THE DEVELOPMENT AT DALE EVANS AND LAFAYETTE

FINAL ENVIRONMENTAL IMPACT REPORT

1.0 INTRODUCTION

1.1 Introduction

This Final Environmental Impact Report (EIR) has been prepared in accordance with the California Environmental Quality Act (Public Resources Code §§21000-21189.3) and the State CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3, §§15000-15387).

The Final EIR includes the Draft EIR, written comments received during the public comment period, responses to those comments.

The Town of Apple Valley prepared this EIR to evaluate the potential environmental impacts associated with the construction and operation of the proposed Development at Dale Evans and Lafayette as the Lead Agency for the Project.

According to State CEQA Guidelines §15089, the requirements for a Final Environmental Impact Report are:

a) *The Lead Agency shall prepare a final EIR before approving the project. The contents of a final EIR are specified in Section 15132 of these Guidelines.*

b) *Lead Agencies may provide an opportunity for review of the final EIR by the public or by commenting agencies before approving the project. The review of a final EIR should focus on the responses to comments on the draft EIR.*

1.2 Organization of the Final EIR

As directed by CEQA Guidelines §15132, the Final EIR consists of two sections:

Section 1 – Introduction. This Section provides an introduction and summarizes the CEQA requirements for preparation of responses to substantive public comments on the Draft EIR.

Section 2 – Response to Comments. This Section includes comments received during the public comment period and the Town's response to each comment. Where the same question or concern has been raised, the first instance when the comment was addressed is referenced in the response.

1.3 Draft EIR Public Review Period

The Draft EIR was released for public comment on March 21, 2023. The document was sent to the California State Clearinghouse, public agencies, and individuals who had expressed an interest or requested to receive the Draft EIR. In addition, a Notice of Completion/Notice of Availability was published in the Apple Valley News. The Notice of Completion/Notice of Availability was also sent to the San Bernardino County Clerk. Copies of the Draft EIR were also made available at Town Hall, on-line at the Town's website, and at the Town library.

The public comment period ended on May 5, 2023. During the public review period, the Town received a total of 5 comments in the form of letters and emails.

1.4 Certification of the Environmental Impact Report and Project Selection Process

The Town of Apple Valley will consider the EIR and certify the document. CEQA Guidelines §15090 prescribe that the Town must find that:

a) The Final EIR has been completed in compliance with CEQA;

b) The Final EIR was presented to the decision-making body and that the decision-making body reviewed and considered the information contained in the Final EIR; and

c) The Final EIR reflects the Lead Agency's independent judgment and analysis.

If the Town certifies the Final EIR, it can then consider approving the project, in whole or in part.

1.5 Consideration of Recirculation

CEQA Guidelines §15088.5 requires a Lead Agency to recirculate a revised EIR only if significant new information is identified following the release of the Draft EIR. "Significant new information" can include, changes in the project or environmental setting as well as

additional data or other information, for example, a new significant environmental impact or a substantial increase in the severity of an environmental impact. New information is not considered significant unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the proponent has declined to implement.

The Town has evaluated the information contained in this Final EIR as well as all other information in the record, and has determined that no significant new information has been added to the EIR and no change in conditions has occurred since public notice was given of the availability of the Draft EIR for public review. Therefore, CEQA does not require recirculation of the Draft EIR.

2.0 RESPONSE TO COMMENTS

2.1 Introduction

The Response to Comments on the Draft EIR for the Project has been prepared in accordance with CEQA Guidelines Sections 15088, 15089 and 15132. This Section of the Final EIR contains reproductions of all comments received during the public comment period. The letters and their attachments, when applicable, are included in Appendix A.

The following comments were received on the Draft EIR from public agencies and interested parties. These comments address various aspects of the Draft EIR, including clarification of information, comments upon the adequacy of environmental analysis, and similar issues. Each letter or email has been provided brackets identifying each specific comment for which a response is provided and a corresponding comment identification number. Following each comment is a specific response that matches the comment number. A list of all comments received is provided in Table 2-1. Individual comments and the Town's responses follow.

Table 2-1
List of Comments Received

Assigned Letter	Commenter Name	Agency / Affiliation / City of Residence
A	Adam Frankel	Lozeau Drury
B	Adam Salcido	None provided
C	Chris Anderson	Mojave Desert Air Quality Management District
D	Alisa Ellsworth	California Department of Fish and Wildlife
E	Gary Ho	Blum, Collins & Ho LLP
F	Richard Franco	Adams Broadwell Joseph & Cardozo

2.2 Response to Comments

A. Lozeau Drury

Comment A.1 This comment is submitted on behalf of Supporters Alliance for Environmental Responsibility ("SAFER"), regarding the Draft Environmental Impact Report ("DEIR") prepared for the Development at Dale Evans and Lafayette, which proposes the development of a 1,207,544 square foot warehouse distribution center on a 79.5-acre site in north Apple Valley (the "Project").

Response A.1 This introductory comment requires no response.

Comment A.2 SAFER is concerned that the DEIR fails as an informational document and fails to impose all feasible mitigation measures to reduce the Project's impacts. SAFER requests that the Planning and Development Services Department address these shortcomings in a revised draft environmental impact report ("RDEIR") and recirculate the RDEIR prior to considering approvals for the Project.

Response A.2 This comment makes unsubstantiated, over-broad assertions regarding the adequacy of the EIR without providing any evidence to support the assertion. As addressed in responses to comments from other commenters below, the assertion is false. No further comment is possible or required.

Comment A.3 SAFER reserves the right to supplement this comment during the administrative process. *Galante Vineyards v. Monterey Peninsula Water Management Dist*., 60 Cal. App. 4th 1109, 1121 (1997).

Response A.3 The comment is noted but requires no response.

B. Adam Salcido

Comment B.1 Please provide any updates to the above mentioned project.

I am requesting under Public Resource Code Section 21092.2 to add the email addresses and mailing address below to the notification list, regarding any subsequent environmental documents, public notices, public hearings, and notices of determination for this project.

t.lucio57@gmail.com
phaninger1@gmail.com
jbourg2271@aol.com
jbourgeois029@gmail.com

asalcido.07@gmail.com

Mailing Address:
P.O. Box 79222
Corona, CA 92877
Please confirm receipt of this email. Thank you for your assistance.

Response B.1 The commenter's request is noted. The requested email and mailing addresses have been added to the Town's notification list.

C. Mojave Desert Air Quality Management District

Comment C.1 The Mojave Desert Air Quality Management District (District) has received a request for comments on the Draft Environmental Impact Report for the proposed development at Dale Evans and Lafayette street in Apple Valley. The project proposes to develop a 1,207,544 square foot warehouse distribution center on a 77± acre parcel of land in north Apple Valley. The project site is bounded by Lafayette Street to the north, Dachshund Avenue to the east, Burbank Avenue to the south, and Dale Evans Parkway to the west. The project site is within the boundary of the North Apple Valley Industrial Specific Plan (NAVISP). The 77± acre development will include 1,147,1167 square feet of warehouse space and 60,377 square feet of office space, housed in a single building occupying the center of the site. For purposes of the DEIR analysis, it has been assumed that 85% of the space would be used for dry warehousing, and 15% for cold storage.

Response C.1 The comment provides an accurate description of the proposed Project. No further response is required.

Comment C.2 We have reviewed the project and, based on the information available to us at this time, the District will require that the following mitigation measures be required for the construction phase of the development (enforceable by the District AND by the land use agency):

- Prepare and submit to the MDAQMD, prior to commencing earth-moving activity, a dust control plan that describes all applicable dust control measures that will be implemented at the project;

- Signage compliant with Rule 403 Attachment B shall be erected at each project site entrance not later than the commencement of construction.

- Use a water truck to maintain moist disturbed surfaces and actively spread water during visible dusting episodes to minimize visible fugitive dust emissions. For projects with exposed sand or fines

deposits (and for projects that expose such soils through earthmoving), chemical stabilization or covering with a stabilizing layer of gravel will be required to eliminate visible dust/sand from sand/fines deposits.

- All perimeter fencing shall be wind fencing or the equivalent, to a minimum of four feet of height or the top of all perimeter fencing. The owner/operator shall maintain the wind fencing as needed to keep it intact and remove windblown dropout. This wind fencing requirement may be superseded by local ordinance, rule or project-specific biological mitigation prohibiting wind fencing.

- All maintenance and access vehicular roads and parking areas shall be stabilized with chemical, gravel or asphaltic pavement sufficient to eliminate visible fugitive dust from vehicular travel and wind erosion. Take actions to prevent project-related trackout onto paved surfaces, and clean any project-related trackout within 24 hours. All other earthen surfaces within the project area shall be stabilized by natural or irrigated vegetation, compaction, chemical or other means sufficient to prohibit visible fugitive dust from wind erosion.

- Obtain District permits for any miscellaneous process equipment that may not be exempt under District Rule 219 including, but not limited to: Internal Combustion Engines with a manufacture's maximum continuous rating greater than or equal to 50 brake horsepower.

Response C.2 The Town appreciates the District's comment. The EIR addressed the need for a dust control plan, and its associated performance standards, at two locations:

- On page 2.4-15, the implementation of a dust control plan consistent with Rule 403, which is a standard requirement of the Town, is described as having been included in the CalEEMod assumptions for the Project; and
- On page 2.4-20 of the DEIR that analysis of the Project's emissions and conformance with applicable air quality attainment and maintenance plan would result in less than significant impacts, and thus additional mitigation measures are not required.

Although it is implied that conformance with applicable plans would require that the project adhere to the District's rules and regulations for standard construction requirements, **Section 2.4.7 Mitigation Measures** (pg 2.4-20 of DEIR) is hereby amended as follows to more expressly

address the mitigation measures described (edits are in strikethrough and **bold**):

"Analysis of the Project's emissions and conformance with applicable air quality attainment and maintenance plans found that impacts are expected to be less than significant. ~~Given that impacts will be less than significant, mitigation measures will not be necessary.~~ **Nonetheless, the following mitigation measure ensures that construction-related impacts remain at less than significant levels:**

AQ-1 The project shall adhere to all MDAQMD standard rules and regulations during the construction phase of development, including:

- **Prepare and submit to the MDAQMD, prior to commencing earth-moving activity, a dust control plan that describes all applicable dust control measures that will be implemented at the project;**

- **Signage compliant with Rule 403 Attachment B shall be erected at each project site entrance not later than the commencement of construction.**

- **Use a water truck to maintain moist disturbed surfaces and actively spread water during visible dusting episodes to minimize visible fugitive dust emissions. For projects with exposed sand or fines deposits (and for projects that expose such soils through earthmoving), chemical stabilization or covering with a stabilizing layer of gravel will be required to eliminate visible dust/sand from sand/fines deposits.**

- **All perimeter fencing shall be wind fencing or the equivalent, to a minimum of four feet of height or the top of all perimeter fencing. The owner/operator shall maintain the wind fencing as needed to keep it intact and remove windblown dropout. This wind fencing requirement may be superseded by local ordinance, rule or project-specific biological mitigation prohibiting wind fencing.**

- **All maintenance and access vehicular roads and parking areas shall be stabilized with chemical, gravel or asphaltic pavement sufficient to eliminate visible fugitive dust from vehicular travel and wind erosion. Take actions to prevent project-related trackout onto paved surfaces, and clean any project-related trackout within 24 hours. All other earthen surfaces within the project area shall be stabilized by natural or irrigated vegetation, compaction, chemical or other means sufficient to prohibit visible fugitive dust from wind erosion.**

- **Obtain District permits for any miscellaneous process equipment that may not be exempt under District Rule 219 including, but not limited to: Internal Combustion Engines with a manufacture's maximum continuous rating greater than or equal to 50 brake horsepower.**"

Comment C.3 The District does not object to the findings of the DEIR that the development will have less than significant impacts on air quality during the construction phase but has concerns regarding the air quality modeling for the operational phase. The project DEIR states that during operation, the warehouse will dedicate least 15% of the warehouse space dedicated to cold storage. As the trucks and trailers visiting the Project-site would likely be equipped with Transport Refrigeration Units (TRUs.), the DEIR needs to include analysis which includes the large quantities of diesel exhaust from TRU's while operating within the Project-site.

Response C.3 The District's concerns are noted. The operational assumptions used in the CalEEMod air quality analysis include a truck fleet mix consisting of 35% Light Heavy Duty (LHDl), 11% Medium Heavy Duty (MHD) and 54% Heavy Heavy Duty (HHD). The truck mix percentages were derived from the project's Traffic Study, specifically Table 4-1: Project Trip Generation Summary. Footnote number 6 in that table cites the source of the cold storage truck mix assumptions as being "SCAQMD Warehouse Truck Trip Study Data Results and Usage (2014)." As noted on page 2.4-12 of the DEIR, "[h]eavy duty trucks are diesel fueled and can be equipped with transport refrigeration units (TRU) for the refrigeration or heat of perishable products." Therefore, operational impacts associated with diesel exhaust from heavy duty trucks capable of being equipped with TRUs were analyzed in the EIR.

With regard to TRUs, analyzing emissions from TRUs when an operator has not been identified and the operational activities are unknown would be speculative at best. Also, there is no evidence that impacts from the operation of TRUs would significantly add to the project's PM or NOx emission projections resulting in a potentially significant impact because TRUs would only add a fraction of the diesel exhaust emitted by the heavy duty trucks. As previously stated above, operational impacts associated with diesel exhaust from heavy duty trucks capable of being equipped with TRUs were analyzed in the EIR.

Nonetheless, to assure that potential impacts associated with the operation of TRUs are less than significant, **Section 2.4.7 Mitigation Measures** (pg 2.4-20 of DEIR) is hereby amended as follows (additions are in **bold**):

"**AQ-2. Cold storage operations incorporate mobile source activity which accommodate transport refrigeration units (TRU) to refrigerate or heat perishable goods. To reduce on-site emissions of TRUs, the following mitigation measures shall be incorporated into project design and operational guidelines:**

- **All loading/unloading docks and trailer spaces shall be equipped with electrical hookups for trucks with transport refrigeration units (TRU) or auxiliary power units. This requirement decreases the amount of time that a TRU powered by a fossil-fueled internal combustion engine can operate at the project site. Use of zero-emission all-electric plug-in TRUs, hydrogen fuel cell transport refrigeration, and cryogenic transport refrigeration shall be encouraged for operational fleets to the maximum extent feasible.**

- **All TRUs entering the project site be shall plug-in capable.**

- **On-site TRU diesel engine runtime shall be limited to no longer than 15 minutes.**"

Comment C.4 The District will also require clarification on other assumptions listed in the DEIR including: the 15% warehouse space dedicated to cold storage and whether that percentage has a possibility of increasing during the operational phase; [sentence continued in Comment C.5]

Response C.4 The District's concerns are noted. The Town's responsibility under CEQA limits the potential for any greater amount of refrigerated storage. Since the EIR clearly analyzes only the impacts of 15% of space dedicated to refrigerated storage, and equally clearly demonstrates that a dry storage warehouse would have lower impacts in its alternatives analysis, the Town cannot, under CEQA, permit a proposal with a higher percentage or square footage of refrigerated storage without further CEQA review. Should a higher percentage be proposed in the future, the Town is obligated to conduct additional review under CEQA to assure that impacts of that higher amount of refrigerated space are adequately analyzed.

Comment C.5 [continued from Comment C.4…] the assumed 781 total truck trips per day and how the number of daily trips was derived; the fleet mix assumption which assumes 35% of truck trips are Light Heavy Duty (LHDI), 11% of truck trips are Medium Heavy Duty (MHD) and 54% of truck trips are Heavy Heavy Duty (HHD). These assumptions are important to the District because they determine whether the projected emissions during the Project's operational life will exceed the MDAQMD thresholds for any criteria air pollutants.

Response C.5 The District's concerns are noted. The truck mix percentages were derived from the project's Traffic Study, specifically Table 4-1: Project Trip Generation Summary. As described in Appendix I, the trip generation was adjusted from the raw ITE estimates for high-cube warehouse by using the High Cude Warehouse Vehhicle Trip Generation Analysis published by ITE in 2016 (Appendix I, page 1.1-2). Footnote number 6 in Table 4-1 also cites the source of the cold storage truck mix assumptions as being "SCAQMD Warehouse Truck Trip Study Data Results and Usage (2014). CalEEMod inputs for truck mix were adjusted to reflect this breakdown; therefore, emissions associated with operation of the truck mix were accounted for in the analysis.

Comment C.6 Thank you for the opportunity to review this planning document. If you have any questions regarding this letter, please contact me at (760) 245-1661, extension 1846, or Bertrand Gaschot at extension 4020.

Response C.6 The Town thanks the District for its participation in the CEQA process. This comment only provides contact information, and no further response is required.

D. California Department of Fish and Wildlife

Comment D.1 The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from the Town of Apple Valley for the Development at Dale Evans & Lafayette Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.

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

Response D.1 The Town thanks the Department for participating in the CEQA process for this project. No further response is required.

Comment D.2 CDFW is California's Trustee Agency for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as

available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

Response D.2 The comment describes the Department's role in the CEQA process, and requires no further response.

Comment D.3 The proposed Project is located in the northern section of the Town of Apple Valley, East of Interstate 15 and the Mojave River, in San Bernardino County. The project site is bounded by Lafayette Street to the north, Dachshund Avenue to the east, Burbank Avenue to the south, and Dale Evans Parkway to the west at APNs 0463-231-11, 0463-231-12, 0463-231-13, 0463-231-14, 0463-231-15, 0463-231-16, 0463-231-34, 0463-231-35, 0463-231-36, 0463-231-37, coordinates Latitude 34.591680, Longitude -117.203210.

The Project includes the development of a 1,207,544 square foot warehouse distribution center with accompanying office spaces on a 78± acre parcel of land. A dry wash occurs across the property, which conveys storm flows from the north, through the site and southeasterly via sheet flow under current conditions. These flows will be intercepted at the northwestern boundary of the site, conveyed through the site in a perimeter channel to be constructed by the Project, and released at the south boundary of the property. In addition, on-site retention facilities are proposed to contain the Project's incremental increase in 100-year storm flows within the site.

Response D.3 The comment provides a description of the proposed Project. No further response is required.

Comment D-4 CDFW offers the comments and recommendations below, and in Attachment 1 "Mitigation Monitoring and Reporting Program (MMRP)", to assist the Town of Apple Valley in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

Rare Plant Survey

The CDFW appreciates the inclusion of MM BIO 1 which considers surveys conducted to identify special status plants between the months of April and May for white pygmy- poppy (*Canbya candida*), desert cymopterus (*Cymopterus deserticola*), Mojave monkeyflower (*Diplacus mohavensis*), Barstow woolly sunflower (*Eriophyllum mohavense*), Torrey's box-thorn (*Lycium torreyi*), solitary blazing star (*Mentzelia eremophila*), beaver dam breadroot (*Pediomelum castoreum*), and Mojave fish-hook cactus (*Sclerocactus polyancistrus*). Many of these plants have blooming periods March to July.

