify the project biologist if a bird's nest is found by them. The performance standard goes on to state that the nest would be relocated "if possible." The project biologist will not relocate a nest for a species covered by MBTA if active and occupied, and will comply with the requirements of law.

Finally, as regards mitigation measure IV.1.11., the performance standard is again related to the course work that is to be presented to the construction personnel. The mitigation measure applicable to the actual pre-construction survey for tortoise is contained in mitigation measure IV.2. Further we note that the authorized biologist who will be making decisions regarding how measures need to be implemented on the ground is approved by the United States Fish and Wildlife Service and California department of Fish and Wildlife based in part by a demonstrated expertise in Desert Tortoise and a track record of implementing measures in accordance with the federal and state Endangered Species Act. As such, the authorized biologist has discretion as to where clearance surveys are required based on the identification of suitable habitat and their expertise on the species and its habitat. The measure is enforceable through the process of ensuring an authorized biologist is identified and approved for the project and that avoidance measures for tortoise are provided by the authorized biologist.

Comment G-5 Item 13 says that permanent or temporary exclusion fencing *may* be required. We take it this is superseded by MM IV.3, but it makes the mitigation measures questionable.

Response G-5 As described in Response G-4, the performance standard contained in IV.1.13. describes the course work to be implemented with construction personnel. The standards to be implemented for tortoise fencing are contained in mitigation measure IV.3. It should be noted that exclusion fence will be used for the project site; however, it is not proposed for off-site improvements as it is not deemed necessary for all the reasons set forth in Response G-9.

Comment G-6 MM IV.2 provides for a preconstruction survey no more than 7 days prior to earth moving activities for the desert tortoise, kit fox, burrowing owl, and migratory birds. Given the lack of exclusion fencing, it should be the day before, or else your mitigation will be ineffective to mitigate potentially significant impacts. The MM states that the biologist should do a report, with recommendations which *could* include many items which you list. Again, this is unenforceable, and the conclusion that impacts will be mitigated to less than significant levels is not based on substantial evidence.

Response G-6 As with Mitigation Measure IV.1, Mitigation Measure IV.2 provides performance standards for the pre-construction survey that is required by the mitigation measure and identifies potential avoidance measures based on the result of the pre-construction surveys (which will be conducted 3 days prior to commencement of construction – see Response G-2).

As regards the performance standards listed in the mitigation measure, they are entirely appropriate and are described to provide a range of options that could result based on the pre-construction survey itself. The preparation of a

report is mandated. What that report includes will depend on the findings of the survey, and the best practices applicable based on these findings. The measure further provides "Any and all recommendations included in the study shall be implemented . . .."; therefore, this measure is clearly enforceable.

See also comments and responses under item F, above.

Comment G-7 In MM IV.2 Item 1 you state that the avian breeding season is March 1 through September 15. This is inaccurate. It begins in January for raptors, and for the loggerhead shrike noted on the Project site in the biological survey. See Attachment A. Moreover, Item 1 is fully ineffective because it calls for a survey during this artificially limited breeding season only "no less than 30 days prior to commencement of project activities." Surveys should be only 1 day prior to commencement. Item 4 provides for buffers, but Item 6 provides those buffers may be reduced and sound barriers put in place. This would be wholly ineffective, again. Item 7 calls for nest surveys and/or monitoring at a minimum weekly during nesting season, "unless it is determined that less frequent visits would be necessary." If construction is ongoing at the site with nests with limited buffers, we see no set of circumstances where less than weekly site visits by the biologist would be appropriate.

Response G-7 As noted above, Mitigation Measure IV.2 has been clarified to note that the Project is required to conduct nesting bird surveys beginning February 1. Further, the requirements of the SAA are incorporated as project design features (as stated under criteria b and c of Section IV, Biological Resources, of the IS/MND) and condition 2.11 of the SAA states that nesting bird surveys will be conducted 3 days prior to commencement of project activities. Further, condition 2.10 of the SAA requires that a Nesting Bird/Burrowing Owl Plan be submitted to CDFW for review and approval prior to construction. The Plan must address avoidance and minimization measures for nesting birds. A nesting bird log will be submitted to CDFW. Therefore, nesting buffers and avoidance measures will meet the CDFW's performance standards.

Comment G-8 *Cumulative impacts.* Your IS does not assess cumulative impacts to biological resources from the planned project in combination with other projects. While this might have been addressed in the Specific Plan EIR, we do not think it was since it called for site-specific evaluations.

Response G-8 The commenter is incorrect. Please see Specific Plan EIR pages VIII-3 through VIII-4. The Specific Plan EIR addressed the need for pre-construction surveys and for species-specific surveys. It also acknowledged the loss of habitat resulting from development of the Specific Plan area. It also described that the Specific Plan area is already impacted by human activity, with the scattered development of properties, roads and other

infrastructure. The EIR also identified that the Town was preparing a multiple species habitat conservation plan, which would, when adopted, address the loss of habitat and the preservation of areas for long term conservation of habitat and species. Moreover, the commenter points to no evidence, much less substantial evidence, showing that any cumulative impact will occur as a result of the proposed Project. Accordingly, no further response is required.

Comment G-9 *Mitigation Monitoring Program.* Program measure IV.A calls for submission of course materials and a sign in sheet for construction staff sometime prior to the issuance of a building permit. If the building permit comes, as we suspect, after the grubbing, grading, and trenching permits, this is too late in the process. Measure IV.C regarding tortoise exclusion fencing is timed more properly, but this fencing does not appear to be required for the offsite improvements. This is a failing both in your MMRP and in MM IV.3.

Response G-9 The commenter is incorrect. Mitigation Measure IV.1 clearly states that the education program is to be constructed "prior to the initiation of any earth moving or construction activities on the project site" and the Applicant will obtain sign in when the training is conducted. The assembly of the materials and delivery to the Town is to occur prior to the issuance of building permits, to allow sufficient time for the biologist to collect the information and prepare his report. However, for the sake of clarity regarding the timing of the education programs, the Timing section under Measure IV.A is modified to require that the course materials and sign in sheet for construction staff be provided "prior to initiation of any construction activity."

As regards Mitigation Measure IV.3, the commenter is correct exclusionary fencing is not required for off-site improvements which consists of roadway improvements, pipe water main relocation and extensions on the frontage roadways and undergrounding of power lines on Navajo Road. Exclusion fencing is not practicable around roadways given that they must remain accessible for vehicular use. A biological monitor will ensure impacts to Desert Tortoise will not occur from off-site improvements. All mitigation measures apply to the entire project.

Comment G-10 *Threshold d. Will the Project interfere substantially with the movement of wildlife or impeded the use of native wildlife nursery sites?* Again, you assert a less than significant impact. We disagree, given you found 8 kit fox burrows on site. This means the site could qualify as a nursery site. Regarding your conclusion that the site is "isolated," the California Department of Fish & Wildlife apparently did not think so based on the multiple conditions it negotiated in the Streambed Alteration Agreement.

Response G-10 The commenter's statement that the site "could qualify as a nursery site' is unsupported. As described in detail in the biological resource survey prepared for the project, extensive effort was made to determine whether kit

fox burrows were occupied. This included the application of an inert powder at each burrow, and nocturnal monitoring to identify the species, if on site. No kit fox paw marks were found at any of the burrows. Furthermore, the surveys in April of 2015 and May of 2016 occurred when kit fox pups would be emerging from their dens. Therefore, the site is not a "nursery" site, and the commenter's statement remains unsubstantiated.

As regards the SAA conditions, it is unclear whether the commenter is referring to kit fox or other species. However, the Department imposed conditions which are entirely consistent with the mitigation measures and performance standards provided in the Initial Study.

Comment G-11 You indicate here that the Specific Plan EIR called for site-specific studies and these studies were done and that less than significant impacts would occur.

Threshold b. Would the Project cause a substantial adverse change in the significance of an archaeological resource or tribal cultural resource? You state that the San Manuel Band of Mission Indians indicated the site was within its ancestral territory and requested a Native American monitor to be present during site disturbing activities. You omit to mention that your final archaeological and paleontological resource study recommends that independent of this, full-time archaeological resource monitoring is required until it is determined there is no more potential for archaeological resources to be present. The study mentions that a prehistoric isolate was previously found onsite, though your IS does not mention this.

Response G-11 The commenter is incorrect. Mitigation Measure V.1 specifically states that both an archaeological monitor and a Tribal monitor are to be on site during all ground disturbing activities. There was no omission in the Initial Study.

The Initial Study correctly states that the currently completed resource study did not identify any resources. The Initial Study further includes multiple cultural resource reports, including the report completed in 2007 which identified a prehistoric isolate that was found to be less than significant, as isolates usually are. The Initial Study and associated documents provide a comprehensive description of the cultural resource conditions on the site, fully address the protection of these resources, and provides for monitoring to assure that unidentified resources, if found, are properly mitigated. For example, Mitigation Measures V.1 and V.2 empower the archeological, Native American, and paleontological monitors to stop construction if any unanticipated resource is located during construction.

Comment G-12 *Mitigation & Monitoring Program.* Item V.A provides that the Project proponent shall present the Town with agreements with qualified monitors. It says this is to happen upon "receipt of agreement and onsite inspections,"

but this is indeterminate as to time. It needs to be prior to issuance of a grading permit.

Response G-12 The Monitoring Program item specifically states that the Town will inspect the project site to assure that monitoring is occurring during earth moving activities. Nonetheless, and to further clarify the timing, the MMRP shall be revised to clarify that monitoring agreements must be submitted to the Town prior to the issuance of a grading permit.

Comment G-13: *Threshold c. Would the Project directly or indirectly destroy a unique paleontological resource of unique geologic feature?* You acknowledge that other sites in the area have yielded mammalian resources in Pleistocene sediments, which may occur at depths at the Project site. As a mitigation measure MM V.2 you provide that a qualified paleontological monitor shall be onsite for excavations greater than five feet below ground. But your final archaeological and paleontological report says that the standard should be three feet below ground. Additionally, regarding your MM&RP, you indicate that the Project proponent will provide the Town with an agreement with a paleontological monitor, but again this is upon "receipt of agreement and site inspections," a completely indeterminate time. The IS should specify this needs to be prior to issuance of any grading permit.

Response G-13 Comment noted. Although the Town believes that a requirement for monitors where excavation exceeds five feet is all that is needed to fully mitigate for impacts, the Town will nonetheless amend Mitigation measure V-2 to require monitoring for all excavation of more than 3 feet below ground. The distinction between when work will occur three to five feet below ground is not meaningful at this site give the nature of the excavation that will occur (i.e., any excavation that would disturb soils three feet below the surface would also likely disturb soils five feet below the surface). This will further reduce this already insignificant impact. See also Response G-12.

Comment G-14 The two thresholds under the CEQA Guidelines are *a. Whether the Project would generate greenhouse gas emissions that may have a significant impact on the environment,* and *b. Whether the Project would conflict with an applicable plan, policy or regulation adopted for the purpose of reducing greenhouse gas emissions?*

You say there is no significant impact because neither the construction nor the operation of the Project will lead to emissions over the Mojave Desert Air Quality Management District's threshold of 100,000 MTCO2e a year. First, we need to disagree with the threshold on the ground it is not based on substantial evidence. The California Air Resources Board has identified a goal of 4.7 million MTCO2e a year from 2007 to 2020. This means that each project the MDAQMD exempts at 100,000 MTCO2e a year is up to potentially 2% of ARB's annual statewide goal.

We believe you should evaluate this Project in comparison with the far more appropriate threshold proffered by the Bay Area Air Quality Management District of 1,100 MTCO2e a year for land use projects. *See* Attachment B. *See also* Attachment C (identical standard proposed by SMAQMD staff). Under this standard, the Project would have a significant impact.

Response G-14 The MDAQMD GHG threshold is an established threshold adopted by the District July 31 of 1995, and amended February 28, 2011, that is specific to the conditions and circumstances in the air basin within which the proposed project would be located. Furthermore, the BAAQMD threshold reflects the conditions and circumstances in the San Francisco Bay Area – a highly developed and densely populated area entirely unlike the largely rural and undeveloped area in which the proposed project would be located – and the BAAQMD has no legal authority over the air basin within which the proposed project would be located. Ultimately, the project is located within the Mojave Desert Air Quality Management District and is not governed by the rules and regulations of the SCAQMD or BAAQMD. The Initial Study correctly uses an adopted threshold of the air quality management district in which the project's facilities are located.

The commenter is incorrect in implying that the project will result in emissions equating to 2% of the statewide GHG emissions. Even under the conservative assumptions made for the project, the project will potentially generate approximately 46,050 CO_2E tons per year, equivalent to 0.98% of ARB's annual statewide goal.

Project-generated GHG emissions were evaluated using the most recent version of the California Emissions Estimator Model (CalEEMod Version 2013.2.2), as set forth in "Project Jupiter Project and North Apple Valley Industrial Specific Plan Air Quality and Greenhouse Gas Emissions Comparison Evaluation," Dudek 2016 ("Dudek AQA 2016"), attached to and incorporated into this Response to Comments as Exhibit A.

Operation of the project would result in GHG emissions through energy use (electricity and natural gas); motor vehicle trips; electricity usage associated with water supply, treatment, and distribution and wastewater treatment; and solid waste disposal. Annual GHG emissions from these sources were estimated using CalEEMod. The project would primarily generate GHG emissions from mobile sources including truck and employee trips.

CalEEMod was used to estimate project-generated mobile source emissions from employee trips and truck trips based on the assumptions provided in Dudek AQA 2016 Section 5. CalEEMod was also used to estimate emissions from the project's area sources, which includes operation of gasoline-powered landscape maintenance equipment, which produce minimal GHG emissions.

The estimation of operational energy emissions was based on CalEEMod land use defaults and units or total area (i.e., square footage) of the project. Annual natural gas and electricity emissions were estimated in CalEEMod using the emissions factors for Southern California Edison, which would be the energy source provider for the project. The project would meet the 2013 California Building Energy Efficiency Standards (Title 24, Part 6, of the California Code of Regulations). The energy input ratios for Title 24 for electricity and natural gas were updated to meet the 2013 Title 24 standards, while default values as provided in CalEEMod, were assumed for Non-Title 24 electricity and natural gas.

Supply, conveyance, treatment, and distribution of water for the project require the use of electricity, which would result in associated indirect GHG emissions. Similarly, wastewater generated by the project requires the use of electricity for conveyance and treatment, along with GHG emissions generated during wastewater treatment. Water consumption estimates for both indoor and outdoor water use were based on CalEEMod default values.
The project would generate solid waste and would therefore result in CO_2E emissions associated with landfill off-gassing. CalEEMod default values for solid waste generation were used to estimate GHG emissions associated with solid waste.

Dudek AQA 2016 Table 12 presents estimated maximum daily project-generated GHG emissions from area sources, energy sources, and motor vehicles. It was assumed that all project-generated emissions, including all mobile source emissions, would occur within the MDAQMD jurisdictional boundaries. Additional details regarding these calculations are provided in Dudek AQA 2016 Attachment A.

Dudek AQA 2016 Table 12
Estimated Project-Generated Maximum Daily Operational Greenhouse Gas Emissions

Emission Source	CO_2 (pounds/day)	CH_4 (pounds/day)	N_2O (pounds/day)	CO_2E (pounds/day)
Area	0.62	0.00	0.00	0.65
Energy (natural gas)	785.16	0.02	0.01	789.94
Mobile (employee trips)	7,613.00	0.41	0.00	7,621.50
Mobile (truck trips)	226,805.23	1.67	0.00	226,831.73
Total	**235,204.01**	**2.10**	**0.01**	**235,243.82**
MDAQMD threshold	-	-	-	*548,000*
Threshold exceeded?	-	-	-	No

Notes: See Dudek AQA 2016 Attachment A for detailed results.
Area sources = landscape maintenance equipment. Energy sources = natural gas. Mobile sources = motor vehicles.
CO_2 = carbon dioxide; CH_4 = methane; N_2O = nitrous oxide; CO_2E = carbon dioxide equivalent; - = not applicable

As shown in Dudek AQA 2016 Table 12, estimated total maximum daily operational project-generated GHG emissions would be approximately 235,244 CO_2E pounds

per day would not exceed the significance threshold established by the MDAQMD of 548,000 CO_2E pounds per day.

Dudek AQA 2016 Table 13 presents estimated annual project-generated GHG emissions from area sources, energy sources, motor vehicles, solid waste generation, water consumption, and wastewater treatment. All project-generated emissions were assumed to occur within the MDAQMD jurisdictional boundaries.

Dudek AQA 2016 Table 13
Estimated Project-Generated Annual Operational Greenhouse Gas Emissions

Emission Source	CO_2 (MT/year)	CH_4 (MT/year)	N_2O (MT/year)	CO_2E (MT/year)	CO_2E (tons/year)
Area	0.05	0.00	0.00	0.05	0.06
Energy (natural gas and electricity)	1,320.16	0.07	0.02	1,326.79	1,462.54
Mobile sources (employee trips)	1,137.20	0.07	0.00	1,138.60	1,255.09
Mobile sources (truck trips)	37,394.41	0.21	0.00	37,398.78	41,225.10
Solid waste	259.67	15.35	0.00	581.94	641.48
Water supply and wastewater	1,035.16	10.31	0.25	1,330.00	1,466.07
Total	**41,146.65**	**26.01**	**0.27**	**41,776.16**	**46,050.34**
MDAQMD threshold	-	-	-	-	*100,000*
Threshold exceeded?	-	-	-	-	No

Notes: See Dudek AQA 2016 Attachment A for detailed results.
Area sources = landscape maintenance equipment. Energy sources = natural gas and electricity. Mobile sources = motor vehicles. Solid waste = solid waste landfill off-gassing. Water supply and wastewater = supply, conveyance, treatment, and distribution of water and wastewater.
MT = metric tons; CO_2 = carbon dioxide; CH_4 = methane; N_2O = nitrous oxide; CO_2E = carbon dioxide equivalent; - = not applicable

As shown in Dudek AQA 2016 Table 13, estimated total annual project-generated GHG emissions would be approximately 46,050 CO_2E tons per year as a result of project operations, does not exceed the significance threshold established by the MDAQMD of 100,000 CO_2E tons per year.
The SCAQMD has not adopted recommended numeric CEQA significance thresholds for GHG emissions for lead agencies to use in assessing GHG impacts of residential and commercial development projects[11]. In October 2008, SCAQMD presented to the Governing Board the Draft Guidance Document – Interim CEQA Greenhouse Gas (GHG) Significance Threshold (SCAQMD 2008). The guidance document was not adopted or approved by the Governing Board. The SCAQMD

[11] To be clear, the South Coast AQMD has adopted a threshold of significance of 10,000 MT/yr CO2eq for industrial project stationary sources for which the SCAQMD is the lead agency. However, this threshold is inapplicable to the proposed Project because (i) the SCAQMD is not the lead agency for the Project; (ii) the Project's emissions from buildings and other stationary sources are under regulation by MDAQMD, not the SCAQMD; and (iii) the SCAQMD's threshold expressly applies to *stationary* sources, whereas the only emissions that the Project may cause within the SCAQMD's jurisdiction are *mobile* source emissions.

formed a GHG CEQA Significance Threshold Working Group to work with SCAQMD staff on developing GHG CEQA significance thresholds until statewide significance thresholds or guidelines are established. The most recent working group meeting on September 28, 2010 (SCAQMD 2010), proposed a tiered threshold approach. Tier 3 consists of screening values, which the lead agency can choose, but must be consistent with all projects within its jurisdiction. Under Tier 3, if a project's emissions are under one of the following screening thresholds, then the project is less than significant: (a) All land use types: 3,000 MT CO_2E per year, (b) Based on land use type: residential: 3,500 MT CO_2E per year; commercial: 1,400 MT CO_2E per year; industrial: 10,000 MT CO_2E per year; or mixed use: 3,000 MT CO_2E per year. The SCAQMD recommends that a project's construction emissions are averaged over 30 years and are added to a project's operational emissions.