The DEIR should include detailed documentation of a botanical field survey following protocols set forth in the Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The botanist(s) should be experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys should be conducted at the appropriate time of year when plants will both be evident and identifiable and, in a manner, which maximizes the likelihood of locating special status plants and sensitive natural communities that may be present. Botanical field surveys should be conducted (sic) floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status.

Additionally, CDFW is concerned that the measure does not provide an effective mitigation measure, as the Apple Valley MSHCP/NCCP has not been approved and take coverage has not been authorized. The DEIR should identify specific mitigation measures for impacts to rare plants.

Following the 2018 CDFW Protocol, the DEIR should include an assessment from project related impacts

- A discussion of the significance of special status plant populations in the project area considering nearby populations and total range and distribution;
- A discussion of the significance of sensitive natural communities in the project area considering nearby occurrences and natural community distribution;
- A discussion of project related direct, indirect, and cumulative impacts to special status plants and sensitive natural communities;

- A discussion of the degree and immediacy of all threats to special status plants and sensitive natural communities, including those from invasive species;
- A discussion of the degree of impact, if any, of the project on unoccupied, potential habitat for special status plants; and
- Recommended measures to avoid, minimize, or mitigate impacts to special status plants and sensitive natural communities.

CDFW offers the following revisions to MM BIO-1 (edits are in strikethrough and **bold**)

MM BIO-1
A ~~Spring (April-May)~~ plant survey shall be completed following the CDFW 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities in a manner which maximizes the likelihood of locating special status plants and sensitive natural communities that may be present. ~~prior to any ground disturbance on the site~~. If any ~~of the eight~~ special status plant species known to occur in the Project area (see **Table 2.5-3**) are found on site during ~~Spring~~ **the** surveys, the population size of the species and importance to the overall population should be determined. If a **special status plant** species occurs on the site~~, is found to be important to the overall population~~, and cannot be avoided, it should be transplanted and/or have seeds/topsoil collected. ~~The Town of Apple Valley must also be consulted if species proposed for coverage under the MSHCP/NCCP are found.~~

Response D.4 The EIR, starting on page 2.5-12, correctly describes that no State or federally endangered plants were identified or expected to occur on the Project site. The EIR also correctly identifies several special status species, as listed by the Department in their comment, that were identified or likely to occur. Special status species, however, are not protected from take under either the Fish and Game Code or the federal Endangered Species Act (ESA). It must also be noted that in the high desert environment, the period when plants can be identified is the Spring, prior to the high temperatures which desiccate plants and make them impossible to identify. The EIR therefore correctly identifies that a Spring survey, when the plants would be burgeoning or blooming on the site, is required to assure that they are identified, and that their potential loss is mitigated, consistent with CEQA Guidelines, § 15126.4, subd. (a)(1)(B).

Contrary to the commenter's statement, the EIR does not rely on the Apple Valley MSHCP. Mitigation Measure BIO-1 rather lists the sensitive plants to be surveyed, and provides clear performance standards (determination of population size, transplantation and/or seed

collection). Consultation with the Town regarding the identification of species proposed for coverage under the MSHCP is an added requirement to assure that the Town's database of information for that document is supplemented if needed, and is not the primary performance standard. The performance standards are consistent with the Department's protocols for the study of special status plants, as listed in the commenter's bullet points above.

Therefore, the Mitigation Measure is correctly written, provides effective mitigation against the loss of sensitive but unprotected species, and does not require modification.

Comment D.5 Desert Tortoise (*Gopherus agassizii*)

The DEIR states that the vegetation community occurring on the project site (creosote bush scrub) is a habitat typically utilized by desert tortoises. Although no desert tortoises or their sign were detected during the reconnaissance or focused surveys, the CNDDB reports four occurrences within a 5-mile radius, a desert tortoise carcass was photographed approximately 1.5 miles north-northeast of the project site in June 2022 and a live desert tortoise was photographed approximately 2 miles to the northwest in June 2020. CDFW recommends that prior to start of Project activities, a preconstruction survey and pre-construction sweep be conducted to ensure the absence of this species. CDFW recommends the following revisions to MM BIO-5 and MM BIO-6 below (edits are in strikethrough and **bold**):

MM BIO-5

A qualified biologist shall conduct pre-construction surveys within the Project area and a 500-foot buffer surrounding these areas 14-21 days prior to initiating Project activities. The surveys shall be conducted to identify and map for avoidance of any special-status species with the potential to occur on the site such as desert tortoise. The qualified biologist shall ensure that the methods used to locate, identify, map, avoid, and buffer individuals or habitat are appropriate and effective, including the assurance that the surveyor has attained 100% visual coverage of the entirety of the potential impact areas, and an appropriate buffer surrounding those areas. Appropriate survey methods and timeframes shall be established, to ensure that chances of detecting the target species are maximized. In the event that listed species, such as the desert tortoise, are detected and avoidance is infeasible, proper authorization (i.e., incidental take permit (ITP)) from the USFWS and CDFW must be obtained.

Construction and maintenance personnel shall be required to inspect for desert tortoises under vehicles prior to moving the vehicle. If a desert tortoise is found beneath a vehicle, it may not be moved until the desert

tortoise has left of its own accord. All desert tortoise observations shall be noted by the contractor and reported to a qualified biologist and federal and State wildlife agencies.

MM BIO-6
A qualified biologist shall conduct pre-construction sweeps within the Project area (including access routes) and a 500-foot buffer surrounding the Project areas, no more than 2 hours prior to initiating Project activities. The pre- construction sweeps shall confirm and mark/map for avoidance the location of any special-status species such as desert tortoise and shall verify that no additional special-status species have occupied the Project areas or adjacent habitats. If any additional special-status species (or sign of presence) are identified within or adjacent to the project areas during the pre-construction sweep, the qualified biologist shall determine whether the proposed avoidance measures will be effective in fully avoiding impacts of the project on the identified resource(s) prior to initiating Project activities. If full avoidance cannot be accomplished, Permittee shall postpone the Project, and contact CDFW to discuss an appropriate action. A qualified biologist shall ~~periodically~~ monitor construction to ensure that **desert** tortoises do not enter the work area and that **if one enters the project area, work is halted until the desert tortoise leaves by its own accord and** they are not disturbed if present. **Moving, relocating or handling of desert tortoise requires authorization from CDFW and USFWS. If full avoidance cannot be accomplished, Permittee shall postpone the Project, and contact CDFW to discuss an appropriate action.** ~~Isolating the site with~~ **Using** tortoise-proof fencing ~~will also~~ **may** reduce ~~or eliminate this need~~ **tortoise entry onto the Project site**.

Response D.5. The comment is noted, but not supported by substantial evidence. As described in the EIR (page 2.5-13 and -14, Appendix B, pages 34-36) a protocol-compliant desert tortoise survey was conducted for the proposed project, and no evidence of the species was found (including presence or sign). The EIR also describes that the species could move onto the site. However, given the distance from previous recorded sightings, the qualified biologist recommended comprehensive worker education and avoidance measures, as included in Mitigation Measures BIO-4 through BIO-7. These include a WEAP program, to assure that all workers fully understand the requirements of law regarding the species; periodic monitoring by a qualified biologist; regular inspections and covering or fencing of trenches on a daily basis. These measurers will be effective in preventing the take of the species, in the unlikely event it would move onto the site during construction. The existing measures assure effective mitigation of impacts to desert tortoise, and no alterations to the measures are needed.

Comment D.6 Nesting Birds

Shown on Table 3 of Appendix C are special status birds that may occur on the Project site. These include golden eagle (*Aquila chrysaetos*), burrowing owl (*Athene cunicularia*), Swainson's hawk (*Buteo swainsoni*), Costa's hummingbird (*Calypte costae*), prairie falcon (*Falco mexicanus*), loggerhead shrike (*Lanius ludovicianus*), and Le Conte's thrasher (*Toxostoma lecontei*). Please note that it is the Project proponent's responsibility to avoid "take" of all nesting birds. California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill". Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. These regulations apply anytime nests or eggs exist on the Project site. To address the above issues and help the Project applicant avoid unlawful take of nests and eggs, CDFW offers the following revisions to MM BIO-8 and MM BIO-9. (edits are in strikethrough and **bold**).

MM BIO-8

Any vegetation removal or grading ~~occurring during the nesting season (generally February 1 through August 31)~~ will require at least one nesting bird survey to be conducted by a qualified biologist no more than three days prior to site disturbance. **Surveys shall include any potential habitat (including trees, shrubs, the ground, or nearby structures) that may be impacted by Project activities.** If no nests are found, construction may proceed. If active nests are found, impact avoidance measures (e.g., "no work" buffers, sound and/or visual barriers) will be put in place around the nest until young have fledged. This also applies to offsite nests identified by the biologist during the nesting survey which may be indirectly impacted by site development.

MM BIO-9

The CDFW recommends ~~avoidance buffers of approximately 500 feet for birds-of-prey and listed species, and 100-300 feet for other unlisted birds~~ **the extent of the 'no-disturbance buffer' shall be no less than 300 feet (500 feet for raptors) although a smaller buffer may be determined by a qualified biologist.** Appropriate buffers shall be established on a case-by-case basis by the nesting bird biologist**.**

Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the 'no-disturbance buffer' shall be expanded.

Response D.6 The listing of the appropriate portions of Fish and Game Code are noted. The commenter's request for modifications are noted but not supported by substantial evidence for the following reasons: As it relates to nesting surveys, the MBTA includes the provisions that they be conducted during the nesting season, which in Apple Valley is correctly identified as February through August. Further, Mitigation Measure BIO-8 includes the performance standards (no work buffers, barriers) which the commenter proposes in BIO-9, and it is documented that the Department has no established buffer areas, but rather has published recommendations as described in BIO-9. Finally, since the buffer distances in the mitigation measure are more conservative than those edited by the commenter, the Town believes that birds would be better protected with the existing language. Since effective mitigation is already written into BIO-8 and BIO-9, no modifications are needed.

Comment D.7 <u>Burrowing Owl (*Athene cunicularia*)</u>

The Project site has the potential to provide suitable foraging and/or nesting habitat for burrowing owl. 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 Fish and Game Code section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill."

CDFW appreciates that the Town of Apple Valley will 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 CDFW's website: https://www.wildlife.ca.gov/conservation/survey-protocols. The Staff Report on Burrowing Owl Mitigation, specifies three steps for project impact evaluations:

a. A habitat assessment;

b. Surveys; and
c. An impact assessment

CDFW appreciates the inclusion of MM BIO-10 which considers pre-construction surveys for burrowing owl and offers the following revisions (edits are in ~~strikethrough~~ and **bold**).

MM BIO-10

A survey for potential burrows followed by four breeding season surveys of areas found to have potential for burrowing owl occupation must be conducted in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012). The burrow survey can be conducted any time, but the breeding season focused survey cannot begin prior to February 1. **Prior to initiating Project activities, a qualified biologist shall conduct at least one survey covering the entire Project area and surrounding 15-meter buffer to identify the presence of suitable burrows and/or burrow surrogates (>11 cm in diameter [height and width] and >150 cm in depth) for burrowing owl and sign of burrowing owl (e.g., pellets, prey remains, whitewash, or decoration, etc.) If burrowing owls or suitable burrows and/or sign of burrowing owl are documented on-site, a breeding season survey for burrowing owl in accordance with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) shall be conducted by a qualified biologist prior to start of Project activities. If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no further action is necessary. If burrowing owl, active burrowing owl burrows, or sign thereof are found the qualified biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures to be approved by CDFW prior to commencing Project activities and propose mitigation for permanent loss of occupied burrow(s) and habitat.**

Response D.7 The comment is noted. The modifications requested by the commenter are restatements of the protocol explicitly listed in the Mitigation Measure (Staff Report on Burrowing Owl Mitigation (CDFG 2012)). Given that the measure requires the implementation of the protocol, its restatement is not necessary, and no additions are required.

Comment D.8 <u>Lake and Streambed Alteration</u>

CDFW appreciates that the Project proponent recognizes that notification to CDFW is required, pursuant to section 1602 of the Fish and Game Code.

Response D.8 The comment is noted. The Town always implements the requirements of Fish and Game Code when required.

Comment D.9 Moving out of Harm's Way

To avoid direct mortality, CDFW recommends that the lead agency condition the DEIR to require that a CDFW-approved qualified biologist be retained to be onsite prior to and during all ground- and habitat-disturbing activities to move out of harm's way special status species or other wildlife of low or limited mobility that would otherwise be injured or killed from project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise by injured or killed, and individuals should be moved only as far a necessary to ensure their safety (i.e., CDFW does not recommend relocation to other areas). Furthermore, it should be noted that the temporary relocation of onsite wildlife does not constitute effective mitigation for the purposes of offsetting project impacts associated with habitat loss.

Response D.9 The comment is noted. As described above and in the EIR, Mitigation Measures BIO-1 through BIO-15 assure the comprehensive protection of biological resources on site prior to and during construction. In addition to the pre-construction analyses and surveys described in these mitigation measures, which will assure that no protected species is impacted by the Project's construction, Mitigation Measure BIO-6 includes periodic monitoring by a qualified biologist. This added protection will assure that impacts to biological resources are less than significant before and during all construction activities.

Comment D.10 CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the California Endangered Species Act (CESA). A CESA ITP is issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats. CDFW recommends that a CESA ITP be obtained if the Project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). If the Project, including the Project construction or any Project-related activity during the life of the Project cannot fully avoid take of a CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation through an ITP. Desert tortoise is a CESA-listed threatened and proposed endangered species that has potential to occur within the Project Area. If pre-construction surveys identify presence of desert tortoise, CDFW encourages early consultation with CDFW.

Response D.10 The commenter's description of the CESA ITP is noted. As described above, the mitigation measures provided in the EIR assure that there will be no unlawful take of any CESA-protected species as a result of implementation of the proposed Project.

Comment D.11 CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). Information can be submitted online or via completion of the CNDDB field survey form at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

Response D.11 The comment is noted. The Project biologist understands the requirements of law, and has and will report special status species consistent with State law.

Comment D.12 The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.).

Response D.12 The Town is aware of the required filing fees, and will assure that they are paid upon issuance of a Notice of Determination for the EIR, as required by the County of San Bernardino.

Comment D.13 CDW appreciates the opportunity to comment on the NOP of a DEIR for the Development at Dale Evans & Lafayette Project (SCH No. 2022120356) and recommends that the Town of Apple Valley address the CDFW's comments and concerns in the forthcoming DEIR. If you should have any questions pertaining to the comments provided in this letter, please contact Julian Potier, Environmental Scientist, at (909) 938-6112 or at julian.potier@wildlife.ca.gov.

Response D.13 The Town thanks the Department for its participation in the CEQA process, and notes that the EIR is the document on which the

Department has commented. The only additional document in the process is this Response to Comments/FEIR.

E. Blum, Collins & Ho LLP

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

Response E.1 The comment is noted. The commenter has been added to the Town's list of notifications for the Project.

Comment E.2 The project proposes the construction and operation of one 1,207,544 square foot distribution center building including 1,147,167 square feet of distribution center space and 60,377 square feet of office space on an approximately 77 acre site. The building includes 204 truck/trailer loading dock doors and the site provides 1,218 parking spaces.

Response E.2 The comment provides a short description of the Project, and requires no further response.

Comment E.3 2.4 Air Quality, 2.7 Energy, and 2.9 Greenhouse Gas Emissions

Please refer to attachments from SWAPE for a complete technical commentary and analysis.

The EIR does not include meaningful analysis of relevant environmental justice issues in reviewing potential impacts, including cumulative impacts from the proposed project. This is especially significant as the surrounding community is highly burdened by pollution. According to CalEnviroScreen 4.0, CalEPA's screening tool that ranks each census tract in the state for pollution and socioeconomic vulnerability, the proposed projects census tract (6071012101) is highly burdened by pollution. The surrounding community bears the impact of multiple sources of pollution and is more polluted than other census tracts in many pollution indicators measured by CalEnviroScreen. For example, the project census tract ranks in the 80th percentile for ozone burden and 80th percentile for traffic burdens. All of these environmental factors are attributed to heavy truck activity in the area. Ozone can cause lung irritation, inflammation, and worsening of existing chronic

health conditions, even at low levels of exposure[2]. Exhaust fumes contain toxic chemicals that can damage DNA, cause cancer, make breathing difficult, and cause low weight and premature births.

Response E.3 The commenter's concerns about environmental justice and impacts of pollution on surrounding communities are noted. The commenter's comment, however, is incorrect. The CalEnviroScreen rating overall for this Census tract is 65, the Pollution Burden Percentile is 40, and the Traffic percentile is 60, not 80[1]. Therefore, the commenter overstates the impacts associated with pollution burden for the Project area, and assumes that the traffic burden is tied to truck traffic without providing substantial evidence. Rather, the CalEnviroScreen results also show that the Census tract is in the 22nd percentile for diesel particulate matter, a low level for the emissions associated with truck traffic.

DEIR Pages 2.4-17 and -18 provide analysis of the project's potential to expose sensitive receptors to substantial pollutant concentrations using the MDAQMD CEQA Guidelines. According to these guidelines, the Project is not located within the specified distance of a sensitive receptor to warrant additional impact analysis. In addition, the MDAQMD does not currently have a methodology to correlate the expected air quality emissions of a project to the likely health consequences of those emissions consistently and meaningfully. The results of the CalEEMod projections confirm that the Project's emissions are below the MDAQMD thresholds, including operational emissions from project-related truck activity in the area. MDAQMD is the expert authority as regards air emissions in Apple Valley and the region, and its requirements have been adhered to in the EIR. No further analysis is necessary or warranted.

Comment E.4 The census tract ranks in the 85th percentile for solid waste facility impacts. Solid waste facilities can expose people to hazardous chemicals, release toxic gases into the air (even after these facilities are closed), and chemicals can leach into soil around the facility and pose a health risk to nearby populations. The census tract also bears more impacts from cleanup sites than 52% of the state. Chemicals in the buildings, soil, or water at cleanup sites can move into nearby communities through the air or movement of water.

Response E.4 The commenter's concerns regarding solid waste facility impacts are noted but provide no substantive comment regarding the environmental impacts of the proposed Project. The project does not

[1] CalEnviroScreen GIS portal https://experience.arcgis.com/experience/11d2f52282a54ceebcac7428e6184203/page/CalEnviroScreen-4_0/, accessed 6/23/23.

propose a solid waste facility and impacts from solid waste facilities are not relevant to the project. Further, the CalEnviroScreen rating for toxic releases is low, standing at 37, which is in direct contradiction to the commenter's assertions. See Response E.3 for discussion on impacts to sensitive receptors.

Comment E.5 Further, the census tract is a diverse community including 22% Hispanic, 10% African-American, and 2% Asian-American residents, whom (sic) are especially vulnerable to the impacts of pollution. The community also has a high rate of poverty, meaning 53% of the households in the census tract have a total income before taxes that is less than the poverty level. Income can affect health when people cannot afford healthy living and working conditions, nutritious food and necessary medical care. Poor communities are often located in areas with high levels of pollution. Poverty can cause stress that weakens the immune system and causes people to become ill from pollution. Living in poverty is also an indication that residents may lack health insurance or access to medical care. Medical care is vital for this census tract as it ranks in the 89th percentile for incidence of cardiovascular disease and 88th percentile for incidence of asthma.

Response E.5 The commenter's concerns regarding racial and socio-economic health impacts are noted but provide no substantive comment regarding the environmental impacts of the proposed Project. See Response E.3 for discussion on impacts to sensitive receptors.

Comment E.6 California s Building Energy Code Compliance Software (CBECC) is the State's only approved energy compliance modeling software for non-residential buildings in compliance with Title 24. CalEEMod is not listed as an approved software. The CalEEMod modeling does not comply with the 2022 Building Energy Efficiency Standards and under-reports the project's significant Energy impacts and fuel consumption to the public and decision makers. Since the EIR did not accurately or adequately model the energy impacts in compliance with Title 24, a finding of significance must be made. A revised EIR with modeling using the approved software (CBECC) must be circulated for public review in order to adequately analyze the project s significant environmental impacts. This is vital as the EIR utilizes CalEEMod as a source in its methodology and analysis, which is clearly not the approved software.

Response E.6 The commenter incorrectly asserts that the CalEEMod software is not an approved software for analyzing the environmental impacts of a project's energy use, and that the EIR did not adequately analyze impacts of the project's energy use because it did not accurately consider Title 24 compliance measures.

CalEEMod is a Statewide land use emission computer model developed for the California Air Pollution Officers Association (CAPCOA) in collaboration with the California Air Districts, including the MDAQMD, that provides a uniform platform to quantify potential criteria pollutant and greenhouse emissions associated with construction and operation of land development projects. The model version available at the time of analysis was CalEEMod Version 2020.4.0. According to the User Guide (Version 2020.4.0, May 2021), CalEEMod utilizes widely accepted methodologies for estimating emissions from a number of sources, including studies commissioned by the California Energy Commission (CEC). CalEEMod Version 2020.4.0 analyzes operational emissions from natural gas and electricity usage for residential and non-residential uses, and models Title 24 energy conservation standards applicable to all residential and non-residential buildings throughout California. For electricity, Title 24 uses include the major building envelope systems covered by Part 6 (California Energy Code) of Title 24 such as space heating, space cooling, water heating, and ventilation. For natural gas, Title 24 uses include building heating and hot water end uses.

The building codes available at the time of the software's release were the 2019 Building Bodes. Contrary to the commenter's claim that CalEEMod emissions would under-report the project's energy impacts, emissions projected using the 2019 Building Codes would theoretically be higher than those projected using 2022 Building Codes due to less stringent standards in the 2019 code. Therefore, the emission levels analyzed in the DEIR can be considered over-reported, or higher than what would be expected if the 2022 Building Code standards were modeled.

The analyses in Chapters 2.4 Air Quality and 2.9 of the DEIR find that the Project's criteria pollutant and greenhouse gas emissions, which consider emissions from energy production and energy use, do not exceed the MDAQMD's significance threshold for CO2e (DEIR page 2.4-20 and 2.9-11). The underlying assumptions of CalEEMod, including energy use, were approved by MDAQMD and are appropriate to use for air quality analyses. MDAQMD is the expert authority as regards air emissions in Apple Valley and the region, and its requirements have been adhered to in the EIR. No changes to the air quality analysis or EIR are necessary.

Furthermore, the project is required to adhere to the California Building Code available at the time of construction, including the California Energy Code and California Green Building Standards Code (CALGreen). The CDECC software the commenter references is used to demonstrate a building's performance compliance with Title 24 and

does not pertain to CEQA environmental impact analysis. The project's performance standards will be reviewed by the Town's building department prior to issuance of building permits and in accordance with Title 24 building and energy codes.

No further analysis is necessary or warranted.

Comment E.7 The EIR has not provided any information or analysis on the buildout conditions of the General Plan or the North Apple Valley Industrial Specific Plan (NAVISP). Table II-2: Specific Plan Land Use Designations Buildout Summary of the NAVISP states that the Industrial - Specific Plan designation will have a buildout square footage of 42,599,240, and this analysis is based upon new development construction at 22% building coverage of the site. The EIR states the proposed project will have 35% building coverage of the site, which is 13% greater than analyzed for every site in the NAVISP. Other projects in the NAVISP area have also constructed at higher building coverage rates than the NAVISP analyzed, such as the Project Jupiter Distribution Warehouse that was constructed at 29% building coverage of the site. The EIR has not demonstrated that the proposed project is within the buildout scenario of the NAVISP, including all cumulative development constructed since the inception of the NA VISP, approved projects not yet constructed, and "projects in the pipeline." The EIR must be revised to include this analysis in order to provide an adequate and accurate environmental analysis.

Response E.7 As clearly stated in Section 1 of the EIR, the document is a project-level analysis of the impacts of the Project, not a tiered analysis of either the NAVISP or the General Plan EIRs, although both were used for reference in the Project EIR. The analysis is the NAVISP was accurate at the time of its writing, but substantial time has passed, and reliance on that document would not be appropriate. Furthermore, although some projects may have been developed at densities greater than those estimated in that EIR, others have and will develop at less intense densities. The current EIR correctly assesses the current conditions in the area, and provides cumulative analysis of impacts known or estimated to occur in the NAVISP and the Town's boundary, based on current knowledge and facts. Since the EIR does not tier or otherwise rely on the NAVISP for its conclusions and analysis, the conditions analyzed 20 years ago are only marginally relevant to the Project.

It should also be noted that the commenter does not provide substantial evidence that the future projects in the NAVISP would exceed the anticipated build out, but rather supposes that this build out is inaccurate. The commenter's supposition is not substantial evidence, and does not support any change in the EIR.

Comment E.8 Table 111-41:Preferred Alternative General Plan Land Use Designation Build Out Summary: Town & Unincorporated Lands of the General Plan EIR states that the Industrial Specific Plan land use designation will have a buildout of 36,938,445 total square feet. The proposed project's 1,207,544 square feet represents 3 .3 % of the General Plan buildout for this land use designation. As discussed above, the EIR has not demonstrated that the proposed project is within the General Plan buildout scenario, including all cumulative development constructed since approval of the General Plan, approved projects not yet constructed, and "projects in the pipeline." Other recent industrial projects such as Project Jupiter Distribution Warehouse (1,360,875 square feet of industrial/warehouse space[13]) and IM Warehouse (1,080,125 square feet of industrial/warehouse space) cumulatively with the proposed project generate 3,648,544 square feet of industrial/warehouse space, which is 10.2% of the General Plan buildout capacity accounted for by only three projects. The EIR must be revised to include this analysis in order to provide an adequate and accurate environmental analysis.

Response E.8 Please see Response E.7. This is a project-level EIR that analyzes current conditions and known and expected future conditions. The commenter provides no substantial evidence that more than 32.8 million square feet of industrial development will be constructed in the Town by General Plan build out, but only supposes that the 10% represented by the recently proposed and constructed buildings will result in an exceedance of the General Plan's build out assumptions. The commenter's supposition is not substantial evidence, and does not support any change in the EIR.

Comment E.9 Mitigation Measure TRF-19 and Table 2.17-9: Project Fair Share Calculations provides a list of fee payments to mitigate significant impacts at identified intersections to less than significant levels; the impacted intersections are as follows:

Opening Year (2024)

1. Dale Evans Pkwy. / Johnson Rd. (LOS F - PM)
2. I-15 NB Ramps / Stoddard Wells Rd. (LOS F - PM)

Horizon Year (2040)

1. Dale Evans Pkwy. / Johnson Rd. (LOS F - AM & PM)
2. Dale Evans Pkwy. / Lafayette St. (LOS F - AM & PM)
3. Dale Evans Pkwy./Corwin Rd. (LOS F - AM & PM)
4. Stoddard Wells Rd./Johnson Rd. (LOS F - PM)
5. I-15 NB Ramps / Stoddard Wells Rd. (LOS F - AM & PM)
6. Navajo Rd. / Johnson Rd. (LOS F - AM & PM)

7. Navajo Rd. / Lafayette St. (LOS F - AM & PM)
8. Central Rd. / Johnson Rd. (LOS F - AM & PM)

It must be noted that the impacts to the I-15 are under jurisdiction of Caltrans. The following Caltrans jurisdictions (sic) are identified to experience significant and unavoidable impacts resulting from the project:

1. Opening Year (2024): I-15 NB Ramps / Stoddard Wells Rd. (LOS F - PM)
2. Horizon Year (2040): I-15 NB Ramps / Stoddard Wells Rd. (LOS F - AM & PM)

Response E.9 The listing of intersection improvements is noted. No further response is necessary.

Comment E.10 Any improvements constructed or in-lieu fees/fair share fees paid for the I-15 are beyond the control/scope of the lead agency. An assessment of fees is appropriate when linked to a specific mitigation program. (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, *Save our Peninsula Comm. v. Monterey County Bd. Of Supers.* (2001) 87 Cal.App.4th 99, 141.) Payment of fees is not sufficient where there is no evidence mitigation will actually result. (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099,1122.) The assessment of fees here is not adequate as there is no evidence mitigation will actually result. The improvements required are not part of an existing DIF/TUMF program and therefore are not planned to occur at all or by any certain date, whether by Apple Valley or Caltrans. Any improvements recommended or fees paid to mitigate impacts for the I-15 are beyond the control of the lead agency and evidence that these improvements will be completed or approved by Caltrans has not been provided. The EIR must be revised and recirculated to include the LOS analysis as cumulatively considerable significant impact as the project conflicts with Transportation Impact Threshold A and Land Use and Planning Impact Threshold B because it is not consistent with the following General Plan policy:

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

Response E.10 The commenter is incorrect. The intersection improvements listed in Comment E.9 are all Town intersection improvements. None is an Interstate 15 improvement. Therefore, the Town's reliance on fair share contributions and developer impact fees in Mitigation Measure TRF-19 is wholly appropriate. In addition, as shown in Table 2.17-5, the only intersection operating at unacceptable levels of service at Project opening year is Dale Evans/Johnson Road, which will operate at an

unacceptable level with or without the Project. In this case again, payment of a fair share contribution, installation by the Project with reimbursement, or other means listed in Mitigation Measure TRF-18 are all effective means through which the improvements may be completed. All other affected intersections operate at acceptable levels at Project opening year (2024), as shown in Table 2.17-5. Only at the 2040 Horizon Year (General Plan build out) do impacts to other intersections occur. Since the Project will not have a direct significant impact as it relates to the Town's General Plan LOS standard, fair share contributions to these improvements is the appropriate mitigation, as described in TRF-19. Therefore, since there is no reliance on Interstate 15 improvements, nor any need for Caltrans improvements, the analysis in the EIR is correct, and the mitigation measures accurately and thoroughly reduce the impacts to less than significant levels. No change to the EIR is required.

Comment E.11 Additionally, the EIR does not provide a consistency analysis with SCAG's 2020-2045 Connect SoCal RTP/SCS. Due to errors in modeling, modeling without supporting evidence (as noted throughout this comment letter and attachments), and the EIR's conclusion the project will result in significant and unavoidable cumulatively considerable impacts to Vehicle Miles Traveled, the proposed project is directly inconsistent with Goal 5 to reduce greenhouse gas emissions and improve air quality, Goal 6 to support healthy and equitable communities, and Goal 7 to adapt to a changing climate. The EIR must be revised to include a finding of significance due to these direct inconsistencies with SCAG's 2020-2045 Connect SoCal RTP/SCS.

Response E.11 Although the EIR does not enumerate the RTP/SCS goals, it has been used extensively in the EIR, as evidenced by citations to the Plan in the air quality (page 2.4-13), greenhouse gas (2.9-13), population and housing (2.14-2) and traffic (2.17-3) sections of the EIR. Further, the EIR acknowledges that the impacts associated with VMT will be significant and unavoidable. Contrary to the commenter's assertions, the EIR does not contain errors in modeling, as described in other Responses to the commenter herein.

Comment E.12 SCAG's Connect SoCal Demographics and Growth Forecast states that Apple Valley will add 12,200 jobs between 2016 - 2045. Utilizing the EIR's calculation of 1,172 employees, the project represents 9.6% of Apple Valley s (sic) employment growth from 2016 - 2045. A single project accounting for this amount of growth over 29 years represents a significant amount of growth. A revised EIR must be prepared to include this analysis, and also provide a cumulative analysis discussion of projects approved since 2016 and projects "in the pipeline" to determine if the project will exceed SCAG's employment and/or

population growth forecast. For example, other recent industrial projects such as 1M Warehouse (1,080,125 square feet of industrial/warehouse space; 1,049 employees), Apple Valley 143 (2,628,000 square feet of industrial/warehouse space; 2,552 employees), and Apple Valley Commercial Project (49,995 square feet commercial space; 75 employees) combined with the proposed project will cumulatively generate 4,848 employees, which is 39.7% of Apple Valley's employment growth forecast over 29 years. This number increases exponentially when other development activity is added to the calculation. A revised EIR must be prepared to include a cumulative analysis on this topic.

Response E.12 The commenter's opinion is noted, but not supported by substantial evidence. As described in appropriate sections of the EIR (pages 2.7-11, 2.14-5 through -7, 2.14-8, 2.15-7, 2.16-6), the Town currently experiences significant employment leakage, and Town residents travel to the Inland Empire for work. The proposed Project could result in many of those commuters remaining in Town for work, which would be beneficial to the Town's jobs/housing balance. In the EIR, the worst case scenario – that all employees at the Project will be new residents – was cited in order to conduct a conservative analysis, and the jobs/housing balance issue was also described.

The commenter similarly, assumes that all jobs created by the other projects listed in the comment will be filled by new residents, but provides no supporting evidence to substantiate that assumption. The EIR correctly considered the worst case scenario regarding employment, and correctly states that it is likely that existing Town residents will fill at least some of the jobs created by the Project, as well as other projects in the Town. Furthermore, in the Cumulative Impact Analysis on page 2.14-8, the EIR addresses the identified jobs/housing imbalance and correctly states that this Project and other projects could alleviate this imbalance.

Comment E.13 Mitigation Measure TRF-19 and Table 2.17-9: Project Fair Share Calculations provides a list of fee payments to mitigate significant impacts at identified intersections to less than significant levels; the impacted intersections are as follows:

Opening Year (2024)

3. Dale Evans Pkwy. / Johnson Rd. (LOS F - PM)
4. I-15 NB Ramps / Stoddard Wells Rd. (LOS F - PM)

Horizon Year (2040)

9. Dale Evans Pkwy. / Johnson Rd. (LOS F - AM & PM)
10. Dale Evans Pkwy. / Lafayette St. (LOS F - AM & PM)

11. Dale Evans Pkwy./Corwin Rd. (LOS F - AM & PM)
12. Stoddard Wells Rd./Johnson Rd. (LOS F - PM)
13. I-15 NB Ramps / Stoddard Wells Rd. (LOS F - AM & PM)
14. Navajo Rd. / Johnson Rd. (LOS F - AM & PM)
15. Navajo Rd. / Lafayette St. (LOS F - AM & PM)
16. Central Rd. / Johnson Rd. (LOS F - AM & PM)

It must be noted that the impacts to the I-15 are under jurisdiction of Caltrans. The following Caltrans jurisdictions are identified to experience significant and unavoidable impacts resulting from the project:

3. Opening Year (2024): I-15 NB Ramps / Stoddard Wells Rd. (LOS F - PM)
4. Horizon Year (2040): I-15 NB Ramps / Stoddard Wells Rd. (LOS F - AM & PM)

Response E.13 See Response E.9

Comment E.14 Any improvements constructed or in-lieu fees/fair share fees paid for the I-15 are beyond the control/scope of the lead agency. An assessment of fees is appropriate when linked to a specific mitigation program. (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, *Save our Peninsula Comm. v. Monterey County Bd. Of Supers.* (2001) 87 Cal.App.4th 99, 141.) Payment of fees is not sufficient where there is no evidence mitigation will actually result. (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099,1122.) The assessment of fees here is not adequate as there is no evidence mitigation will actually result. The improvements required are not part of an existing DIF/TUMF program and therefore are not planned to occur at all or by any certain date, whether by Apple Valley or Caltrans. Any improvements recommended or fees paid to mitigate impacts for the I-15 are beyond the control of the lead agency and evidence that these improvements will be completed or approved by Caltrans has not been provided. The EIR must be revised and recirculated to include the LOS analysis as cumulatively considerable significant impact as the project conflicts with Transportation Impact Threshold A and Land Use and Planning Impact Threshold B because it is not consistent with the following General Plan policy:

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

Response E.14 See Response E.10.

Comment E.15 The EIR has not adequately analyzed the project's potential to substantially increase hazards due to a geometric design feature (e.g.,

sharp curves or dangerous intersections) or incompatible uses; or the project's potential to result in inadequate emergency access. The Traffic Appendix includes Exhibit 1-4: Truck Access Driveway 3 and Driveway 5 with separate exhibits for inbound and outbound trucks. The exhibits are provided separately in order to avoid providing an exhibit that depicts two trucks simultaneously entering and exiting the site. The separate diagrams appear to show that the truck turning radii will overlap, meaning that two trucks cannot enter and exit the site simultaneously and there is not sufficient space available to accommodate heavy truck maneuvering. There are no exhibits depicting the onsite turning radius available for trucks maneuvering throughout the site. Notably, trucks must make a u-turn within the loading dock area because gate access is restricted on the eastern side of the project site. Trucks can only exit to the west via the same driveway they entered, meaning a u-turn is necessary within the loading dock area. The EIR must be revised to include a finding of significance due to these significant and unavoidable impacts.

Response E.15 The commenter is incorrect. First, as relates to Exhibit 1-4, the commenter's supposition is incorrect. On the contrary, the Exhibit is provided in support of the analysis in the traffic study that the radii at driveways 3 and 5 were not sufficient as designed, and required mitigation, which is provided as Mitigation Measure TRF-1, which requires this redesign. With this redesign, as described in both the traffic study and EIR (page 2.17-20), operations of truck traffic at these entry points will be safe, and the site plan has already been modified to reflect the change, per the Town Engineer's request.