It is not appropriate to divide GHG emissions by air district or air basin because GHG emissions have a global effect on climate change. Nonetheless, truck emissions were presented by air district in Dudek AQA 2016 for disclosure purposes. To estimate the GHG emissions by air district, the unmitigated mobile source truck emissions shown in Dudek AQA 2016 Table 15 were apportioned to each air district according to the relative average weekday truck VMT discussed in Section 3 of the Dudek memorandum. For disclosure, Dudek AQA 2016 Table 17 presents a summary of estimated annual operational mobile source truck trip GHG emissions for each air district.

Dudek AQA 2016 Table 17
Estimated Project-Generated Annual Operational Mobile Source - Truck Trips Greenhouse Gas Emissions by Air District

Mobile Source – Truck Trips Location	CO_2 (MT/year)	CH_4 (MT/year)	N_2O (MT/year)	CO_2E (MT/year)	CO_2E (tons/year)
MDAQMD	23,932.42	0.13	0.00	23,935.22	26,384.06
SCAQMD	13,461.99	0.08	0.00	13,463.56	—

Notes: See Dudek AQA 2016 Attachment A for detailed results.
MT = metric tons; CO_2 = carbon dioxide; CH_4 = methane; N_2O = nitrous oxide; CO_2E = carbon dioxide equivalent

Based on the distribution of truck trips and trip distances, it was estimated that 64% of the project's emissions would occur within the MDAQMD and 36% would occur within the SCAQMD.

Comment G-15 You also assert that the Project follows the Town's Climate Action Plan because it will have high efficiency HVAC and fans. You state that the 30% reduction in construction energy use per the California Building Code is below the Town's Climate Action Plan goal of 15% below 2005 levels by 2020. This isn't an apples-to-apples comparison. First, you are comparing energy efficiency to GHG reductions. Second, the bulk of the GHG emissions from this Project will come from truck emissions, not building efficiencies or inefficiencies. You also assert that statewide programs and standards "including new fuel-efficient standards for cars and expanding the use of renewable energies" will help reduce long-term emissions. Again the majority of emissions will come from diesel trucks and will be unaffected. And you could have, but have not, provided for solar panels on the building.

Response G-15 The Initial Study correctly describes that the project will not conflict with the Climate Action Plan. Mention of HVAC efficiency and adherence to California building codes were used as limited examples of how the project will comply with the CAP. The CAP does not speak to or seek to regulate vehicle emissions, and performance standards as a project specific issue, and therefore vehicle emission measures are not a requirement to demonstrate compliance with the Town's CAP. The Initial Study does not, as the commenter implies, conclude that development of this project will result in a 15-30% reduction in GHG emissions from *all* potential sources, although the Initial Study *does* analyze and disclose the GHG emissions from all potential sources and Dudek AQA 2016 has confirmed that the project's estimated GHG emissions will not exceed the thresholds set by the MDAQMD (see Tables 12, 13, 17 and response to Comment G-14). Accordingly, no mitigation measures are required under CEQA. (State CEQA Guidelines § 15126.4(a)(3) ("Mitigation measures are not required for effects which are not found to be significant.").)

Nonetheless,, the applicant has reconfirmed the details regarding project features that are already incorporated into the proposed Project's design in compliance with the Town's CAP. Although these features are already an inherent part of the Project description, the Town will nonetheless expressly include these features as conditions of approval for informational purposes. These features include:

Ridesharing Program:

- To encourage associates to participate in carpooling for transportation to and from the DC, the applicant will provide the following services/incentives (AVDC Inc. 2016.).
  1. The Human Resources office will maintain a bulletin board on which the HR manager will post information on those associates seeking to carpool. The applicant will assist interested associates in finding potential carpooling partners.
  2. The applicant will designate up to 20 preferred parking spaces at the facility reserved for those associates who participate in carpooling.
  3. The applicant will provide referral services and information on ride share matching.
  4. The applicant will provide assistance to associates in forming new carpooling groups and ongoing carpooling support.
  5. The applicant will provide associates with regularly updated information about options for using public transportation.
  6. Once carpools are established, the applicant will track associate carpooling participation patterns.
  7. The applicant will coordinate carpooling events throughout the year to provide associates with information on carpooling and to encourage associates to form and maintain carpooling groups.

8. The applicant will disseminate internet websites to associates to provide carpool opportunities (www.erideshare.com and www.carpoolworld.com).

- The applicant also will assist interested associates to determine the feasibility of carpooling to and from work and facilitate meetings in which potential carpool groups can initially meet and discuss compatibility. The applicant will provide a list of suggested topics for potential carpooling associates to discuss in forming carpool groups.

Architecture:

- The project would use low-emissivity window systems and shades for energy savings.
- The project would use low VOC content products (e.g., paints and finishes) that meet or exceed the requirements for CALGreen criteria.
- The project would divert construction waste to recycling facilities in lieu of landfills to reduce emissions associated with landfill off-gassing.
- The project would use higher R-values roof and building insulation for reduced energy consumption.

Mechanical – HVAC:

- The project would utilize a high efficiency packaged single zone variable air volume rooftop units with energy saving economizer, automatic temperature setback, occupancy sensors, and optimized controls for maximum energy performance.
- The project would utilize partial HVAC unit redundancy for times of low cooling demand or maintenance periods; some units can be switched off and still maintain space conditioning to increase energy conservation.
- The project would utilize demand controlled ventilation controlling CO_2 levels, allowing a reduction in fresh air / outside air intake to reduce the mechanical cooling and optimize energy performance.

Plumbing:

- The project would use low-flow water efficient lavatories and urinals in all bathrooms with automatic sensors to reduce water demand and increased water efficiency rating.
- Indoor Water Use
  1. The project would install low-flow bathroom faucets, achieving an approximately 77% reduction in water flow.
  2. The project would install low-flow toilets, achieving an approximately 31.8% reduction in water flow.
- Outdoor Water Use
  1. The project would install water-efficient irrigations systems, achieving an approximately 50% reduction in water use.

Electrical:

- The project would use LED lighting in lieu of fluorescent or HID to achieve a lighting design that uses 31% less energy as allowed by Title 24 requirements.

- The project building's design would exceed Title 24 requirements by approximately 7%.
- The project would install high efficiency lighting, achieving a 31% reduction in energy use.
- The project would install energy efficient fans that would reduce energy consumption.

Implementation of the aforementioned project design features, which are required elements of the proposed Project's design, would reduce project-generated criteria air pollutant emissions and GHG emissions. Energy efficiency features would reduce the consumption of natural gas and electricity, specifically energy consumed for building heating, cooling, and lighting, and associated emissions. Water use reduction features would reduce indirect GHG emissions associated with water supply, treatment, and distribution, and wastewater, which are primarily associated with electricity consumed and the treatment process. The diversion of construction solid waste to recycling facilities would reduce CO_2 and CH_4 emissions associated with the decomposition of waste disposed of at a landfill.

Furthermore, the discussion of statewide fuel-efficiency standards was provided for public disclosure and background purposes. The conclusion that the project's vehicle GHG emissions will be less than significant is not dependent on the implementation of those fuel-efficiently standards. The Initial Study fully accounted for and disclosed the anticipated GHG emissions from all sources, including those from truck operations.

Ultimately, the significance of vehicle emissions was addressed by the established Mojave Desert AQMD GHG threshold, which showed the project to have a less than significant impact.

Finally, solar is not required as part of the CAP or established GHG regulation. Because GHG emissions were already found to be less than significant, further mitigation to reduce energy demand and any related GHG emissions is not required for the project. (State CEQA Guidelines § 15126.4(a)(3) ("Mitigation measures are not required for effects which are not found to be significant.").)

Comment G-16 *Threshold b. Would the Project create a significant hazard to the public or the environment through reasonably foreseeable accident conditions involving the release of hazardous materials into the environment?* You acknowledge that a portion of the Project site was used by the U.S. military as a bombing site. This means there is the potential for unexploded ordnance – you say in the northwest corner of the site. As you acknowledge, the bombing spilled over into the adjacent site but you have not provided for mitigation there. This is along Lafayette Street on the way to Dale Evans Parkway, which seems to us to be the most likely traveled

route. This represents a hazard to neighboring uses and any travelers on Lafayette Street.

Response G-16 Comment noted. See responses A-2 and G-17. The Ordnance Investigation conducted for the proposed project was comprehensive, and included analysis of all the potential impacts associated with past use of the site and its surroundings for bomber training. The mitigation measures include in the Initial Study cover any and all portions of the project, including off-site improvements. Therefore, the pertinent measures will be applied to those portions of improvements on Lafayette Street that cross the range area. Nonetheless, to provide further clarification, MM VII.1 shall be revised to clarify that it applies to all areas within the site "including off-site improvement areas." The Initial Study correctly describes the potential impacts, and provides mitigation measures to assure that impacts associated with ordnance scrap are less than significant.

Comment G-17 In MM VII.1 you state that the bombing target area and within 300 feet of it *within the site* shall be cleared by a qualified technical team. The Proponent should get clearance to clear the areas *adjacent* to the site as well. In MM VII.5 you state there should be a Site Management Plan for future grading and site disturbance within 300 feet of the bombing area. The area should be completely cleared under MM VII.1, such that there is no need for this further measure.

Response G-17 The basis for the commenter's assertion is unclear. The project proponent is responsible for mitigating impacts associated with the project on any area where the project could have an impact. The mitigation measures included in the Initial Study cover any and all portions of the project, including off-site improvements. Therefore, the pertinent measures will be applied to those portions of improvements on Lafayette Street that cross the range area. The project proponent will do so by implementing conditions of approval and mitigation measures. Nonetheless, to provide further clarification, MM VII.1 shall be revised to clarify that it applies to all areas within the site "including off-site improvement areas." The project proponent is not responsible for conducting investigations and remediation on other parties' private property, nor would it be appropriate for the Town to impose mitigation measures on a third party. Specifically, to be valid under CEQA, a mitigation measure "must be consistent with all applicable constitutional requirements, including the following: (A) [t]here must be an essential nexus (i.e., connection)" between the measure and the project; and (B) the measure must bear a "rough proportionality" to the impacts of the project. (State CEQA Guidelines, § 15126.4(a)(4)(A)-(B) [citing *Nollan v. California Coastal Commission* (1987) 483 U.S. 825 and Dolan v. City of Tigard (1994) 512 U.S. 374].) Here, there is no evidence, much less substantial evidence, showing that the proposed project may result in off-site impacts relative to unexploded ordnance (if any). Thus, there is no nexus between the project and the commenter's request that the applicant survey and mitigate for potential unexploded

ordnance off-site. (See *Bowman v. California Coastal Commission* (2014) 230 Cal.App.4th 1146 [finding that a condition in a coastal development permit that required an applicant to mitigate for impacts outside of the coastal zone violated the Nollan/Dolan standard].)

Additionally, a mitigation measure requiring remediation of off-site ordnance (if any) is unnecessary because the impacts of the project have already been found to be less than significant. CEQA does not require the imposition of mitigation for insignificant impacts. (State CEQA Guidelines § 15126.4(a)(3) ("Mitigation measures are not required for effects which are not found to be significant.").)

Finally, and even if there were a potentially significant impact (which there isn't), the imposition of such an off-site obligation would be legally infeasible and unenforceable, because the Town cannot impose a mandatory requirement on the applicant to trespass onto adjacent lands not owned by the applicant. (See (Pub. Resources Code, § 21081 6(b); State CEQA Guidelines, § 15126.4(a)(2).)

Comment G-18 *Mitigation Monitoring.* Your MM&RP provides the Project proponent will provide the Town with an agreement with a qualified ordnance disposal team, but again, the "when" for this measure is indeterminate: it should be prior to grading, grubbing, etc. permits. As the Mitigation Monitoring plan stands now, it is not enforceable.

Response G-18 The commenter is incorrect. The Monitoring measure specifically states that the Town will assure that the monitor is on site during all earth moving activities. The agreement, therefore, must be presented before the initiation of these activities." See also Response G-12, describing clarification to MMRP timing requirement.

H. Lozeau Drury, May 24, 2016

Comment H-1 We have reviewed the IS/MND with the assistance of:

1. Traffic Engineer, Daniel T. Smith Jr., P.E.,
2. Ecologist, Shawn Smallwood, Ph.D., and
3. Hydrogeologist, Matthew Hagemann, C.Hg., MS. and Environmental Scientist Jessie Jaeger of Soil/ Water/Air Protection Enterprise (SWAPE).

These experts have prepared written comments that are attached hereto, and which are incorporated in their entirety. The City (sic) of Apple Valley ("City") should respond to the expert comments separately.

Response H-1 Please note that the correct reference is Town of Apple Valley, not City of Apple Valley. The comment letter also includes three attachments, which are reports the commenter claims are prepared by "experts." Those general

reports do not constitute substantial evidence showing that a potentially significant impact for at least three reasons.

- First, such reports are not supported by factual conditions on the site. For example, none of the experts have any direct experience with the project area: none has visited the site; they do not understand that the DRECP is first a multiple species habitat conservation plan, or that it extends from north of the Owens Valley to the Mexican border; do not provide their modeling assumptions, and instead cite unsubstantiated results.
- Second, such reports merely contain opinions, speculation, and unsubstantiated narrative. Most egregious of these is the analysis by SWAPE, which asserts that their air quality modeling showed significant impacts, but provides no information whatever on their assumptions, or the model runs on which their assertions were based. Further, the biologist made no site visit, and relied on a bird nesting investigation paper for an area of central Mexico. Finally, the traffic engineer clearly has not reviewed development records for the area, and relies on an assumption that development has occurred "on the portions of the Industrial Specific Plan area that have been developed in the decade subsequent to initiation of the Specific Plan...or changes in ambient traffic over that time period." Clearly, the traffic engineer has no understanding that little development has occurred, and that the recession and other factors resulted in decreases in annual ambient traffic growth rates, and not increases in those growth rates.
- Third, the project-specific reports and studies prepared as part of the MND demonstrate that the commenter's reports are clearly erroneous and inaccurate, as described above.

Because CEQA specifically states that substantial evidence showing potentially significant impacts does not include factual deficiencies, opinion/speculation/narrative, and clearly erroneous and inaccurate information and only extends to expert testimony that is actually supported by *fact* (State CEQA Guidelines, § 15384(b), none of the three reports attached to the comment letter constitute substantial evidence.

Comment H-2 After reviewing the IS/MND, together with our team of expert consultants, it is evident that the document contains numerous errors and omissions that preclude accurate analysis of the Project's environmental impacts. As a result of these inadequacies, the IS/MND fails as an informational document. In addition, Commenters ask the City (sic) of Apple Valley ("City") to prepare an environmental impact report ("EIR") for the Project because there is a fair argument that the Project may have significant unmitigated impacts, including impacts on air quality, traffic, and biological resources. An EIR is required to analyze these and other impacts and to propose feasible mitigation measures to reduce the impacts to the extent feasible.

Response H-2 The commenter asserts throughout the comment letter that the "fair argument" test applies to determinations of whether the Project may result in potentially significant environmental impacts. Specifically, the commenter implies that that where substantial evidence supports a fair argument of significant environmental impacts, that an EIR must be prepared. However, this comment misstates the appropriate standard of review and is legally incorrect. Please see Response G-1 for a comprehensive explanation. Furthermore, even if the fair argument test did apply, there is no evidence – much less substantial evidence – supporting a fair argument that the project will result in potentially significant impacts as set forth in the responses to comment below.

Comment H-3 The EIR is the very heart of CEQA. (*Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.) As the California Supreme Court held, "[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR." (*Communities for a Better Env't v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320, citing, *No Oil, Inc. v. City of Los Angeles* (1974)(*NRDC v. LA*) 13 Cal.3d 68, 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504–505.) "Significant environmental effect" is defined very broadly as "a substantial or potentially substantial adverse change in the environment." Pub. Res. Code ["PRC"] § 21068; see also 14 CCR § 15382. An effect on the environment need not be "momentous" to meet the CEQA test for significance; it is enough that the impacts are "not trivial." *No Oil, Inc., supra,* 13 Cal.3d at 83. "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*CBE v. CRA* (2002) 103 Cal.App.4th at 109.)

CEQA permits agencies to 'tier' EIRs, in which general matters and environmental effects are considered in an EIR "prepared for a policy, plan, program or ordinance followed by narrower or site-specific [EIRs] which incorporate by reference the discussion in any prior [EIR] and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior [EIR]." (Cal. Pub. Res. Code § 21068.5.) "[T]iering is appropriate when it helps a public agency to focus upon the issues ripe for decision at each level of environmental review and in order to exclude duplicative analysis of environmental effects examined in previous [EIRs]." (Cal Pub Resources Code §21093.) The initial general policy-oriented EIR is called a programmatic EIR ("PEIR") and offers the advantage of allowing "the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts." (14 C.C.R. §15168.) CEQA

regulations strongly promote tiering of EIRs, stating that "[EIRs] shall be tiered whenever feasible, as determined by the lead agency." (Cal Pub Resources Code § 21093.)