As regards the need for trucks to U-turn within the site, the commenter is incorrect. First, we note that there are no access points at all on the west end of the site, contrary to the commenter's description. Access for trucks will be only from the east boundary. Further, there is a continuous loop driveway extending from the northern entry/exit on Dachshund through the loading docks on the north side, around the western parking lot, and easterly to the southern entry/exit on Dachshund. There is no need for a truck to make a U-turn within the site.

As described above, there are no internal hazards within the site, and impacts have been reduced to less than significant levels with the imposition of TRF-1. There is no need for further analysis, and there will be no significant or unavoidable impact.

Comment E.16 There are also no exhibits depicting emergency vehicle access. Deferring this environmental analysis required by CEQA to the construction permitting phase is improper mitigation and does not comply with CEQA's requirement for meaningful disclosure and

adequate informational documents. A revised EIR must be prepared for the proposed project with this analysis in order to provide an adequate and accurate environmental analysis.

Response E.16 It is unclear what the commenter means by deferral of analysis. As described in the EIR, pages 2.15-6 through -8, fire protection will be provided by the Apple Valley Fire Protection District (AVFPD). The Community Risk Reduction Division of the AVFPD provides comments on all project designs as part of the development review process, and again when plans are submitted for building permit plan checks. This procedure is repeated throughout California for most development projects, and is a standard requirement in the Town and elsewhere. The AVFPD is reviewing the entitlement plan set, will provide conditions of approval, and will again review the building plans. There is no deferral of analysis or mitigation.

Comment E.17 The EIR is required to evaluate a reasonable range of alternatives to the proposed project which will avoid or substantially lessen any of the significant effects of the project (CEQA § 15126.6.) The alternatives chosen for analysis include the CEQA required "No Project" alternative and only two others - "100% high cube" Alternative" and "900,000 square foot development, 100% high cube Alternative." The EIR does not evaluate a reasonable range of alternatives as only two alternatives beyond the required No Project alternative is (sic) analyzed. The EIR does not include an alternatives (sic) that meets the project objectives and also eliminates all of the project's significant and unavoidable impacts. The EIR must be revised to include analysis of a reasonable range of alternatives and foster informed decision making (CEQA § 15126.6). This could include alternatives such as development of the site with a project that reduces all of the proposed project's significant and unavoidable impacts to less than significant level, and a mixed-use project that provides affordable housing and local-serving commercial uses that may reduce VMT, GHG emissions, and improve Air Quality.

Response E.17 First, it must be noted that there is no requirement under CEQA that alternatives eliminate all of a Project's significant impacts (although in this case Alternative A would indeed eliminate all of the proposed Project's impacts). Nor is there any standard in CEQA as to the number of alternatives that must be considered. In these assertions the commenter is incorrect.

The Courts have repeatedly found that an EIR need not consider every conceivable project alternative or alternatives that are infeasible. *(In re Bay-Delta etc. (2008) 43 Cal.4th 1143, 1163; Guidelines, § 15126.6, subd. (a).)* Nor is it required to consider specific alternatives proposed

by members of the public or other outside agencies. *(City of Maywood v. Los Angeles Unified School Dist. (2012) 208 Cal.App.4th 362, 420.)* The requirement is that a reasonable range of alternatives that informs the public and decisionmakers must be provided. In this case, the Project occurs within the boundaries of a Specific Plan that requires the development of industrial and commercial uses, and the Project complies with the requirements of that Specific Plan. Residential uses are not permitted in the Specific Plan, and would require a General Plan Amendment, Specific Plan Amendment and Development Code Amendment. That alternative is therefore neither reasonable nor feasible. Furthermore, as described in the EIR, High Density Residential development is allowed on the west side of Dale Evans Parkway, specifically with the intent of providing affordable housing in proximity to the Town's job centers within the Specific Plan area.

Finally, the alternatives provided do reduce the impacts of the Project on the environment. As described throughout Section 3 of the EIR, and summarized in Table 3.20-1, Alternative A is the environmentally superior alternative. The text surrounding that Table further describes the impacts of Alternatives B and C as they relate to the Project, and finds that Alternative C is superior, and reduces most of the Project's impacts. Therefore, the commenter's assertion that the EIR does not provide an adequate range of alternatives is not supported by fact. No change to the EIR is required.

Comment E.18 The EIR has not provided an adequate or accurate cumulative analysis discussion here to demonstrate the impact of the proposed project in a cumulative setting. For example, other recent industrial projects such as such as Project Jupiter Distribution Warehouse (1,360,875 square feet of industrial/warehouse space) and 1M Warehouse (1,080,125 square feet of industrial/warehouse space) cumulatively with the proposed project generate 3,648,544 square feet of industrial/warehouse space, which is 10.2% of the General Plan buildout capacity accounted for by only three projects. Other recent industrial projects such as 1M Warehouse (1,080,125 square feet of industrial/warehouse space; 1,049 employees), Apple Valley 143 (2,628,000 square feet of industrial/warehouse space; 2,552 employees), and Apple Valley Commercial Project (49,995 square feet commercial space; 75 employees) combined with the proposed project will cumulatively generate 4,848 employees, which is 39.7% of Apple Valley's employment growth forecast over 29 years accounted for by only four projects. The EIR must be revised to include this information for analysis and also include a cumulative development analysis of projects constructed, approved projects not yet constructed, and projects in the pipeline" to determine if the proposed project exceeds the General Plan buildout, NAVISP buildout, and/or SCAG's growth forecasts.

Response E.18 The commenter restates objections to cumulative impact analysis previously raised. Please see Responses E.7, E.8 and E.12. As demonstrated in those responses, the EIR adequately addresses cumulative impacts, and no further analysis is required.

Comment E.19 For the foregoing reasons, GSEJA believes the EIR is flawed and a revised EIR must be prepared for the proposed project and circulated for public review. Golden State Environmental Justice Alliance requests to be added to the public interest list regarding any subsequent environmental documents, public notices, public hearings, and notices of determination for this project. Send all communications to Golden State Environmental Justice Alliance P.O. Box 79222 Corona, CA 92877.

Response E.19 As described in Responses E.1 through E.18, the analysis in the EIR is thorough and comprehensive, and recirculation is not required. The commenter has been added to the Town's notification list.

F. Adams Broadwell Joseph & Cardozo on behalf of Californians Allied for a Responsible Economy ("CARE CA")

Comment F.1 We are writing on behalf of Californians Allied for a Responsible Economy ("CARE CA") to comments (sic) on the Draft Environmental Impact Report ("DEIR")1 prepared by the Town of Apple Valley ("Town") for the Development at Dale Evans and Lafayette Project (SCH No. 2022120356; Project No. SPR 2022-004) ("Project"), proposed by RW Apple Valley LLC ("Applicant").

The Project proposes to develop a 1,207,544 square foot ("sf") warehouse distribution center on a 77.95± acre parcel of land located on the Southeast corner of Lafayette Street and Dale Evans Parkway in the Town of Apple Valley, San Bernardino County, California. The Project building is proposed to include 1,147,167 sf of warehouse space, and 60,377 sf of office space. The Project site consists of 10 existing parcels, identified as Assessor's Parcel Numbers 0463-231-11, -12, -13, -14, -15, -16, -34, -35, -36, and -37.

Response F.1 The comment is noted, but provides only a description of the Project. No further response is required.

Comment F.2 Based on our review of the DEIR and supporting documentation, we conclude that the DEIR fails to comply with the requirements of the California Environmental Quality Act ("CEQA"). The DEIR fails to adequately analyze many of the Project's significant environmental impacts and fails to propose feasible and enforceable mitigation measures to reduce those impacts to a less than significant level, as required by CEQA.

As explained in these comments, there is substantial evidence that the Project will result in significant unmitigated impacts relating to air quality, health risks and transportation. The Project also conflicts with applicable land use plans and policies, resulting in land use inconsistencies as well as significant impacts under CEQA. The Town may not approve the Project until the Town revises the Project's DEIR to adequately analyze the Project's significant direct, indirect and cumulative impacts, and incorporates all feasible mitigation measures to avoid or minimize these impacts to the greatest extent feasible.

We reviewed the DEIR and its technical appendices with the assistance of traffic and transportation expert Daniel Smith environmental health, air quality, GHG, and hazardous materials expert James Clark Ph.D. We reserve the right to supplement these comments at a later date, and at any later proceedings related to this Project.

Response F.2 The commenter's opinions are noted. Responses to individual assertions are provided in the Responses below.

Comment F.3 CARE CA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental impacts of the Project. The coalition includes Apple Valley residents David Kimber, Brandon Walker and Greg Wright, the District Council of Ironworkers and Southern California Pipe Trades DC 16, along with their members, their families, and other individuals who live and work in Apple Valley and in San Bernardino County.

CARE CA advocates for protecting the environment and the health of their communities' workforces. CARE CA seeks to ensure a sustainable construction industry over the long-term by supporting projects that offer genuine economic and employment benefits, and which minimize adverse environmental and other impacts on local communities. CARE CA members live, work, recreate, and raise their families in the City of Apple Valley and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

In addition, CARE CA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the

area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

Response F.3 The commenter's description of the organization's purpose is noted, but does not require further response.

Comment F.4 CEQA requires public agencies to analyze the potential environmental impacts of their proposed actions in an EIR. "The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."

CEQA has two primary purposes. First, CEQA is designed to inform decisionmakers and the public about the potential significant environmental effects of a project. "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'" The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." As the CEQA Guidelines explain, "[t]he EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected."

Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring consideration of environmentally superior alternatives and adoption of all feasible mitigation measures. The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to "identify ways that environmental damage can be avoided or significantly reduced." If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment" to the greatest extent feasible and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns."

While courts review an EIR using an "abuse of discretion" standard, "the reviewing court is not to 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference." As the courts have explained, a prejudicial abuse of discretion occurs "if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting

the statutory goals of the EIR process." "The ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail 'to enable who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.'"

Response F.4 The commenter's interpretation of the purpose of CEQA is noted, but requires no further response.

Comment F.5 The DEIR does not meet CEQA's requirements because it fails to include an accurate, complete and stable description of key Project components, rendering the DEIR's impact analysis inadequate. California courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." CEQA requires that a project be described with enough particularity that its impacts can be assessed. Without a complete, stable and accurate project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review.

Here, many of the DEIR's impact analyses are based on unenforceable assumptions regarding future uses of the warehouse. The DEIR's project description states that "no user has been identified for this space [and for] purposes of this analysis, it has been assumed that 85% of the space would be used for dray (sic) warehousing, and 15% for cold storage." This "assumption" is repeated throughout the DEIR, including in the analysis of air quality, energy, and greenhouse gas ("GHG") impacts. While the DEIR assumes for purposes of the CEQA analysis that the warehouse will be limited to 15% cold storage, there is no condition of approval, mitigation measure, or other Project provision restricting cold storage to 15%, and therefore nothing in the record to ensure that cold storage will be so limited if the Project is constructed. Because "no user has been identified" for this warehouse space and because there are no conditions or other mechanism to ensure that the warehouse will be limited to 15% cold storage in practice, it is reasonable to expect that actual cold storage uses may exceed 15%. Depending on the actual percentage of cold storage uses, the Project's air quality, greenhouse gas, and energy impacts could be significantly higher than estimated in the DEIR, as explained below.

Response F.5 The commenter is incorrect. The Project description provided in the EIR is thorough and complete. The commenter's assertion that there is nothing to prevent the Project from containing more than 15% cold storage is false.

As clearly stated in Section 1, page 1-2, there is no defined user identified for the Project. The Town determined that it would be appropriate to study a conservative Project that included refrigerated warehousing, in order to assure that impacts were conservatively analyzed. This determination was based, in part, on the Town's knowledge and understanding that refrigeration could increase impacts associated with air emissions, energy and greenhouse gases. All of the analysis in the EIR consistently analyzes this Project description, and there is nothing unstable in the Project description.

Second, the Alternatives described first in the Executive Summary and also in Section 3 of the EIR include thorough analysis of both an all-dry storage alternative and a reduced footprint alternative. Both of these alternatives were selected to demonstrate the reductions in impacts associated with the lack of refrigerated storage.

As it relates to their being no enforcement of the 15% refrigerated warehouse assumption, the commenter is incorrect. The Town's responsibility under CEQA limits the potential for any greater amount of refrigerated storage. Since the EIR clearly analyzes only the impacts of 15% of space dedicated to refrigerated storage, and equally clearly demonstrates that a dry storage warehouse would have lower impacts in its alternatives analysis, the Town cannot, under CEQA, permit a proposal with a higher percentage or square footage of refrigerated storage without further CEQA review. Should a higher percentage be proposed in the future, the Town would conduct additional review to assure that impacts of that higher amount of refrigerated space were adequately analyzed.

Finally, there is nothing in the record to indicate that any more refrigerated storage space has been requested, nor does such a proposal exist. The commenter's presumptions not withstanding, the analysis of a set percentage of refrigerated space within the Project footprint is appropriate and proper.

Comment F.6 The DEIR's air quality and greenhouse gas analysis uses CalEEMod, a statewide land use emissions model, to estimate Project construction and operational emissions. The model output is based on a number of assumptions about the Project, including that only 15% of the warehouse space will be used for cold storage and 85% for dry storage. Changing these assumptions directly affects the Project's estimated emissions. For example, the DEIR estimates that the Project's operation will generate a daily maximum of 86.20 lbs/day of CO2 and 127.32 lbs/day of Nox, assuming 15% cold storage. The DEIR also analyzes a Project alternative in which the only difference from the proposed Project is 100% dry storage and no cold storage. Under this alternative,

the DEIR finds that the Project's operation will generate a daily maximum of 82.41 lbs/day of CO2 and 122.51 lbs/day of Nox. The DEIR makes clear that eliminating cold storage from the analysis decreases emissions. Conversely, if the Project were to have in excess of 15% cold storage uses, emissions would increase. This is especially relevant with respect to Nox, given that the DEIR's estimates of the Project's operational Nox emissions are close to the Mojave Desert Air Quality Management District's ("MDAQMD") daily threshold of 137 lbs/day.

Response F.6 The commenter's description of the emission projections for the project and alternatives is correct but provides no substantive comment regarding the environmental impacts of the proposed project. Also see Response F.5 above.

Comment F.7 Similarly, the DEIR finds that the Project's operational GHG emissions (assuming 15% cold storage) will be 17,768.97 metric tons/year of CO2e. The "high- cube only" alternative (i.e., no cold storage) is estimated to generate 16,084.87 metric tons/year of CO2e. Reducing the amount of the Project's cold storage uses demonstrably reduces GHG emissions, and increasing the amount of cold storage beyond the DEIR's 15% assumption will likewise increase GHG emissions.

Response F.7 The commenter's description of the emission projections for the project and alternatives is correct but provides no substantive comment regarding the environmental impacts of the proposed project.

Comment F.8 Finally, the amount of the Project's cold storage usage will have a significant impact on the Project's energy usage. "In addition to standard warehouse and office energy uses, such as space heating and cooling, the refrigerated warehouse component of the proposed development will be considerably more energy intensive. While the cold storage portion of the warehouse is assumed to occupy 15% of the floorspace, it will be responsible for approximately 75% of the building's electricity consumption and 82% of the natural gas consumption [emphasis added]." With respect to the "no cold storage" alternative, the DEIR states that this alternative "would use 30% of the electricity used by the proposed Project and 21% of the natural gas, due to the elimination of refrigerated storage, which generates high demand for energy." Due to the outsized effect on energy consumption of refrigerated storage, any increase in cold storage use over the assumed 15% will cause a significant increase in energy consumption which is not considered in the DEIR and may require additional mitigation. Without some enforceable mechanism to limit the Project to 15% cold storage, the DEIR's energy use analysis is unreliable and may significantly underestimate the Project's actual energy use.

Response F.8 See Responses C-4 and F.5.

Comment F.9 Ultimately, the DEIR's estimated emissions and energy usage are dependent on the assumption that 15% of the Project's warehouse space will be used for cold storage. Absent any mechanism to enforce that assumption, the DEIR cannot accurately assess the Project's air quality, GHG and energy impacts, and the DEIR's conclusions regarding the significance of the Project's operational emissions and energy use are not supported by substantial evidence. The Town must prepare a revised EIR that clearly defines the Project's uses with respect to cold storage.

Response F.9 See Response C-4 and F.5.

Comment F.10 An EIR must fully disclose all potentially significant impacts of a Project and implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data. An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA. Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives are subject to a less deferential standard than challenges to an agency's factual conclusions. In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."

Response F.10 Contrary to the commenter's assertion, and as demonstrated throughout this response to comments, the DEIR does thoroughly analyze the impacts of the proposed Project, and provide feasible mitigation for these impacts. Please see specific responses to issues in the following responses.

Comment F.11 Additionally, CEQA requires agencies to commit to all feasible mitigation measures to reduce significant environmental impacts. In particular, the lead agency may not make required CEQA findings, including finding that a project impact is significant and unavoidable, unless the administrative record demonstrates that it has adopted all feasible mitigation to reduce significant environmental impacts to the

greatest extent feasible. Yet, as explained below, the DEIR falls far short of this mandate by adopting mitigation measures that are vague, ineffective, and unenforceable and by failing to commit to other feasible and effective mitigation strategies to address the significant transportation, air quality, GHG emissions and noise impacts of the Project.

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.'"

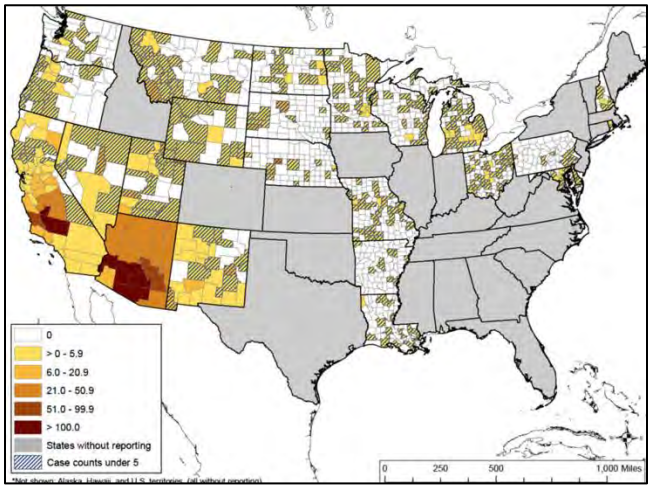
Response F.11 The EIR did not rely on an unsupported study, nor did it exclude feasible mitigation. All of the technical reports prepared for the Project were completed by experts in their fields, and substantiated with facts and evidence. Those technical studies were included as technical appendices to the Draft EIR and circulated to the public. Please see responses below regarding specific issues raised by the commenter.

Comment F.12 The DEIR fails to acknowledge, let alone analyze and mitigate, the potentially significant health impacts from Valley Fever associated with Project construction. Valley Fever is a disease that can infect people when they are exposed to fungal spores during ground disturbance, such as the site preparation and grading associated with this Project's construction. Symptoms include fever, cough, headache, rash, muscle aches, or joint pain. In severe cases, patients develop pneumonia or meningitis, sometimes resulting in death. Valley Fever is endemic in the Southwestern United States, including San Bernardino County and the Mojave Desert. Dr. Clark's comments describe the increasing incidence of Valley Fever in San Bernardino County over the last several years.

Response F.12 The comment is not supported by substantial evidence. San Bernardino County experiences very low rates of Valley Fever. The comment relies on a reported 66 cases in the County in 2021. Given the County's population of 2,193,656 in 2022, those 66 cases represent an incidence rate of 3 per 100,000. Furthermore, this rate is throughout San Bernardino County, not solely in Apple Valley. The data provides substantial evidence that Valley Fever will not substantially impact workers or others at or surrounding the Project site.

Furthermore, according to the federal Centers for Disease Control (CDC), there has been no outbreak of Valley fever in San Bernardino County, as shown in this published map.[2]

Finally, also according to the CDC, San Bernardino County is reported as having the lowest range of cases among reporting counties, at 0-5.9 per 100,000, as shown in the CDC incidence map below.



Comment F.13 As discussed in detail in Dr. Clark's comments, there is a significant risk of Valley Fever to both workers constructing the Project and employees at the adjacent existing warehouses. Dr. Clark describes the known presence of Valley Fever spores in the soils of the Southern California high desert and San Bernardino County, where the Project site is located. Workers involved in soil-disturbing activities, such as grading, can be exposed to Valley Fever in disturbed and windblown dust containing Valley Fever spores. Nearby workers and other receptors downwind of disturbed soils are also at risk.

[2] https://www.cdc.gov/fungal/diseases/coccidioidomycosis/maps.html

Dr. Clark points out that standard fugitive dust mitigation measures are inadequate to protect construction workers and other nearby receptors from the risk of Valley Fever, and identifies several mitigation measures that can actively suppress the spread of Valley Fever. These include:

(1) including Valley Fever-specific requirements in the Project's Injury and Illness Prevention Program;

(2) controlling dust exposure with specific measures that exceed conventional dust control, such as (a) applying chemical stabilizers at least 24 hours prior to high wind events, (b) applying water to all disturbed areas a minimum of three times per day, and at least four times per day if there is any evidence of visible wind-driven fugitive dust, (c) providing National Institute for Occupational Safety and Health (NIOSH) approved respirators for workers with a history of Valley Fever, (d) half- face respirators equipped with a minimum N-95 protection factor for use by workers in areas of ground disturbing activities and half-face respirators equipped with N- 100 or P-100 filters for use during digging activities, (e) prohibiting eating and smoking at the worksite and providing separate, clean eating areas with hand- washing facilities, (f) avoiding outdoor construction operations during unusually windy conditions or in dust storms, and (g) limiting outdoor construction during the fall to essential jobs only, as the risk of infection is higher during this season;

(3) preventing transport of Valley Fever spores outside endemic areas by (a) thoroughly cleaning equipment, vehicles and other items before they are moved offsite to other work locations, (b) preventing spillage or loss of bulk material from holes or other openings in the cargo compartment's floor, sides, and/or tailgate, (c) loading all haul trucks such that the freeboard is not less than six inches when material is transported on any paved public access road and applying water to the top of the load sufficient to limit VDE to 20 percent opacity, or covering haul trucks with a tarp or other suitable cover, (d) providing workers with coveralls daily, lockers (or other systems for keeping work and street clothing and shoes separate), daily changing and showering facilities, (e) training workers to recognize that cocci may be transported offsite on contaminated equipment, clothing, and shoes, and ; and (f) posting warnings onsite and consider limiting access to visitors, especially those without adequate training and respiratory protection;

(4) providing medical surveillance for employees, such as (a) prompt access to medical care, (b) working with a medical professional to develop protocols to evaluate employees who have Valley Fever symptoms.

Dr. Clark's comments and analysis provide substantial evidence that the Project may have significant unmitigated health risks to Project construction workers and nearby receptors, risks which are completely unexamined in the DEIR. The City must prepare a revised EIR that evaluates the risk of Valley Fever and includes appropriate mitigation measures.

Response F.13 See Response F.12. Dr. Clark does not provide evidence that the spores that cause Valley Fever occur in Apple Valley. He asserts only that 66 cases were reported in all of San Bernardino County in 2021. The data compiled by both the California Department of Public Health and the CDC does not identify the High Desert as an area particularly susceptible to Valley Fever. The data is only provided by county. There is no substantial evidence that Valley Fever occurs in Apple Valley, or that workers would be any more susceptible than the 3 per 100,000 identified County-wide to contracting the disease. As a result, Valley Fever will not substantially impact workers or surrounding residents, and no mitigation is required.

Comment F.14 The DEIR's analysis of the Project's operational emissions fails to consider potentially significant sources of emissions, which means that Project emissions are underestimated.

As discussed above, the DEIR assumes that the Project will include cold storage for 15% of the warehouse space. As Dr. Clark points out, the CalEEMOD outputs provided in the air quality analysis show that no backup generators were included in the analysis. For a warehouse like this one that includes refrigerated storage, a backup generator will be required for emergency situations including power outages at the Project site.

Response F.14 The DEIR uses the CalEEMod software, which is an air emissions model approved for use by MDAQMD, to project emissions based on project-specific land use assumptions. The land uses selected in CalEEMod include "Refrigerated Warehouse-No Rail" and "Unrefrigerated Warehouse-No Rail." According to the User Guide (Version 2020.4.0, May 2021), CalEEMod utilizes widely accepted methodologies for estimating energy-source emissions for non-residential land uses from a number of sources, including studies commissioned by the California Energy Commission (CEC) such as the California Commercial End Use Survey (CEUS) study. The DEIR's analysis of the project's expected daily operational emissions for refrigerated and unrefrigerated warehouses was therefore done correctly in accordance with MDAQMD guidelines.

Adding analysis of emissions from backup generators would be speculative, and there is no evidence that emissions from the use of backup generators would result in a significant impact. An emergency such as a power outage would not typically last more than a few hours, and any such impacts from using an emergency generator would not exceed the project's typical daily operational emissions over time. Revisions to the DEIR are not warranted.

Comment F.15 Even more glaring is the failure to consider emissions from Transport Refrigeration Units ("TRUs") that will serve the refrigerated components of the Project warehouse. While the DEIR's emissions analysis assumes the use of 15% of the warehouse space for cold storage, it completely omits any emissions from the refrigerated trucks that will serve the warehouse. TRUs are refrigeration systems powered by diesel internal combustion engines designed to refrigerate perishable products transported in various containers, including truck vans, semi-truck trailers, shipping containers, and rail cars. The CalEEMOD modeling fails to include any emissions from TRUs associated with the trucks and trailers coming to the Project site. This leads to an underestimation of the Project's operational emissions, including PM2.5 and GHG emissions from operation of TRUs on the Project site. For example, the DEIR's CalEEMod analysis shows that 780.7 trucks per day will utilize the Project site; assuming 15% of the trucks have TRUs (consistent with the DEIR's assumption of 15% cold storage usage in the warehouse), there would be 117 TRUs onsite each day. The TRUs would generate an additional 1.3 lbs/day of PM2.5 as diesel exhaust that is unaccounted for in the DEIR.

Response F.15 See Response C-3.

The commenter asserts that TRUs would generate an additional 1.3 bs/day of PM2.5 as diesel exhaust that is unaccounted for in the DEIR. If that were the case, and 1.3 lbs/day of PM2.5 was added to the project operational emissions, the projects total daily PM2.5 emissions would increase from 14.96 lbs/day to 16.26 lbs/day (Table 2.4-6 of DEIR). The MDAQMD threshold for PM2.5 is 65 lbs/day, meaning project impacts would remain less than significant with the commenter's addition of TRU emissions. While additional analysis is not warranted due to the lack of evidence that TRU emissions would result in a significant increase to the project's operational criteria pollutants or greenhouse gas emissions resulting in potentially significant impacts, mitigation measures to reduce on-site operational TRU emissions were added to the DEIR in response to comments made by the MDAQMD during the public review process (Response C-3).

Comment F.16 Because the DEIR completely omits any analysis of TRU use on the Project site, it underestimates the Project's GHG emissions and air quality impacts, including PM2.5 emissions and potential health risks from TRU diesel exhaust. The Town therefore must prepare a revised DEIR that includes the impacts of TRU use and include mitigation measures for any significant air quality impacts.

Response F.16 See Response F.15

Comment F.17 The DEIR recognizes that the Project is within a non-attainment area for PM10 and ozone, but concludes that Project-related impacts with respect to non-attainment pollutants will not be cumulatively considerable. However, the DEIR fails to actually analyze the Project's cumulative air quality emissions, instead relying on the following conclusion: "The MDAQMD does not currently provide thresholds of significance for the cumulative emissions of multiple projects. A project's potential cumulative contributions can instead be analyzed using the criteria for project-specific impacts, assuming that if an individual development generates less than significant construction and operational emissions, then it would not generate a cumulatively considerable increase in non-attainment criteria pollutants."[51] The MDAQMD's approach is not authorized by law and has been rejected by the Courts for failing to comply with CEQA's requirement that a project mitigate impacts that are "cumulatively considerable." The MDAQMD's failure to set a threshold for cumulative project emissions does not authorize the City to ignore CEQA's requirement to analyze cumulative impacts.

The leading case on this issue is *Kings County Farm Bureau v. City of Hanford*. In *Kings County*, the city prepared an EIR for a 26.4-megawatt coal-fired cogeneration plant. Notwithstanding the fact that the EIR found that the project region was out of attainment for PM10 and ozone, the city failed to incorporate mitigations for the project's cumulative air quality impacts from project emissions because it concluded that the Project would contribute "less than one percent of area emissions for all criteria pollutants." The city reasoned that, because the project's air emissions were small in ratio to existing air quality problems, that this necessarily rendered the project's "incremental contribution" minimal under CEQA. The court rejected this approach, finding it "contrary to the intent of CEQA." The court stated:

> We find the analysis used in the EIR and urged by GWF avoids analyzing the severity of the problem and allows the approval of projects which, when taken in isolation, appear insignificant, but when viewed together, appear startling. Under GWF's "ratio" theory, the greater the over-all problem,

> the less significance a project has in a cumulative impacts analysis. We conclude the standard for a cumulative impacts analysis is defined by the use of the term "collectively significant" in Guidelines section 15355 and the analysis must assess the collective or combined effect of energy development. The EIR improperly focused upon the individual project's relative effects and omitted facts relevant to an analysis of the collective effect this and other sources will have upon air quality.

The Town made the same error here. While the DEIR admits that the Project region is out of attainment for ozone and PM10, the City fails to analyze or mitigate the Project's emissions' cumulative air quality impacts. Given that there are two existing large warehouses immediately adjacent to the proposed Project site, as well as the proliferation of warehouse projects in the region and San Bernardino County, the DEIR is woefully inadequate in its analysis of the Project's potentially significant cumulative air quality impacts.

Response F.17 The commenter expresses a general concern about cumulative impacts of air pollution and asserts that the MDAQMD approach to cumulative impacts is not authorized by law. The commenter uses for comparison a case which is not germane to the current condition. In Kings, the proposed project exceeded PM10 and Ozone thresholds established by the King County AQMD, and therefore would have exacerbated conditions relating to these emissions. In the case of the proposed Project, the emissions are not significant, insofar as none of the thresholds established by the MDAQMD are exceeded.

Under CEQA, the Mojave Desert Air Quality Management District (District) is an expert responsible agency on air quality and related matters within its jurisdiction or impacting on its jurisdiction. Consistent with MDAQMD guidance, the DEIR analysis assumes that individual projects that do not generate operational or construction emissions that exceed the MDAQMD's recommended daily thresholds for project-specific impacts would also not cause a cumulatively considerable increase in emissions for those pollutants for which the Basin is in nonattainment, and, therefore, would not be considered to have a significant, adverse air quality impact. Alternatively, individual project-related construction and operational emissions that exceed MDAQMD thresholds for project-specific impacts would be considered cumulatively considerable. The DEIR correctly concludes that the Project would not result in a cumulatively considerable impact during construction or operational activities. Upon review of the DEIR, MDAQMD found no issue with the project's cumulative impact analysis (see letter C in Appendix A).

Furthermore, improvement in air quality has occurred and is projected to continue across the MDAQMD as a result of increasingly stringent federal and State regulations and local attainment plans that have been put in place to reduce air pollution concurrently with population and business growth. Specifically, the DEIR at pages 2.4-20 and -21 cites the 1995 Mojave Desert Planning Area Federal Particulate Matter Attainment Plan, the 2004 MDAQMD State and Federal Ozone Attainment Plan, and the 2008 MDAQMD Western Mojave Desert Non-attainment Area Ozone Attainment Plan as the relevant regional plans that provide guidelines for achieving state and federal air quality standards which aim to reduce cumulative impacts. Section 2.4.6(a) of the DEIR finds the Project compliant with the MDAQMD's attainment plans based on its conformance with the land use plans upon which the District's growth forecasts are based, as well as compliance with all applicable provisions of the plans.

Based on the above, additional cumulative analysis is not warranted.

Comment F.18 Moreover, the Town's approach directly conflicts with the California Attorney General's recent guidance document setting forth best practices for evaluating the environmental impacts of warehouse projects like this one under CEQA. With respect to cumulative air quality and GHG emissions analysis, the Attorney General's guidance states that best practices include "[w]hen analyzing cumulative impacts, thoroughly considering the project's incremental impact in combination with past, present, and reasonably foreseeable future projects, *even if the project's individual impacts alone do not exceed the applicable significance threshold* [emphasis added]."

The DEIR's cumulative impacts analysis with respect to air quality and GHG emissions does not comply with CEQA and is in direct conflict with the Attorney General's suggested best practices, and the Town must prepare a revised EIR that properly evaluates and mitigates such impacts.

Response F.18 See Response F.17, above.

Comment F.19 The DEIR's analysis of the Project's impacts on vehicle miles traveled ("VMT") concludes that, even with the inclusion of a handful of mitigation measures, the Project's VMT impacts will be significant and unavoidable. This conclusion is based on the technical VMT analysis performed by the Town's consultant, finds that the Project would, in the current baseline condition, generate 39.72 VMT per unit service population and in the cumulative General Plan buildout condition, generate 56.77 VMT per unit service population. These levels are well in

excess of the Town's adopted VMT significance threshold of 26.41 VMT per unit service population. While the DEIR proposes some VMT mitigation measures, the VMT analysis concludes "[i]mplementation of feasible VMT reduction measures would not definitively reduce Project VMT or Project VMT impacts. Therefore, even with implementation of these measures, the Project VMT impact is assumed to exceed the Town VMT threshold. The Project VMT is therefore considered significant and unavoidable."

Response F.19 The comment describes the content of the EIR and requires no further response.

Comment F.20 With respect to VMT mitigation measures, the DEIR states "[a]s the future building tenants are not known for the Project, the effectiveness of each commute trip reduction measure may be limited. The Project shall implement the following measures that have the potential to reduce VMT, although no quantified benefit can be taken at this time." The DEIR does not even attempt to quantify the effects of the proposed mitigation measures on Project VMT, yet concludes that VMT impacts will be significant and unavoidable with mitigation incorporated.

Response F.20 The comment is noted. As stated in the EIR, quantification of the measures is not possible since the user is not known. To the extent that these measures could reduce VMT, they are appropriate and feasible. Quantification of the reductions would be speculative and therefore would not provide assurance of effective mitigation. As the EIR is based on fact and not supposition, the document makes the appropriate conclusion, that impacts will remain significant and unavoidable since there is no calculation that can be made to demonstrate that the mitigation would reduce the Project's VMTs to the Town's standard. See also Appendix Ib., VMT Analysis.

Comment F.21 Transportation expert Dan Smith explains why the DEIR's proposed VMT mitigation measures are "unusually weak, low cost and unresponsive to the nature of the Project." For example, mitigation measure VMT-1 provides:

"The Project shall implement a Voluntary Commute Trip Reduction (CTR) measure. The purpose of the CTR would be to encourage alternative modes of transportation such as carpooling, which would reduce VMT. A proposed CTR program for this project could include providing on-site and/or online commute information services including information on available transit and ride coordination for employees."

This measure requires a CTR for the purpose of encouraging alternative transportation modes for Project employees, but contains no specifics of what must be included in the program, other than that it "could

include" provision (sic) information on transit and ride coordination. Mitigation measure VMT-1 violates CEQA as improperly deferred mitigation, as it fails to include specific performance standards for reducing VMT impacts or to specify actions that may achieve those standards. In addition, Mr. Smith notes that, because warehouse projects like this one normally operate around the clock, transit information is useless to workers whose shifts start or end during the night when transit is inoperative. He also cites evidence that the maximum ride share potential is about 4 percent of workers in suburban areas and 0 in rural areas, and that participation in carpooling is close to zero among night shift workers.

Response F.21 The commenter's opinion is noted. However, the mitigation measure does include examples of performance standards, including carpooling and ride coordination. The examples are sufficient to provide direction in the creation of a CTR that would be Project and user-specific, particular when combined with the Town's Development Code Section 9.12.260 - Trip Reduction and Travel Demand Management Program, which includes several such strategies. Furthermore, the examples used by the commenter both demonstrate that transit is insufficient and ride sharing unsuccessful, supporting the EIR's finding that the impacts associated with VMT will be significant and unavoidable. The mitigation measure does not defer mitigation, and is sufficient under CEQA.

Comment F.22 As with mitigation measure VMT-1, Mr. Smith's comments explain why the DEIR's other proposed mitigation measures are completely ineffectual in reducing the Project's recognized significant VMT impacts. He also proposes several feasible mitigation measures that could reduce such impacts, such as:

- Provide free parking in designated spaces for employees who carpool while charging daily or monthly fees for parking for employees who commute by driving alone.
- *Give* an electric bicycle to any employee who a) commits to commuting by that means at least 3 times per week while remaining employed at the Project for a period of, say, 2 years and b) commits to returning the bicycle in good working order or pay for it if they leave employment at the Project before the specified period or fail to commute by bike at the specified frequency.
- Make a cash payment to employees who agree to purchase a zero-emissions vehicle and use it for commute purposes at an agreed-upon frequency and for an agreed-upon period of time with further agreement by the employee to reimburse the payment if they fail to purchase the vehicle, fail to commute by it at the

specified frequency and period of time or if they leave employment at the Project before the specified period of time.