"Subsequent activities in the program must be examined in light of the program EIR to determine whether an additional environmental document must be prepared." C.C.R. § 15168(c). A PEIR may only serve "to the extent that it contemplates and adequately analyzes the potential environmental impacts of the project." (*Sierra Nevada Conservation v. County of El Dorado* (hereinafter "*El Dorado*") (2012) 202 Cal.App.4th 1156). If the PEIR does not evaluate the environmental impacts of the project, a tiered EIR must be completed before the project is approved. (*Id.*)

In very limited circumstances, an agency may avoid preparing a tiered EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact thus requiring no EIR (14 Cal. Code Regs.§ 15371), only if there is not even a "fair argument" that the project will have a significant environmental effect. PRC, §§ 21100, 21064.) Since "[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process," by allowing the agency "to dispense with the duty [to prepare an EIR]," negative declarations are allowed only in cases where "the proposed project will not affect the environment at all." *Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440. For these inquiries, the "fair argument test" applies. (*Sierra Club v. County of Sonoma*, 6 Cal.App.4th 1307, 1318; *See also Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1164 ("when a prior EIR has been prepared and certified for a program or plan, the question for a court reviewing an agency's decision not to use a tiered EIR for a later project 'is one of law, i.e., the sufficiency of the evidence to support a fair argument.'")) Under the fair argument test, a new EIR must be prepared "whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact. (*Id.* at 1316 (quotations omitted).) When applying the fair argument test, "deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary." (*Sierra Club*, 6 Cal. App. 4th at 1312.) "[I]f there is substantial evidence in the record that the later project may arguably have a significant adverse effect on the environment which was not examined in the prior program EIR, doubts must be resolved in favor of environmental review and the agency must prepare a new tiered EIR, notwithstanding the existence of contrary evidence." (*Sierra Club*, 6 Cal.App.4th at 1319.)

The IS/MND acknowledges that it is a tiered CEQA document from the programmatic EIR for the North Apple Valley Industrial Specific Plan ("Specific Plan"). LIUNA agrees that a tiered EIR is required for the Project. First, a tiered EIR is required because the Specific Plan EIR upon which the City (sic) relies explicitly stated that it was a "programmatic" EIR and that

additional environmental analysis would be conducted for new development applications. Because the City (sic) made this representation to the public, it is now bound by it. Indeed, courts have required subsequent CEQA review in cases where the programmatic EIR relied upon has informed the public that later environmental review would occur. (Remy, Thomas, *Guide to CEQA*, p. 653 (11th ed. 2007), citing, *NRDC v. LA* (2002) 103 Cal.App.4th 268.) Apple Valley's Specific Plan EIR made clear that it was intended to serve only as a general "program EIR," and clearly contemplates the development of "project level" environmental review for later projects in the Specific Plan area. The Specific Plan states:

This EIR is meant to serve at a program level. Additional environmental documentation, such as environmental assessments and environmental impact reports, may be required for subdivisions, land use plans and other development applications that may be processed by the Town. (Specific Plan I-5) (emphasis added)

This point was reiterated by the City (sic) in the discussion of traffic impacts:

Given the programmatic nature of the Specific Plan and the associated traffic analysis, updated site-specific traffic studies will be required on a project-by-project basis prior to the implementation of such projects as tentative tract maps, conditional land uses or plot plan approvals within the boundaries of the Specific Plan. Subsequent traffic studies shall analyses the-existing traffic conditions and potential traffic impacts from each project. The need for subsequent traffic analysis shall be made on a case-by-case [sic] basis by the Town Engineer. (*Id.* at III-46.) (emphasis added)

The programmatic level of the Specific Plan study suggests that on-going and project specific traffic monitoring is required to assure adequate levels of service in the long-term. The Town shall periodically monitor conditions along roadway segments where General Plan and Specific plan level analyses indicate high levels of traffic congestion (*Id.* at III-47) (emphasis added)

Any member of the public reading the EIR would reasonably expect that the City (sic) would conduct project-level environmental review for a specific project within the Specific Plan area. Where the City (sic) represented that project level CEQA review would occur later, it must now follow through and conduct full and fair environmental review.
Furthermore, a tiered EIR is required because the PEIR did not analyze the environmental impacts of the Project that is now proposed. A PEIR may only "serve as the EIR for a subsequently proposed project to the extent it contemplates and adequately analyzes the potential environmental impacts of the project." (*El Dorado*, 202 Cal.App.4th at 11671.) The Specific Plan is only a general policy document intended to "guide the future development" of an approximately 4,937 acre tract of land through "development

standards and guidelines for the eventual development of a master planned industrial Park." (Specific Plan, p.I-6&7.) The Specific Plan did not commit to any specific project uses or locations for those uses, merely limiting development to "a broad range of clean manufacturing and warehousing uses, ranging from furniture manufacture to warehouse distribution facilities." (*Id.*at p. I-7) This included three types of industrial designations (Industrial –Specific Plan, Industrial – General, and Industrial – Airport) and commercial development to support the industrial development. (*Id.* at III-5.)

Apple Valley's Specific Plan does not even specifically resolve to construct a distribution warehouse, but only lists distribution warehouses as one potential type of industrial use permitted within the area. Consequently, the PEIR for the Specific Plan lacked the specifics to meaningfully analyze the Project's environmental impacts. It therefore, may not relieve the City (sic) from conducting a review of the potential environmental impacts of the Project. (*See El Dorado*, (2012) 202 Cal.App.4th 1156, 1171; *See also*, *Save Our Neighborhood v. Lishman*, 14 Cal. App. 4th 12888 (finding that a proposed Project was a new Project even though planned for the same land and involving a similar mix of uses where they had different Project proponents and different configuration of uses.))

Given that the Specific Plan EIR does not fulfill the City's (sic) obligation to conduct CEQA review for the Project, it is subject to the "fair argument" standard in determining whether a full tiered EIR is required. (PRC, §§ 21100, 21064). Thus, a negative declaration is only allowed if "the proposed project will not affect the environment at all." (*Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440.) This means that a tiered EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency's decision. (14 C.C.R. § 15064(f)(1); *Sierra Club v. County of Sonoma*, 6 Cal.App.4th 1307, 1318; *Pocket Protectors v. City of Sacramento*, 124 Cal. App. 4th 903, 931 (Cal. App. 3d Dist. 2004); *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-15; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.) The "fair argument" standard creates a "low threshold" favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. *Pocket Protectors*, 124 Cal.App.4th at 928. The following discussion demonstrates that there is a fair argument that the Project will have significant and unmitigated environment impacts, including air, traffic and biological impacts. Therefore, a MND is insufficient to meet the City's (sic) obligations under CEQA, and the City (sic) must prepare a full EIR.

Response H-3 Please see Response H-2 regarding the previously certified Program EIR and the standard of review.

Second, contrary to the commenter's claim, the Town did not commit in its prior Specific Plan EIR process to preparing further EIRs for every development proposal brought forward within the Specific Plan. To the contrary, the Town committed to reviewing subsequent proposals to confirm what further review under CEQA (if any) was required. (See, e.g., State CEQA Guidelines § 15162(c) (once an agency has certified a CEQA document, its obligation under CEQA is complete until and unless it issues a new discretionary approval).)

In addition, the Specific Plan EIR quantified all potential impacts of build out of the proposed project, including traffic, water resources and air quality impacts associated with build out of the entire Specific Plan. The Initial Study reviewed and reanalyzed the specific impacts associated with the proposed project, and correctly found that conditions in the Specific Plan area had not substantially changed; that growth and construction in the Specific Plan area had been considerably slower than that anticipated at the time the Specific Plan and EIR were prepared; that the impacts associated with the proposed project do not represent a substantial change in the impacts identified in the Specific Plan EIR; and that the proposed project's site-specific impacts could be mitigated to less than significant levels with the implementation of the Specific Plan EIR mitigation measures and associated site-specific mitigation measures.

Comment H-4 Establishing an accurate baseline is the *sine qua non* to adequately analyzing and mitigating the significant environmental impacts of a project. (*See* 14 C.C.R. §15125(a); *Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 121-23 ("*Save Our Peninsula.*")) Every CEQA document must start from a "baseline" assumption. The CEQA "baseline" is the set of environmental conditions against which to compare a project's anticipated impacts. Section 15125(a) of the CEQA Guidelines states in pertinent part that a lead agency's environmental review under CEQA:

...must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant." (Emphasis added.)

(14 C.C.R. § 15125(a); *See also, Save Our Peninsula Committee* (2001) 87 Cal.App.4th at 124-25.) As the Court of Appeal has explained, "the impacts of the project must be measured against the 'real conditions on the ground,'" and not against hypothetical permitted levels. (*Save Our Peninsula Committee* (2001) 87 Cal.App.4th at 121-23.)

Traffic Engineer Daniel Smith reviewed the MND and found that the traffic analysis conducted for the IS/MND failed to take into account current traffic and roadway conditions surrounding the Project. First, the traffic study relies on outdated traffic conditions. The MND's traffic analysis is based on tiering from the 2006 Specific Plan EIR. While the use of the Specific Plan's EIR is not inherently problematic, Mr. Smith concluded that the city (sic) failed to conduct the proper analysis to ensure that the conditions relied upon in the Specific Plan PEIR were still accurate. (*See*, Comment of Daniel Smith, p.2 attached hereto as Appendix A.) Specifically, he found that the IS/ MND failed to consider changes since the PIER in traffic both from development within the Specific Plan boundaries and ambient traffic increases from new development outside of the Specific Plan boundaries. (*Id.*) The City (sic) may not rely on a baseline derived from 10-year-old data without any consideration of its continued applicability.

Furthermore, Mr. Smith concluded that the City (sic) used an improper baseline in its traffic analysis by relying on aspirational roadway conditions that do not yet exist. (*Id.* at 3.) As with the baseline traffic, the IS/MND relied on the Specific Plan EIR to determine baseline roadway conditions. However, instead of using the conditions in place when the Specific Plan EIR was drafted in 2006, which consisted of mostly unpaved local roads serving minimal traffic operations, the IS/MND relied on the upgraded road conditions which the Specific Plan intended to be implemented by 2030. Mr. Smith explains that the success of these planned improvements will depend on the course of development within the Specific Plan Boundaries:

> Logically, if development takes place in a coordinated way, sub-area by sub-area, the improvements to the circulation system triggered by individual developments will be mutually supportive and satisfactory transportation service will be maintained throughout the Plan buildout period. However, if initial development is scattered over the entire Plan area, circulation system improvements made may not be mutually sustaining and significant traffic impacts may occur and may continue for years until the Plan nears full development. The IS/MND contains no quantified analysis demonstrating that there would not be traffic impacts with the land developments and circulation system upgrades that will have taken place by the date of completion of the Jupiter Project.

(*Id.*) Even assuming the upgrades are successfully accomplished by 2030, the IS/MND's traffic analysis still fails to take into account the roadway conditions from Project construction and operation (projected to occur in 2017 and 2018 respectively) through 2030. This means over a decade of traffic impacts were not properly considered. Because the roadway conditions utilized to analyze traffic impacts do not reflect conditions "as they exist at the time [environmental analysis] is commenced," the IS/MND violates CEQA. *Save Our Peninsula*, 87 Cal.App.4th at 124-25.

The traffic analysis downplayed the true extent of traffic impacts by using both aspirational roadway conditions and outdated traffic conditions. Therefore, the baseline from which the Project's traffic impacts were analyzed fails to represent accurate conditions presently surrounding the Project. This improper baseline ultimately "mislead(s) the public" by engendering skewed and inaccurate analyses of environmental impacts, mitigation measures and cumulative impacts for biological resources. See *San Joaquin Raptor Rescue Center*, 149 Cal.App.4th at p. 656; *Woodward Park Homeowners*, 150 Cal.App.4th at 708-711. Without an accurate baseline, the IS/MND's conclusion that the Project's traffic impacts will be less than significant are unsubstantiated. Proper analysis must be conducted to take into account present day conditions, and all impacts must be mitigated. An EIR must be prepared to remedy these deficiencies.

Response H-4 The commenter claims that the MND contains an insufficient description of the baseline environmental conditions against which impacts are measured. This is incorrect because the commenter inappropriately references the standard for assessing a project's environmental setting where a lead agency is preparing an EIR. That is, the commenter fails to recognize that CEQA establishes a less-stringent standard for describing baseline conditions where a lead agency is considering approving a project via a negative declaration. (See State CEQA Guidelines, § 15071 [requiring MNDs to describe "[t]he location of the project, preferably shown on a map"]; *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270 [finding that an agency's description of a project's existing environmental setting in a negative declaration will be valid so long as the agency's description "represents an objective, good faith effort to comply with CEQA"].)

As clearly stated in the Initial Study, there has been almost no development in the Specific Plan Area since adoption of the document, and the small development projects that have occurred have been entirely consistent with the uses considered in the Specific Plan and Specific Plan EIR. The Town regularly prepares, and posts on its website, traffic counts performed in the Town (http://applevalley.org/home/showdocument?id=1152). As shown in that statistical data, traffic growth from 2007 to 2016 has increased in most locations by less than 1% annually. The growth projections in the EIR assumed annual growth rates of 2% annually. Actual growth, therefore, has been lower than that anticipated in the EIR, and the projections in that document are therefore conservative. The baseline analysis has not substantially changed, and the analysis of traffic and other impacts was based on accurate conditions. Please see the two pictures below, showing 2007 and 2015 conditions. Furthermore, since the project is consistent with the analysis in the EIR, and since the EIR analysis included an ambient growth rate, the analysis in the EIR is valid, and the impacts of the project will be no greater than the impacts identified in the EIR.

Google Earth image, 1/2007

Google Earth image, 1/2015

The traffic analysis prepared for the proposed project was based not only on the original analysis performed by Urban Crossroads for the Specific Plan EIR, but also an evaluation of development occurring since that time. That analysis concluded that little development had occurred in the area, and that

conditions had not substantially changed since the completion of the Specific Plan EIR. Further, Traffic counts were conducted in August 2015 by Newport Traffic Studies, an independent traffic data collection company. The updated traffic counts demonstrate that conditions in the study are have not significantly changed since the analysis for the NAVISP EIR was completed. In fact, traffic conditions in the peak hour have improved since the NAVISP EIR was completed. See Table X below for a comparison of baseline conditions studied in the NAVISP EIR and current conditions.

Table X: Level of Service (LOS) Baseline Comparison

Intersection	AM Peak Hour LOS		PM Peak Hour LOS	
	2006	2015	2006	2015
Johnson Road and Navajo Road	-	A	-	A
Dale Evans Pkwy and Johnson Road	B	A	C	A
Dale Evans Pkwy and I-15 Freeway NB Ramps	B	A	B	A
Dale Evans Pkwy and I-15 Freeway SB Ramps	A	A	B	A

Source: Urban Crossroads: North Apple Valley Specific Plan Traffic Impact Analysis (Revised) 2007, Table 3-1; and David Evans and Associates 2015: Project Jupiter Distribution Center Traffic Impact Study 2015.

The commenter's traffic engineer also does not appear to consider the location of the proposed project in context when asserting that the Specific Plan's roadway system will develop over a long period of time. As stated in the Initial Study, and shown in Exhibit 2, the proposed project is located immediately south of an existing, developed distribution center which resulted in the construction of major road improvements on Johnson Road, to which the proposed project will connect. Johnson Road intersects Dale Evans Parkway less than ½ mile west of the proposed project. Dale Evans Parkway is developed and provides direct access to the I-15. The improvements required to accommodate the proposed project on the regional roadway system are therefore already in place. Furthermore, although the EIR analyzed a build out year of 2030, the year of build out is irrelevant, since build out assumes concurrent development and build out of the region, not only the project area. Therefore, whether build out occurs in 2030, 2020 or 2035, the EIR analyzed regional growth, and since the supply of available land is finite, considered the development on surrounding lands at an equivalent pace.

Finally, the proposed project will be conditioned to pay the Town's traffic impact fees, which are specifically designed to provide for regional transportation improvements consistent with the General Plan roadway classifications for Town streets.

Comment H-5 Expert wildlife biologist Shawn Smallwood reviewed the IS/MND and the biological survey for the Project and concluded that the failure of the IS/MND (and supporting documents) to investigate and identify occurrences of sensitive biological resources at the Project site resulted in an inaccurate baseline, unsupported by substantial evidence. (See, Comment of Shawn Smallwood, p.2 attached hereto as Appendix B.)

First, an accurate environmental setting for biological resources was not established because the surveys dismissed the presence of special-status species without conducting adequate surveys. Mr. Smallwood found that the IS/MND inappropriately failed to account for a number of special-status species likely to be impacted by the Project given conditions of the Project site. (*Id.*) Mr. Smallwood explained that "[s]tandard scientific practice when assessing risk to rare or precious resources in the face of high uncertainty is to err on the side of caution," however, the IS/MND assumed no impacts to a number of protected species after only reconnaissance-level surveys. (*Id.*) There was no effort to detect bats even though multiple special-status species are likely to forage over the site. (*Id.* at 5.) Similarly the survey concluded that the Pallid San Diego pocket mouse and Southern grasshopper mouse were absent from the Project site without conducting any mammal trapping. (*Id.*) In total, Mr. Smallwood listed over thirty protected species that the survey concluded were not present at the Project site without conducting protocol-level surveys (*Id.* 2-3.) Unless protocol-level surveys are conducted, these species should be assumed to be likely present at the Project site so that potential impacts can be fully analyzed and mitigated.

Response H-5 The commenter is incorrect. Protocol level surveys are required only for special status species with a probability of occurring on the project site, or those species identified as occurring (through the sighting of the species, sign or scat) when a general survey is conducted.
For this project, consistent with the requirements of CEQA, potential impacts to special status species has been analyzed based on the potential for a species to occur based on presence/absence of suitable habitat for that species. An analysis of species with a potential to occur and impacts to those species was conducted in the NAVISP EIR. The EIR identified Mitigation Measures for biological resources including preconstruction surveys for burrowing owl and desert tortoise, surveys for nesting birds if construction took place during breeding season, and focused surveys for Mohave ground squirrel within identified suitable habitat (not applicable to the proposed project site). To ensure there are no additional impacts to special status species, a biological resources study was conducted for the

proposed project and conclusions incorporated into the IS/MND. With respect to species identified in Table 1 of the comment: coast horned lizard was analyzed in the NAVISP EIR which determined that marginally suitable habitat was present and mitigation for this species was not required; species with a status of CDFW 3503.5 (turkey vulture, red tailed hawk, sharp-shinned hawk, Cooper's hawk, American kestrel, merlin, prairie falcon, barn owl, and great-horned owl) are addressed through Mitigation Measure IV.2 which discusses avoidance of impacts to nesting birds; the project's biological resources report determined there is no nesting habitat present for golden eagle; pale big eared bat was addressed in the NAVISP EIR; desert tortoise, desert kit fox, and burrowing owl were addressed in the IS/MND with mitigation measures incorporated; Pallid San Diego pocket mouse was addressed in the NAVISP EIR and potential impacts determined to be less than significant; the remaining species were not identified as species with a potential to occur on the project site and have not been documented in the vicinity of the project site based on a query of the California Natural Diversity Database provided in the project's biological resources report. However, preconstruction surveys and biological monitors required by Mitigation Measure IV.2 would result in avoidance of impacts to these species should they be present.