- Pay an excess VMT mitigation fee established by the Town to be used by the Town to fund transportation infrastructure such as active transportation linkages and transit route extensions and service frequencies in areas where they would be most productive in reducing area VMT. This is similar to off- site transportation improvement development fees.
- Or the excess VMT mitigation fee could be utilized to subsidize development of owner-purchased or rental housing at sites close to the Project site or in low VMT areas of the Town. Specific terms for Project employees to have priority in purchase or rental of said units would be established.

The DEIR fails to include any analysis of the feasibility of the above methods, or any other methods, to reduce the Project's significant VMT impacts and lacks substantial evidence to conclude that the City has eliminated or substantially lessened all significant effects on the environment to the greatest extent feasible. Therefore, the DEIR violates CEQA and the City cannot conclude that the Project's VMT impacts are significant and unavoidable.

The City must evaluate the feasibility and effectiveness of additional mitigation measures in a revised and recirculated DEIR for the Project, including the measures proposed by Mr. Smith.

Response F.22 The commenter's opinions are noted, but do not provide any substantial evidence or quantification of the effectiveness of their proposed mitigation measures. Nor does the attachment provided by the commenter from Mr. Smith. Further, the commenter relies on the payment of fees that do not exist and have not been proposed by the Town, and on the payment by a future user to employees for various incentives. These are not effective or feasible mitigation, as is required under CEQA, since there can be no assurance that they will be implemented. Therefore, the commenter does not demonstrate that these mitigation measures would reduce the impacts of VMTs to less than significant levels and they are speculative in nature. The EIR provides feasible mitigation that can be implemented for the Project and provide, as stated in the EIR (page 2.17.20) for reductions in VMT to the extent possible. The EIR correctly identifies, however, that impacts associated with VMT will remain significant and unavoidable.

Comment F.23 The DEIR's noise analysis does not comply with CEQA, because it lacks the noise analysis required by CEQA. Instead, the DEIR impermissibly defers analysis and mitigation of the Project's potentially significant noise impacts, including impacts to future residential receptors located

directly across the street from the Project site. Though currently vacant, lands immediately to the west of the Project across Dale Evans Parkway are designated medium density residential in the Town's General Plan. The DEIR recognizes that "multi-family residential development will occur in the future on the west side of Dale Evans Parkway, immediately west of the proposed Project."

Response F.23 The EIR does not defer noise impact analysis. As described on pages 2.13-9 and -10, construction noise is quantified, and the level of impact is demonstrated, due to the lack of development within 100 feet of the site. Furthermore, on pages 2.13-10 through -12, operational noise is quantified, and the impacts to future residential development is calculated based on standard methodologies described in the text. The analysis further describes the General Plan Program requiring noise impact analysis for residential projects, and correctly identifies that the Project would not result in an increase in noise levels beyond that determined in the General Plan EIR, and that residential development will be required to mitigate noise levels based on project-specific noise analysis. The EIR describes the Project's impacts, and is not responsible for completing noise analyses for residential projects on the west side of Dale Evans Parkway that do not exist, are not planned, but may occur in the future.

Comment F.24 The DEIR's noise analysis asserts that the Project site is "currently surrounded by properties that are either vacant or occupied by similar industrial uses." It cites the standards in the Town's General Plan, which provide in part that noise levels of up to 75 CNEL dBA are "normally acceptable" for industrial uses. Based on noise contours expected from buildout of the General Plan, noise levels would be 74.1 dBA CNEL at the center line of Dale Evans Parkway. And based on the North Apple Valley Industrial Specific Plan ("NAVISP"), noise levels would be 71.7 dBA at 100 feet from the center line of the segment in the immediate area of the Project site. Therefore, the DEIR finds, the Project will not result in significant noise impacts based on the Town's 75 CNEL dBA standard for industrial uses.

However, the Town's General Plan also has a limit for outdoor noise levels in multi-family residential areas of 65 CNEL dBA. Based on setback requirements, residential development on the west side of Dale Evans Parkway "would occur at a distance of at least 96 feet from centerline at this location, and would have unmitigated noise levels of about 71.7 dBA CNEL at the closest point."

The Town's General Plan establishes goals and policies to "assure a controlled noise environment as the Town grows." These policies include the following:

- Program 1.B.5- "Residential projects proposed adjacent to any street where the build out noise level at 50 feet from centerline is expected to exceed 65 dBA shall be required to submit a noise analysis in conjunction with entitlement applications."
- Program 1.B.6- "Commercial and industrial projects proposed adjacent to sensitive receptors, or lands designated for sensitive receptors, including residential, school or hospital sites, shall be required to submit a noise analysis in conjunction with entitlement applications."

The DEIR cites Program 1.B.5, and states that "[g]iven that residential projects proposed in the area immediately west of Dale Evans Parkway would be required to submit noise analysis, appropriate measures to mitigate by design could be identified at this stage, ensuring that the exterior noise standard for residential sites is met."

The DEIR, however, ignores the requirement in Program 1.B.6 that commercial or industrial projects, like this one, proposed adjacent to sensitive receptors, or *lands designated for sensitive receptors*, shall be required to submit a noise analysis. The DEIR contains no noise analysis; it provides no baseline ambient noise measurements, nor does it attempt to estimate project operational noise. Rather, it relies on the noise contours from buildout of the General Plan and NAVISP. "Given that the Project is consistent with the land uses accounted for in the NAVISP and GP, the noise contours used in the NAVISP and GP EIRs would account for buildout of the Project on the subject site."

Response F.24 Please see Response F.23. The Project is not located adjacent to any land designated for sensitive receptors. The nearest lands designated for residential development would 142 feet to the west at their closest point, property line to property line (page 2.13-12). Therefore, Program 1.B.6 is not applicable to the Project.

Comment F.25 The DEIR also fails to address the statement in the General Plan EIR's discussion of noise impacts that the "General Plan is a program-level document and site-specific development is not within the scope of this EIR, but will be analysed and impacts mitigated on a project-by-project basis at the time such development is proposed." The General Plan EIR also includes general mitigation measures for noise, including that "the Town shall require an acoustical analysis for all commercial and industrial projects that are proposed adjacent to residential land uses or land use designations. The acoustical analysis shall evaluate potential noise impacts of the project and provide mitigation measures that are adequate to meet Town noise standards for residential land uses."

Rather than analyzing and mitigating the Project's noise impacts as required by CEQA and the Town's General Plan, the DEIR improperly defers such analysis and mitigation to a later date and a different project applicant (i.e., the developer of a future residential project west of Dale Evans Parkway.) Deferring the noise analysis in this way violates the CEQA requirement that the DEIR disclose the severity of the Project's impacts and the probability of their occurrence *before* the Project is approved.

Response F.25 Please see Response F.24. As it relates to not disclosing the severity of the Project's impacts, the EIR correctly discloses that the closest residential development would occur at 240 feet from the Project property line, and 400 feet from the Project's closest parking lot (page 2.13-12). At an attenuation rate of 6 db per doubling of distance the Project will not generate noise levels in excess of the Town's standards. The EIR correctly discloses that overall noise generated by trips on Dale Evans Parkway will be the primary source of noise, and that future development will be required to meet the Town's standards for exterior and interior noise levels. Also see Response F.23.

Comment F.26 This deferred analysis also precludes formulation of feasible mitigation measures that could be included in the Project now, to reduce future noise impacts to the reasonably foreseeable adjacent residential uses. The Town has the ability now, during the Project's CEQA review and permitting stage, to require that the Project implement mitigation on the Project site to reduce potentially significant operational noise impacts to future adjacent residential uses. Once the Project is approved, it will be too late to require the Project to include noise mitigation as the Town will lack the authority to require mitigation on the Project site based on a future noise study performed for a residential project on a different site. At that point, noise mitigation will be limited to measures that can be imposed on the residential development to avoid noise impacts from the Project's warehouse operations. The Town will lack jurisdiction to impose mitigation on the Project site.

Response F.26 As described above, there are no adjacent residential uses. Furthermore, the EIR correctly discloses that a solid masonry wall will be located on the Project's western boundary, and that this wall will reduce noise levels by 5 to 20 dBA. The commenter provides no evidence that noise levels from the Project will be significant, or that they would require mitigation. As described in the EIR, the Project will not exceed the Town's standards for industrial project noise, and does not require mitigation. Also see Response F.23.

Comment F.27 The Town's effort to pass off the requirement to analyze and mitigate this Project's potentially significant noise impacts to a future adjacent project violates the basic CEQA mandate to disclose, analyze and mitigate the Project's impacts before it can be approved. The Town therefore must revise and recirculate the DEIR to include a noise analysis and all feasible mitigation to reduce noise impacts.

Response F.27 As described in Responses F.23 through F.26, the Town correctly analyzed noise impacts of the Project, and determined that the impacts of the Project will be less than significant. No further analysis is required.

Comment F.28 The DEIR does not comply with CEQA as it impermissibly defers analysis and mitigation of the Project's potentially significant hydrological and biological impacts.

The Project site is currently undeveloped, and has two unnamed drainages running through it from north to south. These drainages have a defined bed and bank in the northern portion of the site and become areas of sheet flow toward the southern portion of the site. Development of the Project will include the relocation and re-routing of these drainages; nearly 2 acres of the Project site will be comprised of stormwater diversion and detention, with planned overflow discharge on the south end of the property that purportedly will be similar to existing conditions.

Portions of both drainages are under Regional Water Quality Control Board ("RWQCB") and California Department of Fish and Wildlife ("CDFW") jurisdiction, and authorization to disturb them requires a Water Quality Certification from RWQCB and a Section 1602 Streambed Alteration Agreement from CDFW. The DEIR includes mitigation measures BIO-13 and BIO-14 to "ensure that impacts to the drainages during the development of the proposed Project will not cause adverse effects to associated sensitive communities and habitat." The DEIR concludes that with this mitigation, impacts will be less than significant."

The relevant mitigation measures are as follows:

- BIO-13: "The Project proponent will obtain a CWA 401 Certification from the RWQCB. In addition to the formal application materials and fees (based on area of impact), a copy of the EIR and other appropriate California Environmental Quality Act (CEQA) documentation shall be included with the application."

- BIO-14: "The CDFW will require a 1602 Streambed Alteration Agreement (SSA) for activities that alter on-site drainages. In addition to the mitigation measures provided in BIO-1 through BIO-13, the SSA may include avoidance and minimization measures such as the monitoring of the site by a qualified biologist with stop-work authority; the use of Best Management Practices; restrictions on work activities within the wash to dry weather only; storm event inspections; protection measures relating to vegetation removal and habitat restoration; and/or the acquisition of habitat off-site at a ratio of up to 3:1."

The DEIR recognizes that diverting the drainages may have significant impacts, and that RWQCB certification and CDFW agreement "may involve mitigation measures for permanent impacts at a ratio of up to 3:1." Authorization from these agencies will be required prior to Project construction, which "would ensure that construction and operation of the Project complies with the RWQCB and CDFW, and if needed, appropriate measures would be identified and implemented to avoid any adverse effects through direct removal, filling, hydrological interruption, or other means. Overall, provided the Project obtains the applicable permits as provided in the mitigation measures below, impacts will be less than significant."

The finding that simply by obtaining the applicable permits, the Project's impacts will be less than significant is unsupported by substantial evidence and violates CEQA. The DEIR makes no effort to evaluate the Project's potentially significant impacts that may be caused by diversion and relocation of the existing stormwater drainage. As with noise impacts discussed above, the DEIR violates the CEQA requirement that the DEIR disclose the severity of the Project's hydrologic and biological resources impacts and the probability of their occurrence *before* the Project is approved. The Town must prepare and circulate a revised EIR that fully discloses, analyzes, and mitigates such impacts before the Project can be approved.

Response F.28 Impacts associated with the desert washes that occur on the site are analyzed not only in Section 2.5, Biological Resources, but also in Section 2.11, Hydrology and Water Quality. In addition, Appendix D, Jurisdictional Delineation, contains a detailed and comprehensive description of the impacts to the drainages on the property, and the impacts on waters of the State. The EIR at page 2.5-10 and Exhibit 2.5-1 describes the drainages, and the impacts are discussed clearly, including quantification of the loss of jurisdictional areas of both the RWQCB and CDFW, on pages 1.5-15 and -16, and Table 2.5-2. The EIR clearly states that the loss of drainages is a potentially significant impact, and consistent with the requirements of Fish and Game Code

1602, provides for mitigation through a Streambed Alteration Agreement. Further, Mitigation Measure BIO-14 provides a comprehensive list of potential performance standards that could be part of that Agreement. The EIR satisfies the requirement of CEQA by disclosing the presence of waters of the State, quantifying the impact to those waters, and providing a feasible and accepted mitigation in the form of a Streambed Alteration Agreement.

In Section 2.11, the drainages are once again described, as is the nature of drainages in the region, on pages 2.11-8 through -10. The drainage plan for the Project is described on page 2.11-11, and the impacts to on- and off-site drainage flows is analyzed on pages 2.11-16 through -18. As described in this Section, the Project will implement standard requirements imposed by the Town to assure that drainage entering the site from the north will flow through the site and be discharged at the same velocity and in the same quantities as currently occur, and that incremental increases on-site are retained in planned retention basins. The EIR has correctly disclosed, analyzed and where necessary mitigated the impacts to drainages occurring on the property.

Comment F.29 The Project requires approval by the Director of Economic and Community Development of a Site Plan Review ("SPR") permit; site plan review is a process unique to the NAVISP.96 The Director may approve, approve with conditions, or deny an SPR permit, and this decision is appealable to the Planning Commission. In order to approve an SPR permit, the Director must make a series of findings, including 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, the Development Code, and the development policies and standards of the Town."

Response F.29 The comment describes the approval process for the Project, and no response is required.

Comment F.30 As discussed above, the Town has failed to conduct a noise analysis evaluating the Project's potential noise impacts on future residents west of Dale Evans Parkway as required by the Town's General Plan. Because the Project is to be located adjacent to lands designated for sensitive receptors (i.e., residential uses), the General Plan requires that the Town perform such an analysis. Because the Town failed to "evaluate potential noise impacts of the project and provide mitigation measures that are adequate to meet Town noise standards for residential land uses," the Director may not make the necessary finding that the location and intensity of the Project is consistent with the General Plan, the development code and the development policies

and standards of the Town. An SPR permit may not be approved unless and until the Town conducts a proper acoustical analysis of the Project's potential noise impacts on future residents west of Dale Evans Parkway.

Response F.30 As described in responses F.23 through F.27, the EIR analyzed the impacts of the Project on the noise environment. The Project is not adjacent to residential lands. The EIR correctly found that the Project will have less than significant impacts relating to noise. The Director can therefore make the necessary findings and approve the Project.

Comment F.31 For the reasons discussed above, the DEIR for the Project is wholly inadequate under CEQA. It must be revised to provide legally adequate analysis of, and mitigation for, all of the Project's potentially significant impacts. These revisions will necessarily require that the DEIR be recirculated for additional public review. Until the DEIR has been revised and recirculated, as described herein, the Town may not lawfully approve the Project.

Thank you for your consideration of these comments. Please include them in the record of proceedings for the Project.

Response F.31 As described in the Responses to this comment letter, the EIR has thoroughly and comprehensively disclosed, analyzed and mitigated the impacts to the Project. The commenter provides no new information, no substantial evidence of additional impacts or change in conditions that would require additional review or recirculation of the EIR.

Appendix A
Comment Letters

A

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Via Email

May 1, 2023

Daniel Alcayaga, Planning Manager
Town of Apple Valley
14955 Dale Evans Pkwy,
Apple Valley, CA 92307
dalcayaga@applevalley.org

Re: Comment on Draft Environmental Impact Report for the Development at Dale Evans and Lafayette

Dear Mr. Alcayaga,

This comment is submitted on behalf of Supporters Alliance for Environmental Responsibility ("SAFER"), regarding the Draft Environmental Impact Report ("DEIR") prepared for the Development at Dale Evans and Lafayette, which proposes the development of a 1,207,544 square foot warehouse distribution center on a 79.5-acre site in north Apple Valley (the "Project"). A.1

SAFER is concerned that the DEIR fails as an informational document and fails to impose all feasible mitigation measures to reduce the Project's impacts. SAFER requests that the Planning and Development Services Department address these shortcomings in a revised draft environmental impact report ("RDEIR") and recirculate the RDEIR prior to considering approvals for the Project. A.2

SAFER reserves the right to supplement this comment during the administrative process. *Galante Vineyards v. Monterey Peninsula Water Management Dist*., 60 Cal. App. 4th 1109, 1121 (1997). A.3

Sincerely,

Adam Frankel

B

Subject: The Development at Dale Evans and Lafayette
Date: Thursday, May 4, 2023 at 3:06:31 PM Pacific Daylight Time
From: A S <asalcido.07@gmail.com>
To: Daniel Alcayaga <dalcayaga@applevalley.org>
CC: Unknown <jbourg2271@aol.com>, jbourgeois029@gmail.com <jbourgeois029@gmail.com>, Terrance Lucio <t.lucio57@gmail.com>, PATRICK HANINGER <phaninger1@gmail.com>

Good Afternoon Mr. Alcayaga,

Please provide any updates to the above mentioned project.

I am requesting under Public Resource Code Section 21092.2 to add the email addresses and mailing address below to the notification list, regarding any subsequent environmental documents, public notices, public hearings, and notices of determination for this project.

t.lucio57@gmail.com

phaninger1@gmail.com

jbourg2271@aol.com

jbourgeois029@gmail.com

asalcido.07@gmail.com

Mailing Address:

P.O. Box 79222

Corona, CA 92877

B.1

Please confirm receipt of this email. Thank you for your assistance.

Thank You,

Adam Salcido

C

Mojave Desert Air Quality Management District
Brad Poiriez, *Executive Director*
14306 Park Avenue, Victorville, CA 92392-2310
760.245.1661 • Fax 760.245.2022
www.MDAQMD.ca.gov • @MDAQMD

April 25, 2023

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

Project: Development at Dale Evans and Lafayette street

Dear Mr. Alcayaga:

The Mojave Desert Air Quality Management District (District) has received a request for comments on the Draft Environmental Impact Report for the proposed development at Dale Evans and Lafayette street in Apple Valley. The project proposes to develop a 1,207,544 square foot warehouse distribution center on a 77± acre parcel of land in north Apple Valley. The project site is bounded by Lafayette Street to the north, Dachshund Avenue to the east, Burbank Avenue to the south, and Dale Evans Parkway to the west. The project site is within the boundary of the North Apple Valley Industrial Specific Plan (NAVISP). The 77± acre development will include 1,147,1167 square feet of warehouse space and 60,377 square feet of office space, housed in a single building occupying the center of the site. For purposes of the DEIR analysis, it has been assumed that 85% of the space would be used for dry warehousing, and 15% for cold storage. **C.1**

We have reviewed the project and, based on the information available to us at this time, the District will require that the following mitigation measures be required for the construction phase of the development (enforceable by the District AND by the land use agency):

- Prepare and submit to the MDAQMD, prior to commencing earth-moving activity, a dust control plan that describes all applicable dust control measures that will be implemented at the project;

- Signage compliant with Rule 403 Attachment B shall be erected at each project site entrance not later than the commencement of construction.

- Use a water truck to maintain moist disturbed surfaces and actively spread water during visible dusting episodes to minimize visible fugitive dust emissions. For projects with exposed sand or fines deposits (and for projects that expose such soils through earthmoving), chemical stabilization or covering with a stabilizing layer of gravel will be required to eliminate visible dust/sand from sand/fines deposits.

C.2

- All perimeter fencing shall be wind fencing or the equivalent, to a minimum of four feet of height or the top of all perimeter fencing. The owner/operator shall maintain the wind fencing as needed to keep it intact and remove windblown dropout. This wind fencing requirement may be superseded by local ordinance, rule or project-specific biological mitigation prohibiting wind fencing.

- All maintenance and access vehicular roads and parking areas shall be stabilized with chemical, gravel or asphaltic pavement sufficient to eliminate visible fugitive dust from vehicular travel and wind erosion. Take actions to prevent project-related trackout onto paved surfaces, and clean any project-related trackout within 24 hours. All other earthen surfaces within the project area shall be stabilized by natural or irrigated vegetation, compaction, chemical or other means sufficient to prohibit visible fugitive dust from wind erosion.

- Obtain District permits for any miscellaneous process equipment that may not be exempt under District Rule 219 including, but not limited to: Internal Combustion Engines with a manufacture's maximum continuous rating greater than or equal to 50 brake horsepower.

C.2 Cont.

The District does not object to the findings of the DEIR that the development will have less than significant impacts on air quality during the construction phase but has concerns regarding the air quality modeling for the operational phase. The project DEIR states that during operation, the warehouse will dedicate least 15% of the warehouse space dedicated to cold storage. As the trucks and trailers visiting the Project-site would likely be equipped with Transport Refrigeration Units (TRUs.), the DEIR needs to include analysis which includes the large quantities of diesel exhaust from TRU's while operating within the Project-site. The District will also require clarification on other assumptions listed in the DEIR including: the 15% warehouse space dedicated to cold storage and whether that percentage has a possibility of increasing during the operational phase; the assumed 781 total truck trips per day and how the number of daily trips was derived; the fleet mix assumption which assumes 35% of truck trips are Light Heavy Duty (LHD1), 11% of truck trips are Medium Heavy Duty (MHD) and 54% of truck trips are Heavy Heavy Duty (HHD). These assumptions are important to the District because they determine whether the projected emissions during the Project's operational life will exceed the MDAQMD thresholds for any criteria air pollutants.

C.3

C.4

C.5

Thank you for the opportunity to review this planning document. If you have any questions regarding this letter, please contact me at (760) 245-1661, extension 1846, or Bertrand Gaschot at extension 4020.

C.6

Sincerely,

Chris Anderson
Planning and Air Monitoring Supervisor

CJA/bg

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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

D

May 5, 2023
Sent via email

Mr. Daniel Alcayaga, Planning Manager
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, California 92307

Subject: Notice of Preparation of a Draft Environmental Impact Report
Development at Dale Evans & Lafayette Project
State Clearinghouse No. 2022120356

Dear Mr. Alcayaga:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from the Town of Apple Valley for the Development at Dale Evans & Lafayette Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

D.1

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

CDFW ROLE

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

D.2

CDFW is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As

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

proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code. **D.2 Cont.**

PROJECT DESCRIPTION SUMMARY

The proposed Project is located in the northern section of the Town of Apple Valley, East of Interstate 15 and the Mojave River, in San Bernardino County. The project site is bounded by Lafayette Street to the north, Dachshund Avenue to the east, Burbank Avenue to the south, and Dale Evans Parkway to the west at APNs 0463-231-11, 0463-231-12, 0463-231-13, 0463-231-14, 0463-231-15, 0463-231-16, 0463-231-34, 0463-231-35, 0463-231-36, 0463-231-37, coordinates Latitude 34.591680, Longitude -117.203210.

The Project includes the development of a 1,207,544 square foot warehouse distribution center with accompanying office spaces on a 78± acre parcel of land. A dry wash occurs across the property, which conveys storm flows from the north, through the site and southeasterly via sheet flow under current conditions. These flows will be intercepted at the northwestern boundary of the site, conveyed through the site in a perimeter channel to be constructed by the Project, and released at the south boundary of the property. In addition, on-site retention facilities are proposed to contain the Project's incremental increase in 100-year storm flows within the site. **D.3**

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below, and in Attachment 1 "Mitigation Monitoring and Reporting Program (MMRP)", to assist the Town of Apple Valley in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

Rare Plant Survey

The CDFW appreciates the inclusion of MM BIO 1 which considers surveys conducted to identify special status plants between the months of April and May for white pygmy-poppy (*Canbya candida*), desert cymopterus (*Cymopterus deserticola*), Mojave monkeyflower (*Diplacus mohavensis*), Barstow woolly sunflower (*Eriophyllum mohavense*), Torrey's box-thorn (*Lycium torreyi*), solitary blazing star (*Mentzelia eremophila*), beaver dam breadroot (*Pediomelum castoreum*), and Mojave fish-hook cactus (*Sclerocactus polyancistrus*). Many of these plants have blooming periods March to July. **D.4**

The DEIR should include detailed documentation of a botanical field survey following protocols set forth in the Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The botanist(s) should be experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys should be conducted at the appropriate time of year when plants will both be evident and identifiable and, in a manner, which maximizes the likelihood of locating special status plants and sensitive natural communities that may be present. Botanical field surveys should be conducted floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status.

Additionally, CDFW is concerned that the measure does not provide an effective mitigation measure, as the Apple Valley MSHCP/NCCP has not been approved and take coverage has not been authorized. The DEIR should identify specific mitigation measures for impacts to rare plants.

Following the 2018 CDFW Protocol, the DEIR should include an assessment from project related impacts

D.4 Cont.

- A discussion of the significance of special status plant populations in the project area considering nearby populations and total range and distribution;
- A discussion of the significance of sensitive natural communities in the project area considering nearby occurrences and natural community distribution;
- A discussion of project related direct, indirect, and cumulative impacts to special status plants and sensitive natural communities;
- A discussion of the degree and immediacy of all threats to special status plants and sensitive natural communities, including those from invasive species;
- A discussion of the degree of impact, if any, of the project on unoccupied, potential habitat for special status plants; and
- Recommended measures to avoid, minimize, or mitigate impacts to special status plants and sensitive natural communities.

CDFW offers the following revisions to MM BIO-1 (edits are in ~~strikethrough~~ and **bold**)

MM BIO-1

A ~~Spring (April-May)~~ plant survey shall be completed following the CDFW 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities in a manner which maximizes the likelihood of locating special status plants and sensitive natural communities that may be present. ~~prior to any ground disturbance on the site~~. If any ~~of the eight~~ special status plant species known to occur in the Project area (see **Table 2.5-3**) are found on site

during ~~Spring~~ **the** surveys, the population size of the species and importance to the overall population should be determined. If a **special status plant** species occurs on the site~~, is found to be important to the overall population~~, and cannot be avoided, it should be transplanted and/or have seeds/topsoil collected. ~~The Town of Apple Valley must also be consulted if species proposed for coverage under the MSHCP/NCCP are found.~~

D.4 Cont.

Desert Tortoise (*Gopherus agassizii*)

The DEIR states that the vegetation community occurring on the project site (creosote bush scrub) is a habitat typically utilized by desert tortoises. Although no desert tortoises or their sign were detected during the reconnaissance or focused surveys, the CNDDB reports four occurrences within a 5-mile radius, a desert tortoise carcass was photographed approximately 1.5 miles north-northeast of the project site in June 2022 and a live desert tortoise was photographed approximately 2 miles to the northwest in June 2020. CDFW recommends that prior to start of Project activities, a preconstruction survey and pre-construction sweep be conducted to ensure the absence of this species. CDFW recommends the following revisions to MM BIO-5 and MM BIO-6 below (edits are in ~~strikethrough~~ and **bold**):

MM BIO-5

A qualified biologist shall conduct pre-construction surveys within the Project area and a 500-foot buffer surrounding these areas 14-21 days prior to initiating Project activities. The surveys shall be conducted to identify and map for avoidance of any special-status species with the potential to occur on the site such as desert tortoise. The qualified biologist shall ensure that the methods used to locate, identify, map, avoid, and buffer individuals or habitat are appropriate and effective, including the assurance that the surveyor has attained 100% visual coverage of the entirety of the potential impact areas, and an appropriate buffer surrounding those areas. Appropriate survey methods and timeframes shall be established, to ensure that chances of detecting the target species are maximized. In the event that listed species, such as the desert tortoise, are detected and avoidance is infeasible, proper authorization (i.e., incidental take permit (ITP)) from the USFWS and CDFW must be obtained. Construction and maintenance personnel shall be required to inspect for desert tortoises under vehicles prior to moving the vehicle. If a desert tortoise is found beneath a vehicle, it may not be moved ~~until the desert tortoise has left of its own accord~~. All desert tortoise observations shall be noted by the contractor and reported to a qualified biologist and federal and State wildlife agencies.

D.5

MM BIO-6

A qualified biologist shall conduct pre-construction sweeps within the Project area (including access routes) and a 500-foot buffer surrounding the Project

areas, no more than 2 hours prior to initiating Project activities. The pre-construction sweeps shall confirm and mark/map for avoidance the location of any special-status species such as desert tortoise and shall verify that no additional special-status species have occupied the Project areas or adjacent habitats. If any additional special-status species (or sign of presence) are identified within or adjacent to the project areas during the pre-construction sweep, the qualified biologist shall determine whether the proposed avoidance measures will be effective in fully avoiding impacts of the project on the identified resource(s) prior to initiating Project activities. If full avoidance cannot be accomplished, Permittee shall postpone the Project, and contact CDFW to discuss an appropriate action. A qualified biologist shall ~~periodically~~ monitor construction to ensure that **desert** tortoises do not enter the work area and that **if one enters the project area, work is halted until the desert tortoise leaves by its own accord and** they are not disturbed if present. **Moving, relocating or handling of desert tortoise requires authorization from CDFW and USFWS. If full avoidance cannot be accomplished, Permittee shall postpone the Project, and contact CDFW to discuss an appropriate action.** ~~Isolating the site with~~ **Using** tortoise-proof fencing ~~will also~~ **may** reduce ~~or eliminate this need~~ **tortoise entry onto the Project site**.

D.5 Cont.

Nesting Birds

Shown on Table 3 of Appendix C are special status birds that may occur on the Project site. These include golden eagle (*Aquila chrysaetos*), burrowing owl (*Athene cunicularia*), Swainson's hawk (*Buteo swainsoni*), Costa's hummingbird (*Calypte costae*), prairie falcon (*Falco mexicanus*), loggerhead shrike (*Lanius ludovicianus*), and Le Conte's thrasher (*Toxostoma lecontei*). Please note that it is the Project proponent's responsibility to avoid "take" of all nesting birds. California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill". Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. These regulations apply anytime nests or eggs exist on the Project site. To address the above issues and help the Project applicant avoid unlawful take of nests and eggs, CDFW offers the following revisions to MM BIO-8 and MM BIO-9. (edits are in ~~strikethrough~~ and **bold**).

D.6

MM BIO-8

Any vegetation removal or grading ~~occurring during the nesting season (generally February 1 through August 31)~~ will require at least one nesting bird survey to be conducted by a qualified biologist no more than three days prior to site disturbance. **Surveys shall include any potential habitat (including trees, shrubs, the ground, or nearby structures) that may be impacted by Project activities.** If no nests are found, construction may proceed. If active nests are found, impact avoidance measures (e.g., "no work" buffers, sound and/or visual barriers) will be put in place around the nest until young have fledged. This also applies to offsite nests identified by the biologist during the nesting survey which may be indirectly impacted by site development.

D.6 Cont.

MM BIO-9

The CDFW recommends ~~avoidance buffers of approximately 500 feet for birds-of-prey and listed species, and 100-300 feet for other unlisted birds~~ **the extent of the 'no-disturbance buffer' shall be no less than 300 feet (500 feet for raptors) although a smaller buffer may be determined by a qualified biologist.** Appropriate buffers shall be established on a case-by-case basis by the nesting bird biologist. **Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the 'no-disturbance buffer' shall be expanded.**

Burrowing Owl (*Athene cunicularia*)

The Project site has the potential to provide suitable foraging and/or nesting habitat for burrowing owl. 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 Fish and Game Code section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill."

CDFW appreciates that the Town of Apple Valley will 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 CDFW's website: https://www.wildlife.ca.gov/conservation/survey-protocols. The Staff Report on Burrowing Owl Mitigation, specifies three steps for project impact evaluations:

D.7

a. A habitat assessment;
b. Surveys; and
c. An impact assessment

CDFW appreciates the inclusion of MM BIO-10 which considers pre-construction surveys for burrowing owl and offers the following revisions (edits are in ~~strikethrough~~ and **bold**).

MM BIO-10

A survey for potential burrows followed by four breeding season surveys of areas found to have potential for burrowing owl occupation must be conducted in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012). The burrow survey can be conducted any time, but the breeding season focused survey cannot begin prior to February 1. **Prior to initiating Project activities, a qualified biologist shall conduct at least one survey covering the entire Project area and surrounding 15-meter buffer to identify the presence of suitable burrows and/or burrow surrogates (>11 cm in diameter [height and width] and >150 cm in depth) for burrowing owl and sign of burrowing owl (e.g., pellets, prey remains, whitewash, or decoration, etc.) If burrowing owls or suitable burrows and/or sign of burrowing owl are documented on-site, a breeding season survey for burrowing owl in accordance with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) shall be conducted by a qualified biologist prior to start of Project activities. If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no further action is necessary. If burrowing owl, active burrowing owl burrows, or sign thereof are found the qualified biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures to be approved by CDFW prior to commencing Project activities and propose mitigation for permanent loss of occupied burrow(s) and habitat.**

D.7 Cont

Lake and Streambed Alteration

CDFW appreciates that the Project proponent recognizes that notification to CDFW is required, pursuant to section 1602 of the Fish and Game Code.

D.8

Moving out of Harm's Way

To avoid direct mortality, CDFW recommends that the lead agency condition the DEIR to require that a CDFW-approved qualified biologist be retained to be onsite prior to and during all ground- and habitat-disturbing activities to move out of harm's way special status species or other wildlife of low or limited mobility that would otherwise be injured or killed from project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise by injured or killed, and individuals should be moved only as far a necessary to ensure their safety (i.e., CDFW does not recommend relocation to other areas). Furthermore, it should be noted that the temporary relocation of onsite wildlife does not constitute effective mitigation for the purposes of offsetting project impacts associated with habitat loss.

D.9

California Endangered Species Act

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the California Endangered Species Act (CESA). A CESA ITP is issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats. CDFW recommends that a CESA ITP be obtained if the Project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). If the Project, including the Project construction or any Project-related activity during the life of the Project cannot fully avoid take of a CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation through an ITP. Desert tortoise is a CESA-listed threatened and proposed endangered species that has potential to occur within the Project Area. If pre-construction surveys identify presence of desert tortoise, CDFW encourages early consultation with CDFW. **D.10**

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). Information can be submitted online or via completion of the CNDDB field survey form at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://wildlife.ca.gov/Data/CNDDB/Plants-and-Animals. **D.11**

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.). **D.12**

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP of a DEIR for the Development at Dale Evans & Lafayette Project (SCH No. 2022120356) and **D.13**

recommends that the Town of Apple Valley address the CDFW's comments and concerns in the forthcoming DEIR. If you should have any questions pertaining to the comments provided in this letter, please contact Julian Potier, Environmental Scientist, at (909) 938-6112 or at julian.potier@wildlife.ca.gov.

D.13 Cont.

Sincerely,

DocuSigned by:
Alisa Ellsworth
Alisa Ellsworth
Environmental Program Manager

ATTACHMENTS

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

ec: Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov

REFERENCES

California Department of Fish and Wildlife. 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. Available for download at: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline

California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: http://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html

U.S. Fish and Wildlife Service. 2018. Mojave Desert Tortoise Pre-project Survey Protocol.

ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measures.