Significantly, Mr. Smallwood's list is not sourced, and it is impossible to determine where his data was obtained. As noted, the project biologist conducted a search of the California Natural Diversity Database, and searched the California Department of Fish and Game Occurrence Reports. These searches were performed for the Apple Valley North Quadrangle, in which the project occurs. These sources of information are the most commonly used references for biological occurrence, because of their comprehensive nature, and are appropriate in this case. The search identified 12 species with the potential to occur on the site and those species are analyzed and considered. Neither search identified bats as having the potential to occur in the area.

Comment H-6 The failure of the IS/MND to adequately assess potential impacts on special- status species is demonstrated by its treatment of the burrowing owl. The IS/MND concluded that the borrowing owls would likely be absent from the project site because all of the kit fox burrows (in which they burrow) found on the Project site had been collapsed. (*Id.* at 3.) However, the IS/MND failed to note that burrowing owls most often use ground squirrel burrows for nesting and refuge, which were also found onsite but were not collapsed. (*Id.*) Moreover, Mr. Smallwood challenged the IS/MND's conclusion that the creosote on the Project would render it unsuitable for burrowing owls. Based on personal observations and experience, he concluded that these conditions would in fact be suitable for burrowing owls. (*Id.*) Mr. Smallwood also noted that the surveys conducted did not comply with the California Department of Fish and Game protocol, which requires surveys to be conducted multiple times across seasons. This omission was

particularly egregious because the surveys were "designed to meet burrowing owl...survey guidelines" and protocol-level surveys were a requirement established in the Specific Plan EIR. (*Id.*) Mr. Smallwood concluded that, "One-time survey efforts are unreliable for concluding absence of burrowing owl." (*Id.* at p.4.) As such, there was no substantial evidence to warrant the IS/MND's assumptions that the Project would not impact this protected species.

Response H-6 First, the Initial Study did not determine that there were no impacts to burrowing owl. The Initial Study correctly determined that there could be impacts to the species, but that the impacts to burrowing owl could be mitigated, and included mitigation measures to reduce those impacts to less than significant levels.

Second, although the project site was judged marginally suitable for burrowing owl, the project biologists followed the procedures described in the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) (which we assume to be what Mr. Smallwood is referencing when he cites a California Department of Fish and Game protocol). For a discussion of the assessment of potential impacts to burrowing owl and the required mitigation, please see Responses C-3, C-4 and F-3.

Finally, it is worth noting that the burrowing owl located in the area, unlike those in northern California are not migratory and its presence can be detected year round. Surveys at one time of year versus another would not yield a differing result.

Therefore, the Initial Study correctly identified, studied, and mitigated for impacts to burrowing owls.

Comment H-7 Mr. Smallwood found similar issues with the IS/MND as it pertained to additional protected bird species. Mr. Smallwood found that the failure to observe prairie falcons and golden eagles through reconnaissance surveys does not, as the biological surveys suggest, allow for the conclusion that these species do not rely on the Project site for foraging. *(Id.* at 4.) Given the scarceness of these species combined with their wide range, Mr. Smallwood concluded, "There should be no question that destroying foraging habitat on this site will cause ***significant adverse impacts to prairie falcons and golden eagles***." With respect to migratory birds, the IS/MND flatly dismisses the potential presence of migratory birds at the Project site because of the disturbed condition of the Project site and presence of creosote bushes without any evidence to support its claim. (*Id.* at 4.) To the contrary of this vague and unsubstantiated conclusion, Mr. Smallwood pointed to studies demonstrating that birds nest and forage in creosote shrubs, and therefore, concluded that the project would likely "have ***significant adverse impacts on migratory birds***." (*Id.*)

Response H-8 The commenter is incorrect. The Initial Study did not, in any way "flatly dismiss" the potential presence of migratory birds. The NAVISP EIR analyzes potential impacts to prairie falcon foraging habitat (see Figure III-14 of the NAVISP EIR) and the biological resources report prepared for the project acknowledges the presence of foraging habitat for prairie falcon and golden eagle within the project site. The loss of foraging habitat for raptors is a potential cumulative long term impact of a project. Cumulative impacts are discussed in section VIII of the NAVISP EIR and loss of foraging habitat is stated as a cumulative impact of the NAVISP.

Furthermore, and as an informational item, the Town anticipates further managing potential cumulative impacts to biological resources through preparation of a multiple species habitat conservation plan (MSHCP), as discussed in the NAVISP EIR. Both golden eagle and prairie falcon are anticipated to be covered species in the MSHCP. However, the goal of the IS/MND for *this* Project is to address impacts specific to the project that were not identified in the NAVISP EIR. Because the Project will not result in any raptor or cumulative biological impacts greater than those already analyzed and disclosed in the prior NAVISP EIR, loss of foraging habitat was not addressed further in the IS/MND.

Comment H-9 In sum, the City's conclusion that the Project's impact on biological resources will be less than significant cannot be supported without proper biological resource surveys having been conducted. Eliminating the possibility of protected species on site without conducting protocol-level surveys is unreasonable and fails to inform the public and decision makers of the Project's potential impacts on biological resources. Protocol- level surveys must be conducted or protected species likely to be present on the Project site must be assumed to be present to allow for full mitigation of potential impacts. An EIR must be prepared to remedy these deficiencies.

Response H-9 The Initial Study fully analyzed the potential impacts to biological resources, determined that those impacts could be significant, and provided extensive mitigation measures to reduce those impacts to less than significant levels. The Initial Study's findings are consistent with the findings of the Specific Plan EIR, and no new species has been identified, and no new or substantially greater impact found as a result of the analysis. An EIR is therefore not required by CEQA.

Comment H-10 As discussed above, a lead agency must prepare a tiered EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment. (Pub. Res. Code §21082.2; *Sierra Club v. County of Sonoma*, 6 Cal.App.4th 1307, 1318; *El Dorado* (2012) 202 Cal.App.4th 1156; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1993) 6 Cal.

4th 1112, 1123.) Here, substantial evidence presented in this comment letter, and the supporting technical comments, supports a fair argument that the Project will have significant environmental impacts on air quality, traffic, and biological resources. As a result, the City should withdraw the IS/MND and prepare an EIR.

Response H-10 Please see Response H-2.

Comment H-11 SWAPE reviewed the Project and the IS/MND, and determined that the initial study failed to adequately evaluate the Project's air quality impacts because it relied on improper input parameters when modeling the Project's emissions. SWAPE "found that several of the assumptions used and values inputted into the model were not consistent with procedures and values used in other CEQA evaluations for high-cube warehouse projects, and were not consistent with information disclosed in the IS/MND." (SWAPE Comment, p.2, attached hereto as Appendix C.) Such assumptions included truck trips generated from the Project, projected fleet mix, trip length and unrefrigerated storage.

The IS/MND underestimated the number of truck trips likely to be generated by the Project by using default modeling data instead of more accurate project-specific data. In assessing the likely impacts of the Project, SWAPE noted that while the Mojave Desert Air Quality Management District (MDAQMD) does not have guidance with respect to high-cube warehouse distribution centers, South Coast Air Quality Management District (SCAQMD), which also governs the rest of San Bernardino County, has conducted extensive research on the issue and recommends the use of the Institute of Transportation Engineers (ITE) Trip Generation Manual. *Id.* at p.2-3. SWAPE concluded that given the proximity of the SCAQMD jurisdiction and the agency's expertise, it was reasonable and recommended to follow its recommendations. Use of ITE figures reveals that the IS/MND underestimates the number of daily truck and car trips by 273 trips per day, almost ***100,000 trips per year***. *Id.* at 3. By underestimating the number of truck trips likely to be generated by the Project, the IS/MND's failed to take into account the full extent of air pollution likely to be emitted as a result of the Project.

Response H-11 Project-generated criteria air emissions were evaluated using the most recent version of the California Emissions Estimator Model (CalEEMod Version 2013.2.2), as set forth in Dudek AQA 2016, attached to and incorporated into this Response to Comments as Exhibit A.

Mobile emissions from passenger vehicles and heavy-duty trucks were modeled separately using different CalEEMod runs since each vehicle class is assumed to have a different trip length. The emissions from both sources were estimated using the CalEEMod model for estimating of regional emissions. Trip generation rates and fleet mix assumptions from the trip

generation evaluation (Urban Crossroads 2015) were used in this analysis. Passenger Car Equivalents (PCE) factors have been applied to the trip generation rates for heavy trucks (e.g., large two-axles, three-axles, four-plus-axles). Consistent with the San Bernardino County Congestion Management Program and standard traffic engineering practice in Southern California, PCE factors have been utilized due to the expected heavy truck component for the proposed project uses. PCE factors allow the typical "real-world" mix of vehicle types to be represented as a single, standardized unit, such as the passenger car, for the purposes of capacity and LOS analyses. A PCE factor of 1.5 has been applied to large two-axle trucks, a factor of 2.0 for three-axle trucks, and a factor of 3.0 for four-plus axle trucks.

The trip generation evaluation provided the Project's trips during the AM and PM peak hour. The Project is anticipated to generate a total of 211 net PCE trips during the AM peak hours and 244 net PCE trips during the PM peak hours.

The trip generation evaluation provided a truck trip generation rate of 0.64 for the project which accounts for 38.1 percent of the project's total daily traffic. The evaluation did not provide a passenger vehicle trip generation rate, however, the passenger vehicle trip generation rate was calculated as 1.04. Therefore, the project would have an overall trip rate of 1.68 for the project which is consistent with the trip rate for a high-cube warehouse found within the Institute of Transportation Engineers' *Trip Generation Manual, 9th Edition*. The specific fleet mix and trip length assumptions used in this analysis are set forth in detail in Exhibit A, Dudek AQA 2016.

In addition, CalEEMod was used to estimate operational emissions from area sources, including emissions from consumer product use, architectural coatings, and landscape maintenance equipment. With respect to building operation, emissions associated with interior natural gas usage are included in the building energy use module of CalEEMod. While building electricity use would contribute indirectly to criteria air pollutant emissions, the building-specific emissions from electricity use are only quantified for GHGs in CalEEMod, since criteria pollutant emissions occur at the site of the power plant, which is typically off site. As the Project does not use wood or natural gas fired stove or fireplaces, these emission sources were excluded. CalEEMod defaults were used for emissions from power plants that would generate electricity for the Project, reflecting Southern California Edison's renewable energy portfolio. CalEEMod's default assumptions and categories for electricity and natural gas consumption were used: title-24 regulations compliant, consumption outside the scope of title-24 regulations, and (for electricity) lighting. CalEEMod's default assumptions were used for water supply, wastewater and solid waste disposal. Further detail regarding all of the modelling assumptions is provided in Dudek AQA 2016.

The Project has been proposed and will be occupied by one, known, tenant. The applicant has not requested and the Town will therefore not approve cold-storage use. The site plan shown as Exhibit 3 clearly shows an open warehouse building with loading doors on two sides. Project floor plans do not show any refrigerated space within the building. The applicant has confirmed that the Project does not include any cold-storage or refrigerated truck use.

Comment H-12 The IS/MND also underestimated air impacts from the Project by using an inaccurate fleet mix. SWAPE explained that the IS/MND used the model's default fleet mix, which has only approximately 40% of trips by 4+ axle trucks and over 50% of trips by 2 axle trucks. *Id.* at 4. SCAQMD has also provided guidance on fleet mix based on analysis of other high-cube warehouse projects. It recommends a fleet mix of just over 60% 4+ axle trucks, with only 22% of trips from 2 axle trucks and 17.7.% from 3 axle trucks. *Id.* Relying on a fleet mix comprised mostly of smaller vehicles results in lower emission levels because smaller vehicles are less fuel-intensive to operate. SWAPE concluded, "By failing to utilize the warehouse-specific truck trip fleet mix, the IS/MND underestimates the total number of heavy-duty and medium-duty truck trips the Project will generate during operation, and as a result, the Project's operational emissions are underestimated." *Id.* at 5

Response H-12 As set forth in more detail in Dudek AQA 2016, mobile emissions from passenger vehicles and heavy-duty trucks were modeled separately using different CalEEMod runs since each vehicle class is assumed to have a different trip length. The emissions from both sources were estimated using CalEEMod model for estimating of regional emissions. Trip generation rates and fleet mix assumptions from the trip generation evaluation (Urban Crossroads 2015) were used in this analysis. Passenger Car Equivalents (PCE) factors have been applied to the trip generation rates for heavy trucks (e.g., large two-axles, three-axles, four-plus-axles). Consistent with the San Bernardino County Congestion Management Program and standard traffic engineering practice in Southern California, PCE factors have been utilized due to the expected heavy truck component for the proposed project uses. PCE factors allow the typical "real-world" mix of vehicle types to be represented as a single, standardized unit, such as the passenger car, for the purposes of capacity and LOS analyses. A PCE factor of 1.5 has been applied to large two-axle trucks, a factor of 2.0 for three-axle trucks, and a factor of 3.0 for four-plus axle trucks. The trip generation evaluation provided the Project's trips during the AM and PM peak hour. The Project is anticipated to generate a total of 211 net PCE trips during the AM peak hours and 244 net PCE trips during the PM peak hours.

Comment H-13 Further casting doubt on the IS/MND's conclusions, SWAPE concluded that, in using the default figures, the Project substantially underestimated the length of truck trips. The model assumes truck trip lengths of a mere 7.3

miles, a figure which would barely take trucks past the Apple Valley boundary. (*Id. at 7.*) SCAQMD has found that most industrial land use types haul consumer goods from the Ports of Long Beach and Los Angeles, which a simple Google map search reveals are over 100 miles from the Apple Valley. (Id. at 6.) SCAQMD has, therefore, recommended a 40-mile one way trip length, Id. SWAPE also noted recently proposed warehouse projects within the County of San Bernardino have adopted proposed trip lengths of 50 and 24.11 miles. (Id. at 5-6.) Moreover, SCAQMD took issue with the 24.11 proposal, a number that is three times that utilized in the IS/MND. (Id. at 6.) The IS/MND's reliance on a grossly unrealistic trip length resulted in the underestimation of air pollution impacts.

Response H-13 A trip length of 97 miles, calculated based on applicant-provided trip data, was used in the analysis of the heavy-duty truck fleet in Dudek AQA 2016.

Trip lengths were measured assuming that trucks would travel from the project site to the following locations:

- Northern direction (17% inbound and 51% outbound) – MDAQMD boundary (trip length of 57.4 miles)
- Southern direction (4% inbound and 17% outbound) – SCAQMD boundary (trip length of 108 miles)
- Eastern direction (50% inbound and 13% outbound) – MDAQMD boundary (trip length of 94 miles)
- Western Direction (29% inbound and 19% outbound) – Port of Long Beach (trip length of 158 miles)

The customized truck trip length was estimated by taking the weighted average of the inbound and outbound trip distances above based on the percentage of their occurrence. This results in an average trip length of 97 miles. The estimated truck trip length was assumed in CalEEMod in place of the default trip length values.

Further details are set forth in Dudek AQA 2016.

Comment H-14 Finally, the IS/MND underestimated operational emissions by failing to consider any cold-storage warehouse uses even though the DEIR acknowledges that the specific tenants remain unknown. (Id. at p. 7.) If tenants do require refrigeration, it will change the scope of the Project's environmental effects because refrigerated warehouses release more air pollutants and greenhouse gas (GHG) emissions when compared to unrefrigerated warehouses. (Id. at 8) Refrigerated trucks tend to idle much longer than typical hauling trucks, even up to an hour. (*Id.*) Energy usage from warehouses equipped with industrial size refrigerators and freezers is also much greater when compared to unrefrigerated warehouses. (*Id.*) In addition, according to the July 2014 SCAQMD Warehouse Truck Trip Study Data Results and Usage presentation, trucks that require refrigeration

resulted in greater truck trip rates when compared to non- refrigerated trucks. (*Id.*) By relying exclusively on unrefrigerated land use emissions, the air quality analysis greatly underestimates the Project's potential air quality and climate change impacts. (*Id.*) Because it is reasonably foreseeable that one or more of the warehouse tenants will require refrigeration, an EIR should be prepared to account for the effects from refrigerated warehouse buildings. (*Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 396.)

Response H-14 The Project has been proposed and will be occupied by one, known, tenant. The applicant has not requested and the Town will therefore not approve cold-storage use. The site plan shown as Exhibit 3 clearly shows an open warehouse building with loading doors on two sides. Project floor plans do not show any refrigerated space within the building. The applicant has confirmed that the Project does not include any cold-storage or refrigerated truck use. Therefore, there is no basis for assuming refrigeration in the Initial Study's analysis, and no such analysis is required.

Comment H-15 In addition to the failure of the modeling to accurately project operational emissions, SWAPE determined that the model also underestimated construction emissions. SWAPE found that the modeling assumed that all off-road construction vehicles would be equipped with oxidation catalysts, which would reduce emissions from construction by 15%. (SWAPE Comment at p.8). However, SWAPE pointed out that the IS/MND does not contain any commitment to use of oxidation catalysts in construction equipment. *Id.* Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments. (14 C.C.R. §15126.4(a)(2).) Consequently, if the IS/MND is going to rely on clean construction equipment to ensure that emissions impacts are not significant, it must commit to use of this equipment as a condition of approval for the Project. Without such enforceability, the IS/MND may not rely upon those reductions.

Response H-15 The applicant has re-confirmed that its existing proposed Project includes as a construction feature that all off-road construction vehicles will use oxidation catalysts, thus re-confirming the Initial Study's conclusion that the Project's unmitigated NOx emissions will not exceed thresholds and therefore do not require mitigation measures. Nonetheless, the Town will again add this existing Project design feature to the Conditions of Approval to ensure that the record is clear. The Initial Study found impacts to be less than significant, and did not require mitigation measures beyond those included in the Specific Plan EIR.

Comment H-16 In order to account for the numerous errors in the modeling relied upon in the IS/MND, SWAPE reran the model with corrected parameters and found that "the Project will have a potentially significant impact on regional air quality." (*Id.* at 10.) Specifically, the Project's NOx emissions exceeded the

MDAQMD significance threshold of 137 pounds/day, even after the implementation of mitigation. (*Id.* at 11.) This significant impact must be analyzed in an EIR and fully mitigated. SWAPE's letter details a number of mitigation measures for operational NOx that could be incorporated into the Project. (*Id.* at 11-12.)

Response H-16 As set forth in Dudek AQA 2016, the Project's daily operational emissions were evaluated against the CEQA significance thresholds of the Mojave Desert Air Quality Management District (MDAQMD). For a summary of the assumptions used in the Dudek AQA 2016 CalEEMod modelling, please refer to Reponses H-11, H-12, H-13, and H-14; further detail is provided in Dudek AQA 2016.

The MDAQMD CEQA Guidelines, updated in August 2016, sets forth emission-based significance thresholds which are used to determine whether a project would have a significant impact on air quality. Project-related air quality impacts estimated in this environmental analysis would be considered significant if any of the applicable significance thresholds presented in Dudek AQA 2016 Table 3 are exceeded.

Dudek AQA 2016 Table 3
MDAQMD Air Quality Significance Thresholds

POLLUTANT	ANNUAL THRESHOLD (TONS/YEAR)	DAILY THRESHOLD (POUNDS/DAY)
VOC	25	137
NO_x	25	137
CO	100	548
SO_x	25	137
PM_{10}	15	82
$PM_{2.5}$	12	65

Source: MDAQMD 2016.
Notes: CO = carbon monoxide; NO_x = oxides of nitrogen; VOC = volatile organic compound; SO_x = sulfur oxides; PM_{10} = coarse particulate matter; $PM_{2.5}$ = fine particulate matter.

Dudek AQA 2016 Table 8, Estimated Maximum Daily Operational Emissions, presents the maximum daily area source emissions, energy source emissions, and vehicle source emissions for the year 2017. The values shown are the maximum summer or winter daily emissions (i.e., worst-case) results from CalEEMod. Details of the emission calculations are provided in Dudek AQA 2016 Attachment A.

Dudek AQA 2016 Table 8
Estimated Project-Generated Maximum Daily Operational Criteria Air Pollutant Emissions

Emission Source	VOC (pounds/day)	NO_x (pounds/day)	CO (pounds/day)	SO_x (pounds/day)	PM_{10} (pounds/day)	$PM_{2.5}$ (pounds/day)
Area	102.15	0.00	0.29	0.00	0.00	0.00
Energy	0.07	0.65	0.55	0.00	0.05	0.05
Mobile - employee vehicle trips	3.87	4.82	54.64	0.10	7.90	2.12
Mobile - truck trips	33.54	630.78	397.58	2.29	91.06	36.47
Total	**139.63**	**636.25**	**453.06**	**2.39**	**99.01**	**38.64**
MDAQMD pollutant threshold	*137*	*137*	*548*	*137*	*82*	*65*
Threshold exceeded?	**Yes**	**Yes**	No	No	**Yes**	No

Source: MDAQMD 2016.

Notes: The values shown for mobile, energy and area sources are the maximum summer or winter daily emissions results from CalEEMod.
Area sources = consumer product use, architectural coatings, and landscape maintenance equipment. Energy sources = natural gas. Mobile sources = motor vehicles.
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

As shown in Dudek AQA 2016 Table 8, the combined daily area, energy, and vehicular source emissions would not exceed the MDAQMD operational thresholds for CO and PM2.5. While Project emissions would exceed the MDAQMD operational thresholds for VOC, NOx and PM10, the estimated project maximum daily emissions are less than, and do not represent a disproportionate share of, the increase in NAVISP buildout emissions over the development potential of the existing General Plan land use designations as estimated in the Specific Plan EIR, as shown in Dudek AQA 2016 Table 10.

Dudek AQA 2016 Table 10
Comparison of the Project and General Plan EIR Town-Wide Buildout Maximum Daily Operational Criteria Air Pollutant Emissions

Emission Source	VOC (pounds/day)	NO_x (pounds/day)	CO (pounds/day)	SO_x (pounds/day)	PM (PM_{10})[1] (pounds/day)	$PM_{2.5}$ (pounds/day)
2006 NAVISP EIR Buildout (2025) Total	1,089.0	7,149.2	7,310.4	1,192.3	456.0	N/A
Project Emissions (2017) Total	139.63	636.25	453.06	2.39	99.01	38.64
Project Emissions Inconsistent with Estimate for 2006 NAVISP EIR Buildout?	No	No	No	No	No	N/A

Sources: Town of Apple Valley 2006, Dudek 2016.
Notes: NAVISP emissions Based on Table III-25 Anticipated Cumulative Project-Related Emissions Associated with Buildout of the Proposed Project of the 2006 NAVISP EIR. NAVISP Emissions were estimated in the EIR using URBEMIS 2002 Version 8.7 and the SCAQMD 1993 CEQA Air Quality Handbook.
Project-generated emissions estimated using CalEEMod.
VOC = volatile organic compound; NO_x = oxides of nitrogen; CO = carbon monoxide; SO_x = sulfur oxides; PM = particulate matter; PM_{10} = coarse particulate matter; $PM_{2.5}$ = fine particulate matter; N/A = not available.
[1] Estimated project-generated PM_{10} emissions are compared to the 2006 NAVISP EIR-estimated PM emissions for the purposes of this comparison.

In addition, Dudek AQA Table 9, Estimated Annual Operational Emissions, presents the total annual project-generated emissions from area, energy, and vehicle sources for the year 2017 that occur within the MDAQMD.

Dudek AQA 2016 Table 9
Estimated Project-Generated Annual Operational Criteria Air Pollutant Emissions

Emission Source	VOC (tons/year)	NO_x (tons/year)	CO (tons/year)	SO_x (tons/year)	PM_{10} (tons/year)	$PM_{2.5}$ (tons/year)
Area	18.64	0.00	0.03	0.00	0.00	0.00
Energy	0.01	0.12	0.10	0.00	0.01	0.01
Mobile - employee vehicle trips	0.61	0.93	8.90	0.02	1.41	0.38
Mobile - truck trips	6.19	116.61	75.38	0.42	16.35	6.58
Total	**25.45**	**117.66**	**84.41**	**0.44**	**17.77**	**6.97**
MDAQMD pollutant threshold	*25*	*25*	*100*	*25*	*15*	*12*
Threshold exceeded?	**Yes**	**Yes**	No	No	**Yes**	No

Source: MDAQMD 2016, Dudek 2016.
Notes: Emissions estimated using CalEEMod.
Area sources = consumer product use, architectural coatings, and landscape maintenance equipment. Energy sources = natural gas. Mobile sources = motor vehicles.
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

As shown in Dudek AQA 2016 Table 11, similarly to project daily emissions, the combined annual area, energy, and vehicular source emissions would not exceed the MDAQMD significant thresholds for CO, SOx and PM2.5. While estimated annual project emissions would exceed the MDAQMD

operational thresholds for VOC, NOx and PM10, the estimated project maximum daily emissions are less than, and do not represent a disproportionate share of, the increase in NAVISP buildout emissions over the development potential of the existing General Plan land use designations as estimated in the Specific Plan EIR.

Dudek AQA 2016 Table 11
Comparison of the Project and General Plan EIR Town-Wide Buildout Maximum Annual Operational Criteria Air Pollutant Emissions

Emission Source	VOC (tons/year)	NO_x (tons/year)	CO (tons/year)	SO_x (tons/year)	PM (PM_{10})[1] (tons/year)	$PM_{2.5}$ (tons/year)
2006 NAVISP EIR Buildout (2025) Total	142.1	933.0	954.0	155.6	59.5	N/A
Project Emissions (2017) Total	25.45	117.66	84.41	0.44	17.77	6.97
Project Emissions Inconsistent with Estimate for 2006 NAVISP EIR Buildout?	No	No	No	No	No	N/A

Sources: Town of Apple Valley 2006, Dudek 2016.

Notes: NAVISP emissions Based on Table III-25 Anticipated Cumulative Project-Related Emissions Associated with Buildout of the Proposed Project of the 2006 NAVISP EIR. NAVISP Emissions were estimated in the EIR using URBEMIS 2002 Version 8.7 and the SCAQMD 1993 CEQA Air Quality Handbook.
Project-generated emissions estimated using CalEEMod.
VOC = volatile organic compound; NO_x = oxides of nitrogen; CO = carbon monoxide; SO_x = sulfur oxides; PM = particulate matter; PM_{10} = coarse particulate matter; $PM_{2.5}$ = fine particulate matter; N/A = not available.
[1] Estimated project-generated PM_{10} emissions are compared to the 2006 NAVISP EIR-estimated PM emissions for the purposes of this comparison.

With respect to the conclusions arrived at by the commenter, the commenter did not provide model run outputs to allow for proper analysis of SWAPE's claim and it is therefore unclear if proper and necessary assumptions and mitigation measures were employed in the commenter's analysis. The commenter has not provided any new substantiated evidence that impacts will be any greater than those analyzed, and no further analysis is required. Finally, the mitigation measures proposed by the commenter are not required to be imposed or implemented by the Project, because substantial evidence supports the Town's conclusion that the impacts are already less than significant, and to the extent any significant impacts have been identified they are less than, and do not represent a disproportionate share of, the significant impacts resulting from an increase in NAVISP buildout emissions over the development potential of the existing General Plan land use designations as estimated in the Specific Plan EIR. (State CEQA Guidelines § 15126.4(a)(3) ("Mitigation measures are not required for effects which are not found to be significant.").)

Comment H-17 The Traffic Impact Analysis ("TIA") does not support the findings of not significant in the IS/MND. Traffic engineer Dan Smith's analysis of the TIA revealed that the traffic generation study performed in support of the IS/MND fails to take into account the severity of the traffic impacts expected

from the Project. Mr. Smith explains that while the analysis correctly determined that the Project as proposed would generate less overall traffic in the peaks than the PEIR had originally assumed, it failed to mention that the Project would result in ***more*** traffic in the peak direction in both the AM and PM peaks (AM inbound, PM outbound) than assumed for the Specific Plan. Mr. Smith explains, "This concentration of traffic in the peak direction would tend to place greater stress on the transportation system." Therefore, the IS/MND failed to consider this potentially significant impact.

Response H-17 Please see Response H-4. As regards the concentration of traffic in the "peak direction" described by the commenter, the traffic analysis for the project found that the proposed project would generate 18 more trips inbound in the AM peak hour, and 7 trips inbound in the PM peak hour. The EIR found that, for example, the off-ramps at I-15 at Dale Evans Parkway, Stoddard Wells Road, the High Desert Corridor, and all other studied locations would operate at LOS C or better in both the AM and PM peak hour. The addition of up to 18 or 7 trips (since trips will be coming from different directions), as described by the commenter, will not significantly impact the intersection. The same is true of intersections along both Dale Evans Parkway, which will be the most likely regional access point directly to the site. LOS on Dale Evans Parkway at all studied intersections will be LOS C or better at build out. In the AM peak hour, for example, the intersection of Dale Evans at Johnson Road will accommodate 1,801 trips and operate at LOS C. The addition of up to 18 trips will represent an increase of less than 1% to that intersection.

Comment H-18 The biological survey's dismissal of the Project's impacts of wildlife movement (relied upon for the IS/MND) is based on vague, unsubstantiated, and misleading rationales. The survey vaguely refers to the "disconnected nature of ... barriers" and "varying degrees of terrestrial exclusion" without providing enough detail to allow even an expert such as Mr. Smallwood to understand the analysis. (Smallwood Comment, p. 5.) Moreover, Mr. Smallwood notes that the biological survey makes broad and optimistic assertions, such as that culverts, bridges and drainage features will act as wildlife travel corridors without any evidentiary support. (*Id.* at 5.)

In addition, the biological survey underestimates impacts on wildlife movement by only asking whether Project would interfere with a specific wildlife movement corridor, instead of wildlife movement in the region as a whole. (*Id.* at 6.) Mr. Smallwood concluded that, given that the Project would block much of the remaining passage space along the valley floor of northern Apple Valley, the Project would "cause a ***significant impact on wildlife movement in the region.***" (*Id.*) Because the Project is likely to have a significant biological impact, the City must prepare a full EIR to analyze the extent of the impacts and mitigate to the extent feasible.

Response H-18 As shown in the aerial in Exhibit 2 of the Initial Study, the proposed project occurs immediately south of a very large existing distribution warehouse. The site is less than ½ mile from Dale Evans Parkway, a major arterial, and the Apple Valley Airport. Scattered development occurs on surrounding lots, including roadways and small scale industrial buildings. The site does not provide a wildlife corridor, since wildlife would have to cross streets or existing development to come through the site. The Initial Study and biological resource report accurately represent the current conditions, and the fact that the site is not a wildlife corridor. Accordingly, CEQA does not require the preparation of an EIR.

Comment H-19 An IS must discuss a Project's significant cumulative impacts. (14 CCR §15130(a).) This requirement flows from CEQA section 21083, which requires a finding that a project may have a significant effect on the environment if "the possible effects of a project are individually limited but cumulatively considerable . . . . 'Cumulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."

"Cumulative impacts" are defined as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." 14 C.C.R. § 15355(a). "[I]ndividual effects may be changes resulting from a single project or a number of separate projects." *Id.* "The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." *Comm. for a Better Env't v. Cal. Resources Agency ("CBE v. CRA")* (2002) 103 Cal.App.4th 98, 117; 14 C.C.R. § 15355(b). A legally adequate cumulative impacts analysis views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable probable future projects whose impacts might compound or interrelate with those of the project at hand.

The IS/MND only addresses cumulative impacts briefly, labeling the cumulative impacts as "less than significant with mitigation incorporated" without any underlying analysis. The IS/MND dismisses any need to consider the issue because of the Specific Plan EIR:

> The project will . . . contribute to cumulative impacts to air quality, which will potentially impact human beings at Specific Plan build out. The Town Council, however, when it adopted the Specific Plan and certified the EIR, determined that the benefits of build out of the Specific Plan outweighed the potential impacts associated with air quality, and adopted Findings and a Statement of Overriding Considerations as

described above. There is no evidence that the proposed project would result in impacts that are any greater than those already disclosed in the EIR. Accordingly, no further analysis is required under State CEQA Guidelines § 15162."(Specific Plan EIR p. 57.)

The City's reasoning flips the requirements of CEQA on its head. In the case of *CBE v. CRA*, the Court of Appeal held that when a "first tier" EIR admits a significant, unavoidable environmental impact, then the agency must prepare second tier EIRs for later projects to ensure that those unmitigated impacts are "mitigated or avoided." ((2002) 103 Cal.App.4th at 122-125 (citing CEQA Guidelines §15152(f)).) The court reasoned that the unmitigated impacts was not "adequately addressed" in the first tier EIR since it was not "mitigated or avoided." (*Id.*) Thus, significant effects disclosed in first tier EIRs will trigger second tier EIRs unless such effects have been "adequately addressed," in a way that ensures the effects will be "mitigated or avoided." (*Id.*) In fact, a second tier EIR is required, even if the impact still cannot be fully mitigated and a statement of overriding considerations will be required. The court explained, "The requirement of a statement of overriding considerations is central to CEQA's role as a public accountability statute; it requires public officials, in approving environmental detrimental projects, to justify their decisions based on counterbalancing social, economic or other benefits, and to point to substantial evidence in support." (*Id.* at 124-125)

Thus, since the Specific Plan EIR admitted that the Specific Plan would result in significant, unmitigated air impacts, a second tier EIR is now required to determine if mitigation measures can now be imposed to reduce or eliminate those impacts as they pertain to the Project. If the impacts still remain significant and unavoidable, a statement of overriding considerations will be required.

Response H-20 The commenter claims that an MND is inappropriate because the EIR prepared for the Apple Valley North Industrial Specific Plan identified significant and unavoidable impacts to air quality, such that every project implementing the Specific Plan must likewise be subject to its own EIR. This is incorrect.

The *Communities for a Better Environment* case cited by the commenter confirmed that a subsequent project with significant impacts of its own could not merely rely upon a previously adopted statement of overriding considerations in order to avoid analyzing and disclosing those impacts. (*Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 124-125.)

However, subsequent case law has made clear that implementing projects subsequent to an EIR that identified significant and unavoidable impacts may proceed forward without a further EIR where those subsequent

implementing projects do not involve new significant impacts of their own. (E.g., *Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598, 604, 616-617 [Where an EIR identified significant and unavoidable impacts, it was nonetheless appropriate to forego further CEQA review for a subsequent implementing project where the subsequent project's" cumulative impacts would not be greater than those identified in the [prior] EIR".].)

Ultimately, the MND fully documents that the impacts of the Project will not be greater than those previously analyzed and disclosed in the EIR, and the commenter provides no substantial evidence showing that this Project will result in new significant unavoidable impacts of its own. Accordingly, the commenter is incorrect that this subsequent Project requires another EIR.

Comment H-21 The IS/MND makes a second mistake in its reliance on the cumulative impacts analysis conducted for the Specific Plan EIR. The IS/MND states, "There is no evidence that the proposed project would result in impacts that are any greater than those already disclosed in the EIR. Accordingly, no further analysis is required under State CEQA Guidelines § 15162." This conclusion is flawed and misinterprets the requirements of CEQA. As discussed in Section IV, the Project requires a full tiered EIR because it includes new information not available at the time the Specific Plan EIR was drafted and there is a "fair argument" that the Project impacts will be significant even after mitigation. The requirement to conduct a new tiered EIR extends to cumulative impacts analysis just as it does to direct Project impacts. Therefore, the City must consider environmental impacts resulting from the Project in light of the development in the Specific Plan and separate Projects. 14 C.C.R. § 15355(a).

Response H-21 Please see Response H-2, H-3 and H-20

Comment H-22 There have been significant changes in the development of the area since the Specific Plan was drafted that may result in significant cumulative environmental impacts when considered with the Project. For example, Desert Renewable Energy Conservation Plan (DRECP) has resulted in a multi-agency effort to develop thousands of acres of industrial-scale wind and solar energy generation. (Smallwood Comment p. 7.) Mr. Smallwood explained that the DRECP would have substantial impacts on wildlife habitat in the region and could extirpate the burrowing owl from the Mojave Desert due to cumulative impacts with industrial development. (*Id.*)

Response H-22 Please see Response H-4. Please also note, as stated in Response H-1, the DRECP extends from north of the Owens Valley to the Mexican border, and is not a regionally significant document. The commenter fundamentally misunderstands the purpose of the DRECP. It is intended to provide

regional mitigation and prevent the very same impacts that the commenter claims it will create.

Comment H-23 In addition, SWAPE noted that the City's Commercial and Residential Activity Report reported approximately 57 development projects that are or will be developed within the City, five of which are in a three-mile radius of the Project with many more nearby. (SWAPE Comment, p. 13.) SWAPE opined that, taking into account these other projects, there is the potential for the Project to have significant cumulative health impacts. *(Id.* at p.16.) The City may not rely on an outdated PEIR to evade its obligation to conduct a proper cumulative impacts assessment for the Project. An EIR should be prepared taking into account the DRECP and other proposed and approved development efforts that may result in cumulative environmental impacts.

Response H-23 Please see Response H-20. As relates to the air quality impacts associated with the build out of the proposed project and other cumulative projects in Apple Valley, the Initial Study correctly found that, consistent with the EIR, cumulative air quality impacts could be significant, and the Town correctly adopted Findings and a Statement of Overriding Considerations as it related to cumulative air quality impacts. Finally, see response H-22 as it relates to the DRECP.

I. State of California Office of Historic Preservation, Department of Parks and Recreation, June 2, 2016

Comment I-1 Pursuant to 36 CFR §800.4(d) we do not object to your determination that no historic properties will be affected by the undertaking. However, your agency may have additional section 106 responsibilities under certain circumstances set forth at 36 CFR Part 800. For example, in the event that cultural or historical resources are discovered during implementation of the undertaking your agency is required to consult further pursuant to §800.13(b).

Response I-1 Comment noted. The Town will comply with all applicable laws and regulations pertaining to cultural or historical resources in the event of an unanticipated discovery. For example, and as stated in the Initial Study, Mitigation Measures V.1 and V.2 requires on-site monitoring of construction activities by qualified archeological, Native American, and paleontological monitors, to assure that any unanticipated buried resources that are discovered are not impacted by the proposed project. The mitigation measures further empower the monitors to recommend the actions necessary to appropriately protect the find in the field, including the cessation of construction and other measures. This mitigation measure will assure that the Department's concerns regarding undiscovered resources are adequately addressed.

J. Lozeau Drury, April 28, 2016

Comment J-1: I am writing on behalf of the Laborers International Union of North America, Local Union 783 and its members living in City of Apple Valley ("LiUNA"), regarding the Project Jupiter Distribution Warehouse SCH2016041058, Site Plan Review 2015-001, including all actions related or referring to the proposed plan to develop a 106.5 acre parcel to accommodate a 1,360,875 square foot distribution center and associated ancillary facilities located on the Southwest corner of Navajo Road and Lafayette Street on APN Nos: 046-323-107, -108, -110, -160; 046-323-126, -127, -128; 046-323-142 and -143 in the City of Apple Valley. ("Project").

We hereby request that the City of Apple Valley ("City") send by electronic mail or U.S. Mail to our firm at the address below notice of any and all actions or hearings related to activities undertaken, authorized, approved, permitted, licensed, or certified by the City and any of its subdivisions, and/or supported, in whole or in part, through contracts, grants, subsidies, loans or other forms of assistance from the City, including, but not limited to the following:

Notice of any public hearing in connection with the Project as required by California Planning and Zoning Law pursuant to Government Code Section 65091.

- Any and all notices prepared for the Project pursuant to the California Environmental Quality Act ("CEQA"), including, but not limited to:

- Notices of any public hearing held pursuant to CEQA.
Notices of determination that an Environmental Impact Report ("EIR") is required for a project, prepared pursuant to Public Resources Code Section21080.4.
Notices of any scoping meeting held pursuant to Public Resources CodeSection 21083.9.
- Notices of preparation of an EIR or a negative declaration for a project, prepared pursuant to Public Resources Code Section 21092.
- Notices of availability of an EIR or a negative declaration for a project, prepared pursuant to Public Resources Code Section 21152 and Section 15087 of Title 14 of the California Code of Regulations.
- Notices of approval and/or determination to carry out a project, prepared pursuant to Public Resources Code Section 21152 or any other provision of law.
- Notices of approval or certification of any EIR or negative declaration, prepared pursuant to Public Resources Code Section 21152 or any other provision of law.
- Notices of determination that a project is exempt from CEQA, prepared pursuant to Public Resources Code section 21152 or any other provision of law.

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☐ Notice of any Final EIR prepared pursuant to CEQA.

Please note that we are requesting notices of CEQA actions and notices of any public hearings to be held under any provision of Title 7 of the California Government Code governing California Planning and Zoning Law. **This request is filed pursuant to Public Resources Code Sections 21092.2 and 21167(f), and Government Code Section 65092**, which requires 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.

Response J-1: Comment noted. The commenter has been added to the Town's notification list.

K. Johnson & Sedlack, June 24, 2016

Comment K-1: Please allow this letter to serve as a written request to receive all public notices concerning "Project Jupiter," or "Apple Valley Distribution Center" project, a development proposal by AVDC, Inc. to develop an approximately 1.3 million square foot distribution center on approximately 106.4 acres within the North Apple Valley Industrial Specific Plan. (Parcel Map No. 19645)
This written request is intended to include all public notices issued pursuant to the Town of Apple Valley ordinances, as well as pursuant to the California Environmental Quality Act ("CEQA"), including notice of any CEQA determination regarding the subject Project. This written request is also intended to include any notices of public hearings regarding the Project.

Response K-1: Comment noted. The commenter has been added to the Town's notification list.

L. Governor's Office of Planning & Research, State Clearinghouse, May 23, 2016

Comment L-1: The State Clearinghouse submitted the above named Mitigated Negative Declaration to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on May 20, 2016, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within

an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Pl ease contact the State Clearinghouse at (91 6) 445-0613 if you have any questions regarding the environmental review process.

Response L-1: Comment noted. The State Clearinghouse attached a letter from the Lahontan Regional Water Quality Control Board, presented above as letter A.

M. Mojave Group San Gorgonio Chapter, November 23, 2016

The Town notes that the comments received were in response to the Notice of Pending Land Use Decision distributed by the Town on November 14, 2016. The comments below were made well after the circulation of the Initial Study for public comment. However, as a courtesy to the Sierra Club, and since the comments do not raise any issue that was not raised during the comment period by the commenters above, the following responses have been prepared.

Comment M-1: Please accept these comments on the Mitigated Negative Declaration/Initial Study (MND/IS) for the Project Jupiter Distribution Warehouse project (Site Plan Review 2015-001). I write representing the Mojave Group of the Sierra Club. The Sierra Club is a nationwide nonprofit organization consisting of several hundred thousand members. The Mojave Group of the Sierra Club represents members in the desert areas of San Bernardino County, including the Town of Apple Valley.

We have reviewed the MND/IS along with other documentation relevant to the project. We find that the MND/IS does not adequately address the environmental issues as required by state law. Therefore we request that the Town prepare an environmental impact report (EIR) to address the concerns we have about biological and human resources in the area affected by the project.

This is no small project. It proposes to create a warehouse of 1,360,875 square feet on 106.5 acres in northern Apple Valley, along with supporting infrastructure in the surrounding area. A negative declaration is only

appropriate in cases where the environmental impacts of a project can be shown to be minimal. That is not the case here.

Response M-1: Please see Responses H-2, H-3 and H-20.

Comment M-2: The project will have impacts on the biological resources in the area. The MND/IS admits that it will reduce habitat for many species, and could potentially impact several sensitive and threatened species, such as the desert tortoise and kit fox. The project will inevitably reduce habitat supply for species, regardless of any mitigation measures in place to reduce impacts on current nesting birds or tortoises that are discovered during construction. In addition, the MNS/IS failed to study the presence of other sensitive species that could potentially be present, such as bats or the Southern grasshopper mouse. The MND/IS also too hastily dismissed the potential for burrowing owls to be present. Furthermore, the MND/IS also failed to adequately assess the impacts on wildlife movement in the region.

Response M-2: Please see Response H-5.

Comment M-3: The traffic impacts of the study used outdated values from the 2006 Specific Plan. It also assumes completion of a road network anticipated for 2030. The MND/IS does not adequately incorporate study of current conditions, and therefore falls short of an adequate analysis of impacts.

Response M-3: Please see Responses H-1 and H-4.

Comment M-4: The uncertainty regarding traffic impacts leads to potential impacts on air quality. The number and proportion of truck trips generated by the warehouse could be much higher than the MND/IS estimates. The modeling used in the MND/IS does not appear to adequately reflect standards used in other studies. The MND/IS also assumes a grossly low estimate of average trip length of 7.3 miles. These problems are likely to have significantly underestimated the impacts on air pollution as well as on greenhouse gas emissions.

Response M-4: Please see Responses H-11 and H-12.

Comment M-5: The fact that a Specific Plan is in place for the area does not relieve the Town of the obligation to prepare an EIR for the project. The Specific Plan was prepared only with a programmatic EIR under a tiered concept, and it explicitly stated that individual developments would be subject to more extensive environmental review. Since the Specific Plan did not lay out the types of development and use that would occur within Plan area, it could not adequately assess impacts from actual development.

In light of these issues with the MND/IS, the Town should move to prepare a full EIR. Only with a full EIR can the impacts of the project on the people

and environment of Apple Valley and surrounding region be adequately assessed.

Response M-5: Please see Response H-3.

N. Johnson & Sedlack, November 28, 2016

The Town notes that the comments received were in response to the Notice of Pending Land Use Decision distributed by the Town on November 14, 2016. The comments below were made well after the circulation of the Initial Study for public comment. However, as a courtesy to Johnson & Sedlack, and since the comments do not raise any issue that was not raised during the comment period by the commenters above, the following responses have been prepared.

Comment N-1: The following comments are submitted on behalf of concerned area residents and environmental organizations regarding the proposed Jupiter Distribution Warehouse project, Site Plan Review 2015-001. The Town has proposed approval of this project on the basis of a Mitigated Negative Declaration pursuant to the California Environmental Quality Act ("CEQA"). We submit that the Initial Study/Mitigated Negative Declaration ("IS/MND") is inadequate and an Environmental Impact Report ("EIR") is required for at least the following reasons.

Response N-1: Please see Response H-3.

Comment N-2: Public Noticing
Initially we comment that a Notice of Pending Land Use Decision ("Notice") was mailed on November 14, 2016 indicating that a public hearing before the Planning Commission would be held on November 28, 2016. This is incorrect information. According to the City's website, there is no Planning Commission hearing scheduled for November 28, 2016. Moreover, to the extent the Town intends to approve the Project administratively, the Notice is misleading to the public.

Response N-2: The commenter is incorrect. The Notice correctly stated that the project was subject to an Administrative decision, not a Planning Commission meeting. That Administrative decision was rendered on November 28, 2016.

Comment N-3: Tiering
It has not been demonstrated that an MND is appropriate for this Project. Because of changed regulatory conditions and new information since 2006, the prior EIR analysis may no longer be accurate or relevant. Further analysis in the form of an EIR is necessary.

Response N-3: Please see Responses H-2 and H-3.

Comment N-4: Air Quality

Construction Air Quality

The IS/MND fails to include or disclose relevant information with respect to construction air quality. The conclusions of the Air Quality analysis are based on the CalEEMOD model but the data does not appear with the IS/MND and the air quality study does not appear with the materials available online. IS/MND Tables 1 and 2 merely summarize the construction air quality data. In other words, the inputs are not available for public review and comment. For instance, there is no disclosure whether the Project will require off-site haul trips, and, if so, whether those trips are included in the construction air quality analysis. Also for instance, IS/MND Table 1 notes that "Construction Emissions" refers to the "Average of winter and summer emissions, unmitigated" (p. 15). Data should be made available which breaks down the emissions associated with the individual construction phases for years 2016 and 2017. For instance, site grading, due to the operation of diesel equipment, and depending on the amount of grading, can result in higher emissions of criteria pollutants as compared to other construction phases. Data should be made available distinguishing between summer and winter. Often, due to atmospheric conditions or other reasons, there are differences in air quality emissions between summer and winter. In short, the air quality model and data must be disclosed. Additionally, in terms of total NOx emissions (2016 + 2017), i.e., NOx emissions for the "construction phase," the Project will exceed the applicable construction NOx threshold of 13 7 pounds per day. This same is true of ROG emissions.

Response N-4: The commenter is incorrect. All appendices were available for public review during the public comment period for the Initial Study. Also see Responses H-11 through H-16. http://applevalley.org/services/planning-division/spr-2015-001-jupiter

Comment N-5: Operational Air Quality

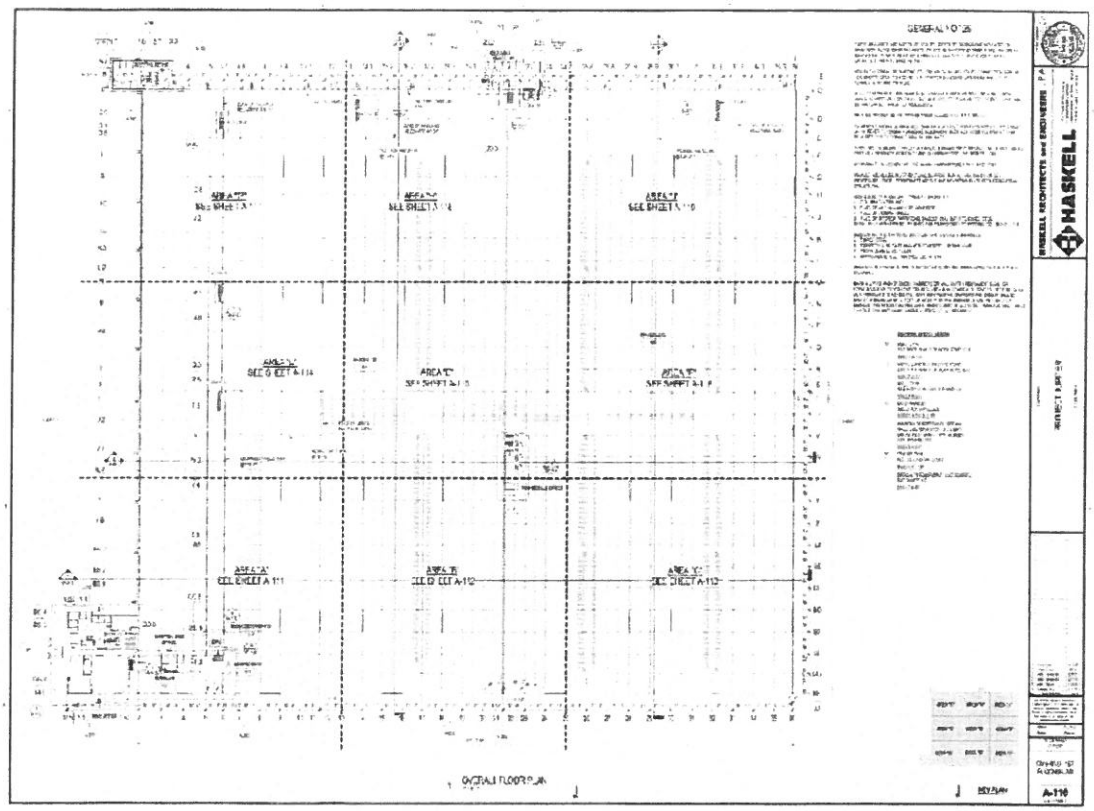
It is known that the greatest source of operational emissions from a project of this type are mobile emissions particularly diesel truck trips. It is imperative that air emissions due to diesel trucks be accurately disclosed and fully mitigated. The conclusions of the air quality study are based on the traffic study but it is not clear that the assumptions of the traffic study are accurate or consistent with new information. Also, the average truck trip lengths are not disclosed in the MND's traffic study. The operational air quality mitigation measures identified on page 18 are permissive rather than mandatory and do not appear to require anything of the operator above and beyond existing regulations. Actual mitigation would come in the form of mitigation for diesel emissions, such as the requirement that the operator mandate the use of cleaner trucks; for instance, the Project should require that all trucks transporting goods shall meet 2010 emission standards or better at opening, or a phase-in of cleaner trucks faster than regulatory standards.

Response N-5: Please see Responses H-11 through H-16.

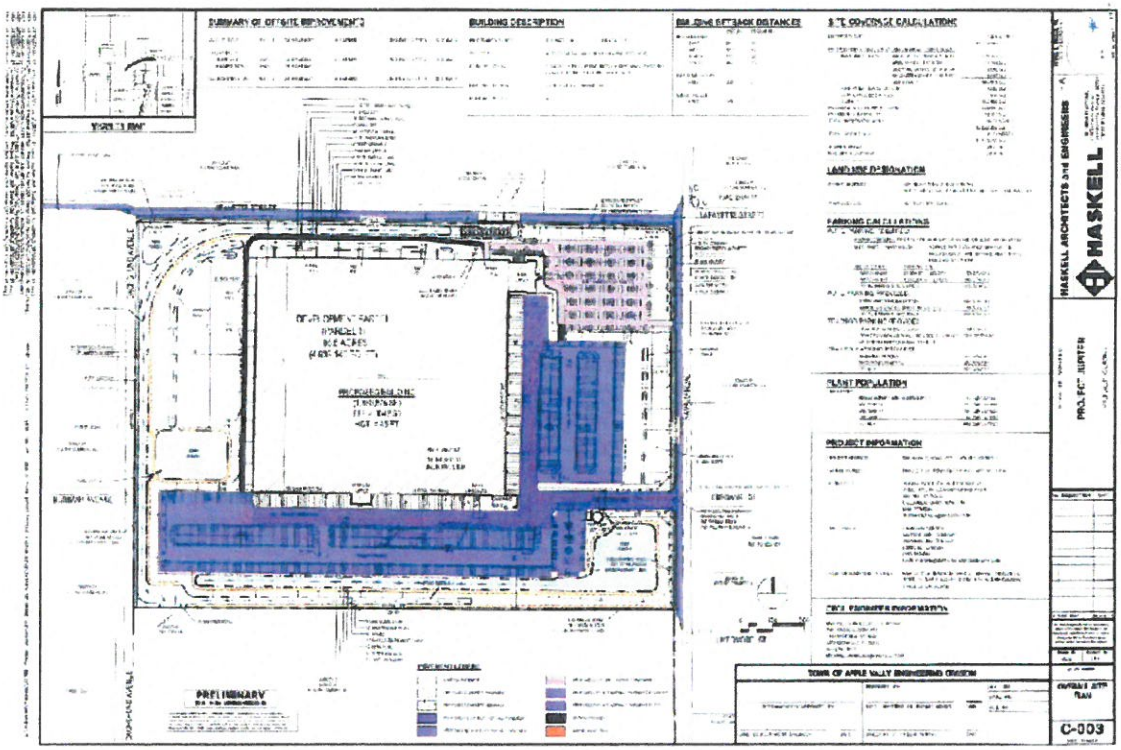
Comment N-6: Lastly, in terms of cumulative impacts, these must be deemed significant where the IS/MND acknowledges that overall build out of the Specific Plan will result in significant and unavoidable impacts.

Response N-6: Please see Responses H-21 and H-23.

1-226



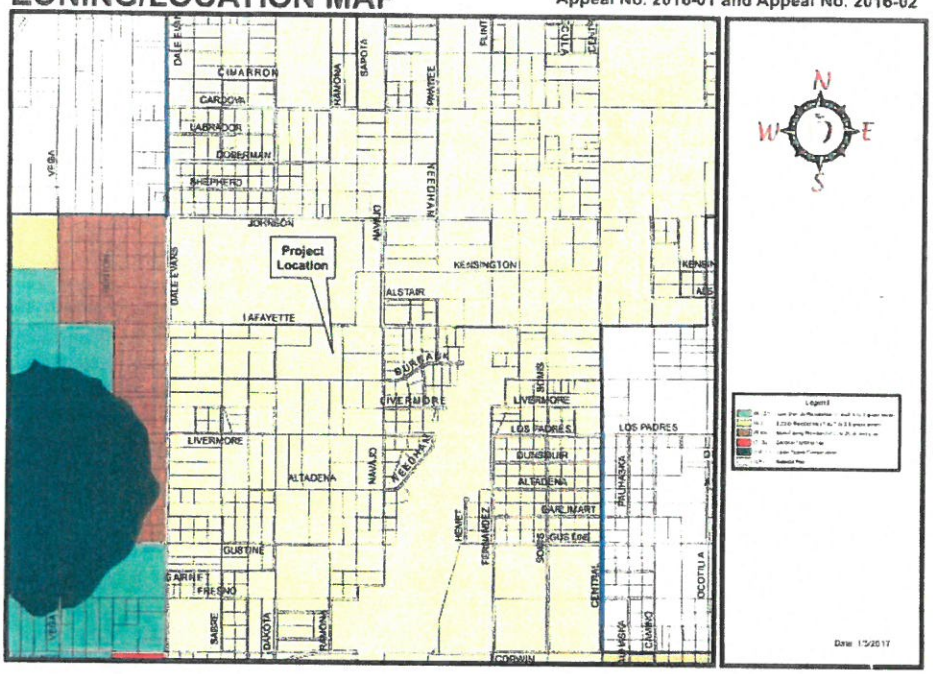
1-227


SUMMARY OF OFFSITE IMPROVEMENTS
BUILDING DESCRIPTION
SITE COVERAGE CALCULATIONS
LANDUSE DESIGNATION
PARKING CALCULATIONS
PLANT POPULATION
PROJECT INFORMATION
HASKELL ARCHITECTS and ENGINEERS
HASKELL
PROJECT JUNTER
PRELIMINARY
TOWN OF APPLE VALLEY ENGINEERING DIVISION
C-003

1-228

ZONING/LOCATION MAP

Appeal No. 2016-01 and Appeal No. 2016-02



1-229

RESOLUTION NO. 2016-010

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF APPLE VALLEY DENYING TWO APPEALS OF THE PLANNING DIVISION'S PRIOR APPROVALS OF SITE PLAN REVIEW NO. 2015-01 (PROJECT JUPITER), ADOPTING A MITIGATED NEGATIVE DECLARATION AND A MITIGATION MONITORING AND REPORTING PROGRAM UNDER THE CALIFORNIA ENVIORNMENTAL QUALITY ACT, AND APPROVING THE PROJECT JUPITER DISTRIBUTION WAREHOUSE PROJECT

WHEREAS, in 2006, the Town of Apple Valley ("Town") prepared and approved the North Apple Valley Industrial Specific Plan ("Specific Plan") pursuant to an Environmental Impact Report (SCH #200603112) under the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.) ("CEQA") and the State CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15000 et seq.) ("Specific Plan EIR"); and

WHEREAS, the Specific Plan established long-term development goals, standards, and guidelines for industrial and commercial development and land uses within the Specifc Plan boundary; and

WHEREAS, the Specific Plan was developed to provide land owners, developers, business owners, and the Town with development standards and guidelines which facilitate long-term economic growth, clean industry, a streamlined permitting process, high quality construction, and a wide range of employment opportunities, among other reasons; and

WHEREAS, in accordance with CEQA, the Specific Plan EIR analyzed and disclosed the potentially significant environmental impacts associated with the Specific Plan; and

WHEREAS, in addition to assessing the environmental impacts associated with the Specific Plan and instituting mitigation measures, the Specific Plan EIR was designed to be used to facilitate the streamlining, or tiering, of the environmental review process for subsequent projects proposed within the Specific Plan boundary; and

WHEREAS, the Specific Plan EIR determined that all environmental impacts resulting from the construction and implementation of the Specific Plan would be less than significant with the imposition of appropriate mitigation measures, with the exception of Air Quality impacts, which were identified as significant and unavoidable; and

WHEREAS, the proposed Project Jupiter Distribution Warehouse Project ("Project") would develop a 106.5 acre parcel to accommodate a 1,360,875 square foot distribution center and associated ancillary facilities within the Specific Plan boundary; and

WHEREAS, pursuant to Section 21067 of the Public Resources Code and Section 15367 of the State CEQA Guidelines, the Town is the lead agency for the proposed Project; and

WHEREAS, in accordance with Public Resources Code section 21166 and State CEQA Guidelines Sections 15063 and 15162, the Town prepared an Initial Study that tiers off of the

Specific Plan EIR to determine if the Project is within the scope of the previously certified Specific Plan EIR; and

WHEREAS, based on the information contained in the Initial Study, which concluded that the Project would not have a significant impact on the environment with mitigation incorporated, the Town determined that a subsequent Mitigated Negative Declaration/Initial Study ("MND") should be prepared for the Project, and an MND was prepared pursuant to CEQA and the State CEQA Guidelines; and

WHEREAS, in accordance with State CEQA Guidelines Section 15072(b), on April 25, 2016, the Town mailed a Notice of Intent to Adopt the MND to all responsible and trustee agencies, the Office of Planning and Research, and members of the public. The Town also published the Notice of Intent to Adopt the MND in the Apple Valley News; and

WHEREAS, as required by State CEQA Guidelines Section 15072(d), the Notice of Intent to Adopt the MND was concurrently posted by the Clerk of the Board for the County of San Bernardino; and

WHEREAS, pursuant to State CEQA Guidelines Section 15073, the MND was circulated for at least 30 days; and

WHEREAS, several public comments on the proposed MND were received by the Town regarding the Project; and

WHEREAS, the Town prepared written responses to these comment letters and the responses are included in the Final MND; and

WHEREAS, on November 28, 2016, the Town's Planning Division adopted the MND and approved the Project and directed Town staff to file and post a Notice of Determination with the County of San Bernardino and the State Clearinghouse; and

WHEREAS, two appeals were thereafter filed challenging the Planning Division's determination, each of which requesting that the Division's determination be reviewed by the Planning Commission. One appeal was filed by Lozeau Drury LLP on behalf of Laborers International Union of North America on December 7, 2016. The second was filed by Blum Collins LLP on behalf of Golden State Environmental Justice Alliance (formerly SoCal Environmental Justice Alliance) on December 7, 2016 ("Appeals"); and

WHEREAS, a notice of public hearing relating to the Appeals was duly given and posted in the manner and for the time frame prescribed by law, and notice of the public hearing conducted by the Planning Commission for review of this item was mailed out to property owners within a 700 foot radius of the Project site boundaries; and

WHEREAS, all the requirements of the Public Resources Code and the State CEQA Guidelines have been satisfied by the Town in connection with the preparation of the MND, which is sufficiently detailed so that all of the potentially significant environmental effects of the Project, as well as feasible mitigation measures, have been adequately evaluated; and

WHEREAS, the MND prepared in connection with the Project sufficiently analyzes the feasible mitigation measures necessary to avoid or substantially lessen the Project's potentially significant environmental impacts; and

WHEREAS, all of the findings and conclusions made by the Planning Commission pursuant to this Resolution are based upon the oral and written evidence presented to it as a whole and the entirety of the administrative record for the Project, which are incorporated herein by this reference, and not based solely on the information provided in this Resolution; and

WHEREAS, prior to taking action, the Planning Commission has heard, been presented with, reviewed and considered all of the information and data in the administrative record, including, but not limited to, the Specific Plan EIR, MND, and Mitigation Monitoring and Reporting Program, and all oral and written evidence presented to it during all meetings and hearings; and

WHEREAS, the MND reflects the independent judgment of the Planning Commission and is deemed adequate for purposes of making decisions on the merits of the Project; and

WHEREAS, no comments made during the public review period, or in the public hearings conducted by the Planning Commission and no additional information submitted to the Town have produced substantial new information requiring recirculation of the MND or additional environmental review of the Project under State CEQA Guidelines Section 15073.5; and

WHEREAS, on January 11, 2017, commencing at 6:00 P.M. in the Town Council Chambers at Apple Valley Town Hall, the Planning Commission conducted a public hearing at which time all persons wishing to testify in connection with said Appeals were heard, and said Appeals were fully studied; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, it is hereby found, determined, and resolved by the Planning Commission of the Town of Apple Valley as follows:

SECTION 1. RECITALS. The Planning Commission hereby finds that the foregoing recitals are true and correct and are incorporated herein as substantive findings of this Resolution.

SECTION 2. APPEALS. Based on the entire record before the Planning Commission, and all written and oral evidence presented, the Planning Commission hereby finds that the Appeals are without merit and are therefore denied. In reaching this finding, the Planning Commission has reviewed and agrees with the Site Plan Review findings previously made by the Planning Division in its File Report for Case Plan Review No. 2015-11, as required by Section III (G)(1) of the North Apple Valley Industrial Specific Plan. Further, the Planning Commission finds that the Planning Divisions's findings are supported by substantial evidence in the record, such that the Planning Commission agrees with, and adopts as its own, each of the written findings of the Planning Divison as set forth below:

1. That the location, size, design, density and intensity of the proposed development is consistent with the General Plan, the North Apple Valley Industrial Specific Plan, Development Code and the development policies and standards of the Town;

   Explanation: The site for the proposed distribution facility is adequate in terms of shape and size to accommodate the facility and all landscaping, setbacks, walls and fences, and parking. The 106-acre site will accommodate the proposed building associated with the Project. All setbacks meet or exceed the requirements of the North Apple Valley Industrial Specific Plan for the proposed land use and the existing zoning.

2. That the location, size and design of the proposed structures and improvements are compatible with the site's natural landforms, surrounding sites, structures and streetscapes;

   Explanation: The subject site is relatively flat, with no topographic features or constraints and, although the development will occupy a vacant lot within a predominately undeveloped area, the area is anticipated to develop in accordance with the Specific Plan standards. To the west of the subject site is a 145,000 s.f distribution/warehousing facility and to the northwest is a similarly size distribution facility to the proposed facility.

3. That the materials, textures and details of the proposed construction, to the extent feasible, are compatible with the adjacent and neighboring structures;

   Explanation: The only facility that is comparable in size was constructed prior to the adoption of the NAVISP and is mainly an exposed metal building. The 145,000 s.f facility to the east is a concrete tilt-up style structure constructed in accordance with the NAVISP. The project's use of concrete tilt up and architecturally treated panels provides an attractive stucco-like appearance, which staff finds to be consistent with the intent of the Specific Plan which discourages exposed metal buildings and to be compatible with the surrounding land uses.

4. That quality in architectural design is maintained in order to enhance the visual environment of the Town and to protect the economic value of existing structures;

   Explanation: The building design uses concrete tilt up and architecturally treated insulated panels with an embossed stucco finish. This provides an attractive stucco-like appearance, which staff finds to be consistent with the intent of the Specific Plan which discourages exposed metal buildings and compatible with the surrounding land uses. The project's architectural design will therefore promote quality architecture within the NAVISP and protect the economic value of existing structures.

5. That there are public facilities, services and utilities available at the appropriate levels, or that these shall be installed at the appropriate time, to serve the project as they are needed;

   Explanation: Town sewer facilities and other utilities are available at the project site or nearby to accommodate the use. The Apple Valley Fire Protection District provided conditions of approval to address fire protection requirements. The project is required to obtain water service from Liberty Utilities. The project is also subject to development impact fees

6. That access to the site and internal circulation are safe;

   Explanation: The site for the distribution facility has adequate access, which means that the site design and proposed conditions of approval provide for the streets surrounding the site to be improved fully to provide legal and physical access to the site, and appropriate regional circulation mitigation has been required. The project site is surrounded by Navajo and Lafayette Roads, which are Town maintained roads that will provide adequate legal and physical access to the project site.

7. That the project is consistent with the uses described in the North Apple Valley Industrial Specific Plan, and analyzed in the North Apple Valley Industrial Specific Plan Environmental Impact Report (SCH No. 2006031112) and General Plan EIR (SCH #2008091077).

   Explanation: Based upon an Initial Study, pursuant to the State Guidelines to implement the California Environmental Quality Act (CEQA) a subsequent Mitigated Negative Declaration was prepared. The proposed Project has been found to be within the scope of the previously certified EIR prepared for the North Apple Valley Industrial Specific Plan, and no new information of substantial importance exists under CEQA Guidelines Section 15162. The MND/Initial Study was prepared to examine the proposed project in the light of the Specific Plan EIR to determine if the project would result in any impacts greater than those previously analyzed and disclosed.

   The Notice of Intent to adopt a Mitigated Negative Declaration for this Project was circulated for public review and comment on April 25, 2016. The Town's Planning Division received some comments regarding the Initial Study and Mitigated Negative Declaration. The comments relate to the Project itself, as well as to concerns about potential environmental impacts that may be associated with the Project for which Staff prepared Response to Comments. Based upon staff's assessment of the comments received, there were no issues raised or comments provided that indicate significant, unmitigated impacts associated with the Project. Accordingly, the conclusion that no further Environmental Impact

Report is required is fully supported by substantial evidence and – further – there is no substantial evidence supporting a fair argument that a significant impact may result.

Finally, and in response to comments, amplifications and clarifications of the MND's existing analysis, mitigation, and CEQA conclusions have been incorporated into the MND. None of these revisions show that new significant impacts may result. Accordingly recirculation of the MND is not required under CEQA Guidelines Section 15073.5

SECTION 3. COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT. As a decision-making body for the Project, the Planning Commission has reviewed and considered the information contained in the Specific Plan EIR, MND, comments received, and other documents contained in the administrative record for the Project. The Planning Commission finds that the Specific Plan EIR, MND, and administrative record contain a complete and accurate reporting of the environmental impacts associated with the Project, and that the MND has been completed in compliance with CEQA and the State CEQA Guidelines.

SECTION 4. FINDINGS ON ENVIRONMENTAL IMPACTS. Based on the whole record before it, including the Specific Plan EIR, MND, Initial Study, the administrative record and all other written and oral evidence presented to the Planning Commission, the Planning Commission finds that all environmental impacts of the Project are either less than significant or can be mitigated to a level of less than significant pursuant to the mitigation measures outlined in the Specific Plan EIR, MND, and the Mitigation Monitoring and Reporting Program. The Planning Commission finds that substantial evidence fully supports the conclusion that no significant and unavoidable impacts will occur and that, alternatively, there is no substantial evidence in the administrative record supporting a fair argument that the Project may result in any significant environmental impacts. The Planning Commission finds that the MND contains a complete, objective, and accurate reporting of the environmental impacts associated with the Project and reflects the independent judgment and analysis of the Planning Commission.

SECTION 5. ADOPTION OF THE MITIGATED NEGATIVE DECLARATION. The Planning Commission hereby approves and adopts the MND.

SECTION 6. ADOPTION OF THE MITIGATION MONITORING AND REPORTING PROGRAM. Pursuant to Public Resources Code section 21081.6, the Planning Commission hereby adopts the Mitigation Monitoring and Reporting Program attached to this Resolution as Exhibit A. In the event of any inconsistencies between the Mitigation Measures as set forth in the MND and the Mitigation Monitoring and Reporting Program, the Mitigation Monitoring and Reporting Program shall control.

SECTION 7. PROJECT APPROVAL. Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing on January 11, 2017, including written and oral staff reports together with public testimony, the Planning Commission hereby approves the Project.

SECTION 8. LOCATION AND CUSTODIAN OF RECORDS. The documents and materials associated with the project and the MND that constitute the record of proceedings on which these findings are based are located at Apple Valley Town Hall, 14955 Dale Evans

Parkway, Apple Valley, CA 92307. The Custodian of Record is Ms. Lori Lamson, Assistant Town Manager—Community Development Services.

SECTION 9. NOTICE OF DETERMINATION. Town staff shall cause a Notice of Determination to be filed and posted with the County of San Bernardino Clerk of the Board and the State Clearinghouse within five (5) working days of the Planning Commission's final Project approval.

PASSED, APPROVED, AND ADOPTED this 11th day of January 2017.

AYES: Commissioners Lamoreaux, Kallen, Tinsley, Vice-Chairman Shoup and Chairman Qualls.
NOES: None
ABSENT: None
ABSTAINED: None

Chairman Doug Qualls
Planning Commission

ATTEST:

Ms. Yvonne Rivera
Secretary, Planning Commission

EXHIBIT "A"

TOWN OF APPLE VALLEY
MONITORING PROGRAM FOR CEQA COMPLIANCE

DATE:	November 28, 2016	**ASSESSORS PARCEL NO.:**	046-323-107, -108, -110, -160; 046-323-126, -127, -128; 046-323-142 and -143
CASE NO.:	Site Plan Review 2015-001	**PROJECT LOCATION:** Southwest corner of Navajo Road and Lafayette Street	
EA/EIR NO:		**APPROVAL DATE:** In Process	
APPLICANT:	AVDC Inc.		

THE FOLLOWING REPRESENTS THE CITY'S MITIGATION MONITORING PROGRAM IN CONNECTION WITH THE MITIGATED NEGATIVE DECLARATION FOR THE ABOVE CASE NUMBER

SUMMARY MITIGATION MEASURES	RESPONSIBLE FOR MONITORING	TIMING	CRITERIA	COMPLIANCE CHECKED BY	DATE
II. AIR QUALITY					
II-1. Grading and development permits shall be reviewed and conditioned to require the provision of all reasonably available methods and technologies to assure the minimal emissions of pollutants from the development (see Table III-27 below), including proper vehicle maintenance and site watering schedules (see detailed list below under Developer's Air Quality Management Resources). The Town Planning and Building Divisions shall review grading plans to ensure compliance with the mitigation measures set forth in the project's environmental documentation and as otherwise conditioned by the Town.	Planning Division	Prior to ground disturbance	Approved air quality management plan.		
II-2. The Town shall coordinate with the project developers to encourage the phasing and staging of development to assure the lowest construction-related pollutant emission levels practical. As part of the Town's grading permit process, the applicant shall concurrently submit a dust control plan as required by MDAQMD in compliance with Rule 403. Mitigation measures to be implemented through this plan include, but are not limited to, the use of water trucks and temporary irrigation systems, post-grading soil stabilization, phased roadway paving, as well as other measures which will effectively limit fugitive dust emissions resulting from construction or other site disturbance (see Table	Planning Division	Prior to ground disturbance	Approved dust control plan.		

III-27 below). II-3. As future demand warrants, developers shall work with the Town to promote and support the development of bus routes/public transit that serve those residing at and ployed by the project.	Planning Division	Annual review of transit routes	Throughout the life of the project.		

SUMMARY MITIGATION MEASURES	RESPONSIBLE FOR MONITORING	TIMING	CRITERIA	COMPLIANCE CHECKED BY	DATE
IV. BIOLOGICAL RESOURCES					
IV.1 Prior to initiation of any earth moving or construction activities on the project site, the project proponent shall conduct environmental awareness training for construction staff, including a presentation by a qualified biologist on desert tortoise, project-specific protective measures, and instructions for actions that must be taken if a tortoise is encountered during construction. These measures include: 1. Prior to initiation of work, all project personnel will attend a WEAP and sign agreement to comply with the measures. Refresher daily at morning tailgate meeting. 2. Sweep of work site(s), staging areas, and access routes will be done daily by biological monitor prior to any work being conducted. 3. If a desert tortoise, kit foxes and/or burrowing owls are found on site, work will immediately cease until the animal has left the area (it must be at least 250 feet away). Listed species may not be handled by anyone. 4. Do not disturb any burrows encountered. Notify biologist. 5. Notify biologist of any other animals or birds nest encountered on site. *Special status animals encountered* will be relocated as needed, if possible *and as allowed under existing regulations.* 6. Keep equipment and vehicles on cleared and approved routes and areas. Watch for and	Planning Division	The project proponent shall provide course materials and an attendance sign in sheet for construction staff environmental awareness training to the Town prior to the initiation of any construction activity on the site.	Report by biologist.		

avoid animals, especially tortoises, kit foxes and burrowing owls when driving. 7. Vehicles that have been parked on site should be checked underneath for tortoises/ animals before starting engine or moving. 8. All fueling and maintenance of vehicles and other equipment and staging areas shall occur along the road only. A spill kit should be available during the work. 9. All food and trash debris will be disposed of in closed containers and removed from the project area at the end of each workday. 10. Desert tortoises can only be handled by authorized biologists. Trained individuals must follow the guidelines outlined in the Desert Tortoise Field Manual (USFWS 2010), chapters 6 and 7. No one is authorized to handle or move any desert tortoise. 11. Immediately prior to the start of any ground-disturbing activities and prior to the installation of any desert tortoise exclusion fencing, clearance surveys for the desert tortoise will be conducted by the authorized biologist, as appropriate. The entire project area will be surveyed for desert tortoise and their burrows by an authorized biologist or approved desert tortoise monitor before the start of any ground-disturbing activities following the 2010 field survey protocol (USFWS 2010) or more current approved protocol. If burrows are found, they will be examined by an authorized biologist to determine if desert tortoises are present. If a tortoise is present and the burrow cannot be avoided, it will be relocated in accordance with USFWS protocol (USFWS 2010). If the authorized biologist determines clearance surveys are not needed, clearance surveys					

would not be required. If desert tortoises are found at a project site where the authorized biologist had previously concluded they were unlikely to occur, the USFWS and CDFW will be contacted to determine if the implementation of additional protective measures would be appropriate. 12. The area of disturbance will be confined to the smallest practical area, considering topography, placement of facilities, location of burrows, public health and safety, and other limiting factors. This measure includes temporary haul roads, staging/storage areas, or access roads. Work area boundaries will be clearly and distinctly delineated with flagging or other marking to minimize surface disturbance associated with vehicle movement. Special habitat features, such as desert tortoise burrows, will be identified and marked as environmentally sensitive areas by the authorized biologist, if they are to be avoided and will be discussed and identified during the worker education program. To the extent possible, previously disturbed areas within the project site will be used for equipment storage, office trailer locations, and vehicle parking. The development of all temporary access and work roads associated with construction will be minimized and constructed without blading where feasible. Project-related vehicle traffic will be restricted to established roads, construction areas, staging/storage areas, and parking areas. The authorized biologist or approved desert tortoise monitor will ensure that blading is conducted only where necessary. 13. Permanent or temporary exclusion fencing					

may be used to prevent entry by desert tortoises into a work site. Exclusion fencing will be installed following USFWS guidelines (2005) or more current protocol. The authorized biologist will ensure that desert tortoises cannot pass under, over, or around the fence. Authorized biologists or desert tortoise monitors will not be required to be present at the site at all times; however, they will be present during the installation of the exclusion fence. However, the authorized biologist must periodically check the fenced area to search for breaks in the fence and to ensure no desert tortoises have breached the fence. Preconstruction surveys for tortoise and tortoise sign will be performed within all proposed construction areas prior to the fence being installed. In addition, prior to ground disturbing activities beginning in a previously undisturbed or unfenced area, preconstruction surveys will be performed. 14. Upon locating a dead or injured tortoise within a project site, the authorized biologist will immediately notify USFAWS within 24 hours of the observation via telephone. Written notification must be made to the appropriate Fish and Wildlife field office within 5 days of the finding. The information provided must include the date and time of the finding or incident (if known), location of the carcass or injured animal, a photograph, cause of death or injury, if known, and other pertinent information (i.e., size, sex, recommendations to avoid future injury or mortality). 15. Injured desert tortoises will be transported to a veterinarian for treatment at the expense of the applicant. Only the authorized biologist or an approved desert tortoise biological monitor					

will be allowed to handle an injured tortoise. If an injured animal recovers, the appropriate Fish and Wildlife field office will be contacted for final disposition of the animal. 16. If working outside of a desert tortoise-proof fenced area, auger holes or other excavations will be covered following inspection at the end of each workday to prevent desert tortoises from becoming trapped. 17. Construction vehicles will be cleaned of all mud, dirt, and debris from other sites prior to entering the project area. The purpose of this measure is to minimize the spread of weedy plant species that may degrade desert tortoise habitat. 18. Except on maintained public roads designated for higher speeds or within a desert tortoise-proof fenced area, driving speed will not exceed 20 miles per hour through potential desert tortoise habitat on both paved and unpaved roads. 19. Any fuel or other hazardous materials spills will be promptly cleaned up; any leaks from equipment will be stopped and repaired immediately. Vehicle and equipment fluids that are no longer useful will be transported to an appropriate off-site disposal location. Fuel and lubricant storage and dispensing locations will be constructed to fully contain spilled materials until disposal can occur. Hazardous waste, including used motor oil waste and coolant, will be stored and transferred in a manner consistent with applicable regulations and guidelines. 20. Upon completion of construction, all refuse, including, but not limited to equipment parts, wrapping material, cable, wire, strapping, twine,					

buckets, metal or plastic containers, and boxes will be removed from the site and disposed of properly. 21. No firearms or pets, including dogs, will be allowed within the work area. Firearms carried by authorized security and law enforcement personnel and working dogs under the control of a handler will be exempt from this protective measure. 22. To preclude attracting predators, such as the common raven (*Corvus corax*) and coyotes (*Canis latrans*), food-related trash items will be removed daily from the work site and disposed of at an approved refuse disposal site. Workers are prohibited from feeding all wildlife. 23. Boring locations will not be established within 35 feet of an active desert tortoise burrow. If an active burrow is found within 35 feet after the boring location is established, the boring location will be moved until it is at least 35 feet from the active burrow. 24. An authorized biologist will be onsite during all drilling activities. 25. Desert tortoise exclusion fence construction will follow the guidelines in Chapter 8 of the Desert Tortoise Field Manual (USWFS 2010). 26. Desert tortoise-proof fencing will not cross washes. When washes and culverts are encountered, the desert tortoise-proof fence will follow the wash to the roadway and either tie into the existing bridge or cross over the top of a culvert. 27. During fence inspections and repairs, if any desert tortoises are observed, workers are to notify the authorized biologist because only authorized biologists and approved biological monitors are permitted to handle tortoise. All					

desert tortoises encountered within the roadway side of the fence will be relocated across the fence to safety in accordance with USFs protocol (USFWS 2010). Any such incident will be reported in the annual report. 28. On a case by case basis, individual active burrows may be fenced if the authorized biologist determines this protective measure is necessary to prohibit desert tortoises from repeatedly entering work areas. Fencing around individual burrows will be removed when adjacent construction is complete. 29. When gates are installed within the fence line, desert tortoise-proof fencing will be installed along the gate bottom beginning at least 2 feet above the fence bottom and extending towards the ground leaving less than a 1-inch gap (USFWS 2010). Any and all recommendations included in the study shall be implemented by the Town and/or the developer.					
IV.2A pre-construction survey shall be completed by a qualified biologist not more than 3 days of initiation of any earth moving activity on site.The pre-construction survey shall include an intensive site survey for desert tortoise, Mojave Ground Squirrel, kit fox, burrowing owl and migratory birds. Should any affected species be identified, the biologist shall include recommendations for avoidance in his/her report, and could include: 1. The avian breeding season is generally	Planning Division	Within 3 days of initiation of grading	Report by biologist		

defined as February 1 through September 15 for most nesting birds. If project activities cannot be avoided between *February* 1 and 15 September, a qualified biological monitor (biologist) shall survey the entirety of the project site, and within a 500 foot buffer surrounding the project site for both diurnal and nocturnal nesting birds, prior to commencement of project activities (including soil disturbance and/or vegetation removal). Surveys shall be conducted by the biologist at an appropriate time of day, no less than thirty days prior to commencement of project activities. 2. If an active nest is found prior to commencement of project activities, the biologist will monitor it for a minimum of one hour and note behaviors such as incubation times and duration, time away from nest, feeding schedule, flushing, etc. This will establish baseline behavior prior to construction, which can be compared to behavior after construction commences. Monitoring will consist of quietly approaching and observing the nest at a distance where the nesting bird will not be disturbed by the biologist's presence. 3. If no nesting birds are detected, project activities may begin. 4. If an active nest is located during nesting bird surveys, a 300-foot minimum avoidance buffer will be implemented around it. For raptors, a 500-foot minimum avoidance buffer should be established. For burrowing owls, buffers be established according to guidelines included in the March 7, 2012 DFG *Staff Report on Burrowing Owl Mitigation* if located between					

February 1 and August 31. Those buffers are shown in Table 1 below. 5. Any breeding habitat/ nest site detected shall be fenced and/or flagged in all directions as an Environmentally Sensitive Area (ESA) as directed by the biologist. The nest site area shall not be disturbed until the nest becomes inactive, the young have fledged, the young are no longer being fed by the parents, the young have left the area, and the young will no longer be impacted by the project. Buffer areas may be increased if active nests of any endangered, threatened, or CDFW species of special concern not already discussed are detected. 6. Buffers may be reduced at the discretion of the biological monitor. A reduction may be warranted based upon factors such as the life history of individual species; the species' and/or individual bird's sensitivity to noise, vibration, and general disturbance; ambient levels of human activity, current site conditions that may shield the nest from disturbance, such as screening vegetation or topography; and the exact nature of project activities that will be conducted in the vicinity of the nest. Additional mitigation measures may need to be implemented if nest buffers are reduced. This additional mitigation could include measures such as sound barriers and increased monitoring. 7. The following measures will minimize the likelihood that active nests will be abandoned or fail due to project activities. Once construction has commenced, nest surveys and/or monitoring will be conducted weekly at a minimum during the nesting season unless it is determined that less frequent site visits would					

be satisfactory. If the buffer of an active nest overlaps the project site, the biologist will monitor the nest daily and will be present on site at all times while work is occurring in order to ensure that construction activities occur outside the delineated buffer, that any installed fencing/flagging is maintained at the buffer boundaries, and to observe for any potential indication of stress of the nesting birds. In other words, to ensure that the nesting birds are exhibiting normal behaviors as compared to behaviors observed by the nesting birds prior to commencement of construction. These behaviors depend on the stage of the nest (i.e. building, egg incubation, nestling age, etc.), and include incubation, feeding, fecal sac removal, foraging, etc. 8. After commencement of construction the biologist will have the authority to halt construction activities if it appears that those activities are causing stress to nesting birds. Such direction shall be taken through the project foreman on site. Determination of "stress" will be based on the results of nest monitoring prior to any construction. Stress would be defined by behaviors such as increased flushing frequency, less nest visits, etc. 9. If a nesting bird or burrowing owl is encountered, the biologist will document the species and location on a survey form. Location will be determined utilizing a global positioning device. The location of active nests and attempted nests will be recorded. Nesting bird behaviors will be recorded, which will also track the nest and its outcome. Monitoring memo reports will be prepared for each day of					

monitoring activity. 10. Biological Monitors shall conduct the pre-construction surveys for desert kit fox and American badger no more than 30 days prior to initiation of construction activities, including pre-construction site mobilization. Surveys shall also address the potential presence of active dens within 100 feet of the project boundary (including utility corridors and access roads). If dens are detected, each den shall be classified as inactive, potentially active, or definitely active den and a report shall be submitted to the Department for review prior to collapsing the burrows. Any and all recommendations included in the study shall be implemented by the Town and/or the developer.					
IV.3Following completion of the pre-construction survey, a CDFW compliant desert tortoise exclusion fence shall be provided in addition to chain link construction fencing.	Planning Division	Prior to initiation of ground disturbing activity	Site inspection of completed fence and report by biologist.		
IV.4Following completion of the exclusion fence, a survey for animal burrows shall be completed. If identified, animal burrows shall be carefully excavated to assure they are not occupied by desert tortoise. Should the species be found on the site, it shall be trans-located to native habitat by a qualified biologist, according to strict CDFW protocol.	Planning Division	Prior to initiation of ground disturbing activity	Report by biologist.		

IV.5A trash management plan shall be developed and implemented during construction on the project site that provides for closed raven-proof containers for trash and food.	Building Division	During construction	Filing of management plan and site inspections.		

SUMMARY MITIGATION MEASURES	RESPONSIBLE FOR MONITORING	TIMING	CRITERIA	COMPLIANCE CHECKED BY	DATE
V. CULTURAL RESOURCES					
V.1 A qualified archaeological monitor and a Native American monitor shall be on site during all ground disturbing activities. The monitor shall be empowered to stop or redirect earth moving activities, if a resource is identified. Should a resource be identified, the monitor shall make recommendations regarding the measures needed to protect the resource. When the monitor determines that there are no resources, or the potential for resources is low, monitoring activities will be suspended. Within 30 days of completion of monitoring, the monitor shall prepare, and deliver to the Town, a report of his/her findings.	Planning & Building Divisions	Prior to initiation of ground disturbing activity.	The project proponent shall provide the Town with agreement(s) with qualified monitors. The Town shall assure that the monitors are on site during earth moving activities.		
V.2 A qualified paleontological monitor shall be on site for any and all excavations that reach more than 3 feet below ground. The monitor shall be empowered to stop or redirect earth moving activities, if a resource is identified. Should a resource be identified, the monitor shall make recommendations regarding the measures needed to protect the resource. Any and all recommendations included in the study shall be implemented by the Town and/or the developer. When the monitor determines that there are no resources, or the potential for resources is low, monitoring activities will be suspended. Within 30 days of completion of monitoring, the monitor shall prepare, and deliver to the Town, a report of his/her findings.	Planning & Building Divisions	Prior to initiation of ground disturbing activity.	The project proponent shall provide the Town with an agreement with a qualified monitor. The Town shall assure that the monitor is on site during earth moving activities.		

SUMMARY MITIGATION MEASURES	RESPONSIBLE FOR MONITORING	TIMING	CRITERIA	COMPLIANCE CHECKED BY	DATE
VII. HAZARDS & HAZARDOUS MATERIALS					
VII.1 The bombing target area, and the area within 300 feet of the bombing target within the site, including off-site improvement areas, shall be cleared by a qualified technical team, and all ordnance or ordnance scrap removed to a depth acceptable to the technical team.	Planning & Building Divisions	During ground disturbing activity.	The project proponent shall provide the Town with an agreement with a qualified ordnance disposal team.		
VII.2 All ground disturbing activities within 300 feet of the existing bombing target area shall be monitored by a two-man team qualified to detect and dispose of ordnance and ordnance scrap.	Planning & Building Divisions	During ground disturbing activity.	The project proponent shall provide the Town with an agreement with a qualified ordnance disposal team.		
VII.3 Ordnance uncovered during clearing and ground disturbing activities shall be collected, handled and disposed of consistent with accepted professional standards by the qualified technical team.	Planning & Building Divisions	During ground disturbing activity.	The project proponent shall provide the Town with an agreement with a qualified ordnance		

			disposal team.		

VII.4 Any fill placed within 300 feet of the target area shall be a minimum of 2 feet in depth.	Planning & Building Divisions	During ground disturbing activity.	The project proponent shall provide the Town with an agreement with a qualified ordnance disposal team.		
VII.5 A Site Management Plan shall be prepared prior to the issuance of a certificate of occupancy for any structure on the site. The Site Management Plan shall include all required techniques to be used for any future grading or other site disturbance within 300 feet of the bomb target area, which could include: 1. During intrusive grading, full time construction support using a two-man technician crew (unexploded ordnance [UXO] Technician II and Technician II) should be performed to identify any ordnance related scrap or munitions or explosives of concern (MEC) items. 2. Where little or no filling is proposed, required techniques will consist of the area being cleared with a two-man UXO technician crew using excavation, stockpiling, and sifting to remove the ordnance-related scrap metal. A depth of 2 feet is recommended for this operation. The cleared soil will then be returned to this area. 3. For deeper cut areas such as the roadway	Planning & Building Divisions	Prior to issuance of Certificate of Occupancy.	Approved Site Management Plan.		

and storm transfer ditch, required techniques will consist of excavation and sifting to a depth of 3 feet. 4. For areas where fill is required and no intrusive grading into the subgrade is needed, no excavation or sifting will be required as long as the area has been surface cleared (inspection by UXO crew) and a minimum of two feet of fill is emplaced.					