Biological (BIO) Mitigation Measure	Implementation Schedule	Responsible Party
Biological Resources Mitigation Measure No. 1 A plant survey shall be completed prior to any ground disturbance on the site. If any of the eight special status plant species known to occur in the Project area (see Table 2.5-3) are found on site during the surveys, the population size of the species and importance to the overall population should be determined. If a special status plant species occurs on the site, and cannot be avoided, it should be transplanted and/or have seeds/topsoil collected.	Prior to commencing ground- or vegetation-disturbing activities	Project Proponent
Biological Resources Mitigation Measure No. 5 A qualified biologist shall conduct pre-construction surveys within the Project area and a 500-foot buffer surrounding these areas 14-21 days prior to initiating Project activities. The surveys shall be conducted to identify and map for avoidance of any special-status species with the potential to occur on the site such as desert tortoise. The qualified biologist shall ensure that	Prior to commencing ground- or vegetation-disturbing activities	Project Proponent

the methods used to locate, identify, map, avoid, and buffer individuals or habitat are appropriate and effective, including the assurance that the surveyor has attained 100% visual coverage of the entirety of the potential impact areas, and an appropriate buffer surrounding those areas. Appropriate survey methods and timeframes shall be established, to ensure that chances of detecting the target species are maximized. In the event that listed species, such as the desert tortoise, are detected and avoidance is infeasible, proper authorization (i.e., incidental take permit (ITP)) from the USFWS and CDFW must be obtained. If nesting birds are detected, avoidance measures shall be implemented to ensure that nests are not disturbed until after young have fledged. Construction and maintenance personnel shall be required to inspect for desert tortoises under vehicles prior to moving the vehicle. If a desert tortoise is found beneath a vehicle, it may not be moved. All desert tortoise observations shall be noted by the contractor and reported to a qualified biologist and federal and State wildlife agencies.		
Biological Resources Mitigation Measure No. 6 A qualified biologist shall conduct pre-construction sweeps within the Project area (including access routes) and a 500-foot buffer surrounding the Project areas, no more than 2 hours prior to initiating Project activities. The pre-construction sweeps shall confirm and mark/map for avoidance the location of any special-status species such as desert tortoise and shall verify that no additional special-status species have occupied the Project areas or adjacent habitats. If any additional special-status species (or sign of presence) are identified within or adjacent to the project areas during the pre-construction sweep, the qualified biologist shall determine whether the proposed avoidance measures will be effective in fully avoiding impacts of the project on the identified resource(s) prior to initiating Project activities. If full avoidance cannot be accomplished, Permittee shall postpone the Project, and contact CDFW to discuss an appropriate action. A qualified biologist shall monitor construction to ensure that desert tortoises do not enter the work area and that if one enters the project area, work is halted until the desert tortoise leaves by its own accord and they are not	Prior to commencing ground- or vegetation-disturbing activities	Project Proponent

disturbed if present. Moving, relocating or handling of desert tortoise requires authorization from CDFW and USFWS. If full avoidance cannot be accomplished, Permittee shall postpone the Project, and contact CDFW to discuss an appropriate action. Using tortoise-proof fencing may reduce tortoise entry onto the Project site.		
Biological Resources Mitigation Measure No. 8 Any vegetation removal or grading will require at least one nesting bird survey to be conducted by a qualified biologist no more than three days prior to site disturbance. Surveys shall include any potential habitat (including trees, shrubs, the ground, or nearby structures) that may be impacted by Project activities. If no nests are found, construction may proceed. If active nests are found, impact avoidance measures (e.g., "no work" buffers, sound and/or visual barriers) will be put in place around the nest until young have fledged. This also applies to offsite nests identified by the biologist during the nesting survey which may be indirectly impacted by site development.	Prior to commencing ground- or vegetation-disturbing activities	Project Proponent
Biological Resources Mitigation Measure No. 9 The CDFW recommends the extent of the 'no-disturbance buffer' shall be no less than 300 feet (500 feet for raptors) although a smaller buffer may be determined by a qualified biologist. Appropriate buffers shall be established on a case-by-case basis by the nesting bird biologist. Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the 'no-disturbance buffer' shall be expanded.	Prior to commencing ground- or vegetation-disturbing activities	Project Proponent

Biological Resources Mitigation Measure No. 10 A survey for potential burrows followed by four breeding season surveys of areas found to have potential for burrowing owl occupation must be conducted in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012). The burrow survey can be conducted any time, but the breeding season focused survey cannot begin prior to February 1. Prior to initiating Project activities, a qualified biologist shall conduct at least one survey covering the entire Project area and surrounding 15-meter buffer to identify the presence of suitable burrows and/or burrow surrogates (>11 cm in diameter [height and width] and >150 cm in depth) for burrowing owl and sign of burrowing owl (e.g., pellets, prey remains, whitewash, or decoration, etc.) If burrowing owls or suitable burrows and/or sign of burrowing owl are documented on-site, a breeding season survey for burrowing owl in accordance with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) shall be conducted by a qualified biologist prior to start of Project activities. If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no further action is necessary. If burrowing owl, active burrowing owl burrows, or sign thereof are found the qualified biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures to be approved by CDFW prior to commencing Project activities and propose mitigation for permanent loss of occupied burrow(s) and habitat.	Prior to commencing ground- or vegetation-disturbing activities	Project Proponent

E

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May 2, 2023

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

VIA EMAIL TO:
dalcayaga@applevalley.org

Subject: Comments on Development at Dale Evans and Lafayette EIR (SCH NO. 2022120356)

Dear Mr. Alcayaga,

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

1.0 Summary

The project proposes the construction and operation of one 1,207,544 square foot distribution center building including 1,147,167 square feet of distribution center space and 60,377 square feet of office space on an approximately 77 acre site. The building includes 204 truck/trailer loading dock doors and the site provides 1,218 parking spaces. **E.2**

2.4 Air Quality, 2.7 Energy, and 2.9 Greenhouse Gas Emissions

Please refer to attachments from SWAPE for a complete technical commentary and analysis.

The EIR does not include meaningful analysis of relevant environmental justice issues in reviewing potential impacts, including cumulative impacts from the proposed project. This is especially significant as the surrounding community is highly burdened by pollution. According **E.3**

to CalEnviroScreen 4.0[1], CalEPA's screening tool that ranks each census tract in the state for pollution and socioeconomic vulnerability, the proposed project s census tract (6071012101) is highly burdened by pollution. The surrounding community bears the impact of multiple sources of pollution and is more polluted than other census tracts in many pollution indicators measured by CalEnviroScreen. For example, the project census tract ranks in the 80th percentile for ozone burden and 80th percentile for traffic burdens. All of these environmental factors are attributed to heavy truck activity in the area. Ozone can cause lung irritation, inflammation, and worsening of existing chronic health conditions, even at low levels of exposure[2]. Exhaust fumes contain toxic chemicals that can damage DNA, cause cancer, make breathing difficult, and cause low weight and premature births[3].

E.3 Cont.

The census tract ranks in the 85th percentile for solid waste facility impacts. Solid waste facilities can expose people to hazardous chemicals, release toxic gases into the air (even after these facilites are closed), and chemicals can leach into soil around the facility and pose a health risk to nearby populations[4]. The census tract also bears more impacts from cleanup sites than 52% of the state. Chemicals in the buildings, soil, or water at cleanup sites can move into nearby communities through the air or movement of water[5].

E.4

Further, the census tract is a diverse community including 22% Hispanic, 10% African-American, and 2% Asian-American residents, whom are especially vulnerable to the impacts of pollution. The community also has a high rate of poverty, meaning 53% of the households in the census tract have a total income before taxes that is less than the poverty level. Income can affect health when people cannot afford healthy living and working conditions, nutritious food and necessary medical care[6]. Poor communities are often located in areas with high levels of pollution[7]. Poverty can cause stress that weakens the immune system and causes people to become ill from pollution[8]. Living in poverty is also an indication that residents may lack health insurance or access to medical care. Medical care is vital for this census tract as it ranks in the 89th percentile for incidence of cardiovascular disease and 88th percentile for incidence of asthma.

E.5

[1] CalEnviroScreen 4.0 https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40
[2] OEHHA Ozone https://oehha.ca.gov/calenviroscreen/indicator/air-quality-ozone
[3] OEHHA Traffic https://oehha.ca.gov/calenviroscreen/indicator/traffic-density
[4] OEHHA Solid Waste Facilities https://oehha.ca.gov/calenviroscreen/indicator/solid-waste-sites-and-facilities
[5] OEHHA Cleanup Sites https://oehha.ca.gov/calenviroscreen/indicator/cleanup-sites
[6] OEHHA Poverty https://oehha.ca.gov/calenviroscreen/indicator/poverty
[7] Ibid.
[8] Ibid.

California s Building Energy Code Compliance Software (CBECC) is the State's only approved energy compliance modeling software for non-residential buildings in compliance with Title 24[9]. CalEEMod is not listed as an approved software. The CalEEMod modeling does not comply with the 2022 Building Energy Efficiency Standards and under-reports the project s significant Energy impacts and fuel consumption to the public and decision makers. Since the EIR did not accurately or adequately model the energy impacts in compliance with Title 24, a finding of significance must be made. A revised EIR with modeling using the approved software (CBECC) must be circulated for public review in order to adequately analyze the project s significant environmental impacts. This is vital as the EIR utilizes CalEEMod as a source in its methodology and analysis, which is clearly not the approved software. **E.6**

2.12 Land Use and Planning

The EIR has not provided any information or analysis on the buildout conditions of the General Plan or the North Apple Valley Industrial Specific Plan (NAVISP). Table II-2: Specific Plan Land Use Designations Buildout Summary of the NAVISP[10] states that the Industrial - Specific Plan designation will have a buildout square footage of 42,599,240, and this analysis is based upon new development construction at 22% building coverage of the site. The EIR states the proposed project will have 35% building coverage of the site, which is 13% greater than analyzed for every site in the NAVISP. Other projects in the NAVISP area have also constructed at higher building coverage rates than the NAVISP analyzed, such as the Project Jupiter Distribution Warehouse[11] that was constructed at 29% building coverage of the site. The EIR has not demonstrated that the proposed project is within the buildout scenario of the NAVISP, including all cumulative development constructed since the inception of the NAVISP, approved projects not yet constructed, and "projects in the pipeline." The EIR must be revised to include this analysis in order to provide an adequate and accurate environmental analysis. **E.7**

Table III-41: Preferred Alternative General Plan Land Use Designation Build Out Summary: Town & Unincorporated Lands of the General Plan EIR[12] states that the Industrial Specific Plan land use designation will have a buildout of 36,938,445 total square feet. The proposed project's 1,207,544 **E.8**

[9] California Energy Commission 2022 Energy Code Compliance Software https://www.energy.ca.gov/programs-and-topics/programs/building-energy-efficiency-standards/2022-building-energy-efficiency-1
[10] North Apple Valley Industrial Specific Plan https://www.applevalley.org/home/showpublisheddocument/18587/636149111285930000
[11] Project Jupiter Distribution Warehouse https://ceqanet.opr.ca.gov/2016041058
[12] Apple Valley General Plan EIR https://www.applevalley.org/home/showpublisheddocument/24331/636552384686570000

square feet represents 3.3% of the General Plan buildout for this land use designation. As discussed above, the EIR has not demonstrated that the proposed project is within the General Plan buildout scenario, including all cumulative development constructed since approval of the General Plan, approved projects not yet constructed, and "projects in the pipeline." Other recent industrial projects such as Project Jupiter Distribution Warehouse (1,360,875 square feet of industrial/warehouse space[13]) and 1M Warehouse (1,080,125 square feet of industrial/warehouse space[14]) cumulatively with the proposed project generate 3,648,544 square feet of industrial/warehouse space, which is 10.2% of the General Plan buildout capacity accounted for by only three projects. The EIR must be revised to include this analysis in order to provide an adequate and accurate environmental analysis.

E.8 Cont.

Mitigation Measure TRF-19 and Table 2.17-9: Project Fair Share Calculations provides a list of fee payments to mitigate significant impacts at identified intersections to less than significant levels; the impacted intersections are as follows:

Opening Year (2024)
1. Dale Evans Pkwy. / Johnson Rd. (LOS F - PM)
2. I-15 NB Ramps / Stoddard Wells Rd. (LOS F - PM)

Horizon Year (2040)
1. Dale Evans Pkwy. / Johnson Rd. (LOS F - AM & PM)
2. Dale Evans Pkwy. / Lafayette St. (LOS F - AM & PM)
3. Dale Evans Pkwy./Corwin Rd. (LOS F - AM & PM)
4. Stoddard Wells Rd./Johnson Rd. (LOS F - PM)
5. I-15 NB Ramps / Stoddard Wells Rd. (LOS F - AM & PM)
6. Navajo Rd. / Johnson Rd. (LOS F - AM & PM)
7. Navajo Rd. / Lafayette St. (LOS F - AM & PM)
8. Central Rd. / Johnson Rd. (LOS F - AM & PM)

E.9

It must be noted that the impacts to the I-15 are under jurisdiction of Caltrans. The following Caltrans jurisdictions are identified to experience significant and unavoidable impacts resulting from the project:
1. Opening Year (2024): I-15 NB Ramps / Stoddard Wells Rd. (LOS F - PM)
2. Horizon Year (2040): I-15 NB Ramps / Stoddard Wells Rd. (LOS F - AM & PM)

[13] Project Jupiter Distribution Warehouse https://ceqanet.opr.ca.gov/2016041058
[14] 1M Warehouse https://ceqanet.opr.ca.gov/2023020285

Any improvements constructed or in-lieu fees/fair share fees paid for the I-15 are beyond the control/scope of the lead agency. An assessment of fees is appropriate when linked to a specific mitigation program. (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, *Save our Peninsula Comm. v. Monterey County Bd. Of Supers.* (2001) 87 Cal.App.4th 99, 141.) Payment of fees is not sufficient where there is no evidence mitigation will actually result. (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099,1122.) The assessment of fees here is not adequate as there is no evidence mitigation will actually result. The improvements required are not part of an existing DIF/TUMF program and therefore are not planned to occur at all or by any certain date, whether by Apple Valley or Caltrans. Any improvements recommended or fees paid to mitigate impacts for the I-15 are beyond the control of the lead agency and evidence that these improvements will be completed or approved by Caltrans has not been provided. The EIR must be revised and recirculated to include the LOS analysis as cumulatively considerable significant impact as the project conflicts with Transportation Impact Threshold A and Land Use and Planning Impact Threshold B because it is not consistent with the following General Plan policy:

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

E.10

Additionally, the EIR does not provide a consistency analysis with SCAG's 2020-2045 Connect SoCal RTP/SCS. Due to errors in modeling, modeling without supporting evidence (as noted throughout this comment letter and attachments), and the EIR's conclusion the project will result in significant and unavoidable cumulatively considerable impacts to Vehicle Miles Traveled, the proposed project is directly inconsistent with Goal 5 to reduce greenhouse gas emissions and improve air quality, Goal 6 to support healthy and equitable communities, and Goal 7 to adapt to a changing climate. The EIR must be revised to include a finding of significance due to these direct inconsistencies with SCAG's 2020-2045 Connect SoCal RTP/SCS.

E.11

2.14 Population and Housing

SCAG's Connect SoCal Demographics and Growth Forecast[15] states that Apple Valley will add 12,200 jobs between 2016 - 2045. Utilizing the EIR's calculation of 1,172 employees, the project represents 9.6% of Apple Valley s employment growth from 2016 - 2045. A single project accounting for this amount of growth over 29 years represents a significant amount of growth. A revised EIR must be prepared to include this analysis, and also provide a cumulative analysis discussion of projects approved since 2016 and projects "in the pipeline" to determine if the project will exceed SCAG's employment and/or population growth forecast. For example, other recent

E.12

[15] SCAG Connect SoCal Demographics and Growth Forecast adopted September 3, 2020 https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocal_demographics-and-growth-forecast.pdf?1606001579

industrial projects such as 1M Warehouse (1,080,125 square feet of industrial/warehouse space; 1,049 employees[16]), Apple Valley 143 (2,628,000 square feet of industrial/warehouse space; 2,552 employees[17]), and Apple Valley Commercial Project (49,995 square feet commercial space; 75 employees[18]) combined with the proposed project will cumulatively generate 4,848 employees, which is 39.7% of Apple Valley's employment growth forecast over 29 years. This number increases exponentially when other development activity is added to the calculation. A revised EIR must be prepared to include a cumulative analysis on this topic.

E.12 Cont.

2.17 Transportation and Traffic

Mitigation Measure TRF-19 and Table 2.17-9: Project Fair Share Calculations provides a list of fee payments to mitigate significant impacts at identified intersections to less than significant levels; the impacted intersections are as follows:

Opening Year (2024)
1. Dale Evans Pkwy. / Johnson Rd. (LOS F - PM)
2. I-15 NB Ramps / Stoddard Wells Rd. (LOS F - PM)

Horizon Year (2040)
1. Dale Evans Pkwy. / Johnson Rd. (LOS F - AM & PM)
2. Dale Evans Pkwy. / Lafayette St. (LOS F - AM & PM)
3. Dale Evans Pkwy./Corwin Rd. (LOS F - AM & PM)
4. Stoddard Wells Rd./Johnson Rd. (LOS F - PM)
5. I-15 NB Ramps / Stoddard Wells Rd. (LOS F - AM & PM)
6. Navajo Rd. / Johnson Rd. (LOS F - AM & PM)
7. Navajo Rd. / Lafayette St. (LOS F - AM & PM)
8. Central Rd. / Johnson Rd. (LOS F - AM & PM)

It must be noted that the impacts to the I-15 are under jurisdiction of Caltrans. The following Caltrans jurisdictions are identified to experience significant and unavoidable impacts resulting from the project:
1. Opening Year (2024): I-15 NB Ramps / Stoddard Wells Rd. (LOS F - PM)
2. Horizon Year (2040): I-15 NB Ramps / Stoddard Wells Rd. (LOS F - AM & PM)

E.13

[16] 1M Warehouse https://ceqanet.opr.ca.gov/2023020285
[17] Apple Valley 143 https://ceqanet.opr.ca.gov/2022070019
[18] Apple Valley Commercial Project https://ceqanet.opr.ca.gov/2021100585

Any improvements constructed or in-lieu fees/fair share fees paid for the I-15 are beyond the control/scope of the lead agency. An assessment of fees is appropriate when linked to a specific mitigation program. (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, *Save our Peninsula Comm. v. Monterey County Bd. Of Supers.* (2001) 87 Cal.App.4th 99, 141.) Payment of fees is not sufficient where there is no evidence mitigation will actually result. (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099,1122.) The assessment of fees here is not adequate as there is no evidence mitigation will actually result. The improvements required are not part of an existing DIF/TUMF program and therefore are not planned to occur at all or by any certain date, whether by Apple Valley or Caltrans. Any improvements recommended or fees paid to mitigate impacts for the I-15 are beyond the control of the lead agency and evidence that these improvements will be completed or approved by Caltrans has not been provided. The EIR must be revised and recirculated to include the LOS analysis as cumulatively considerable significant impact as the project conflicts with Transportation Impact Threshold A and Land Use and Planning Impact Threshold B because it is not consistent with the following General Plan policy: **E.14**

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

The EIR has not adequately analyzed the project's potential to substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses; or the project's potential to result in inadequate emergency access. The Traffic Appendix includes Exhibit 1-4: Truck Access Driveway 3 and Driveway 5 with separate exhibits for inbound and outbound trucks. The exhibits are provided separately in order to avoid providing an exhibit that depicts two trucks simultaneously entering and exiting the site. The separate diagrams appear to show that the truck turning radii will overlap, meaning that two trucks cannot enter and exit the site simultaneously and there is not sufficient space available to accommodate heavy truck maneuvering. There are no exhibits depicting the onsite turning radius available for trucks maneuvering throughout the site. Notably, trucks must make a u-turn within the loading dock area because gate access is restricted on the eastern side of the project site. Trucks can only exit to the west via the same driveway they entered, meaning a u-turn is necessary within the loading dock area. The EIR must be revised to include a finding of significance due to these significant and unavoidable impacts. **E.15**

There are also no exhibits depicting emergency vehicle access. Deferring this environmental analysis required by CEQA to the construction permitting phase is improper mitigation and does not comply with CEQA's requirement for meaningful disclosure and adequate informational documents. A revised EIR must be prepared for the proposed project with this analysis in order to provide an adequate and accurate environmental analysis. **E.16**

3.0 Alternative Projects Analysis

The EIR is required to evaluate a reasonable range of alternatives to the proposed project which will avoid or substantially lessen any of the significant effects of the project (CEQA § 15126.6.) The alternatives chosen for analysis include the CEQA required "No Project" alternative and only two others - "100% high cube" Alternative" and "900,000 square foot development, 100% high cube Alternative." The EIR does not evaluate a reasonable range of alternatives as only two alternatives beyond the required No Project alternative is analyzed. The EIR does not include an alternatives that meets the project objectives and also eliminates all of the project's significant and unavoidable impacts. The EIR must be revised to include analysis of a reasonable range of alternatives and foster informed decision making (CEQA § 15126.6). This could include alternatives such as development of the site with a project that reduces all of the proposed project's significant and unavoidable impacts to less than significant level, and a mixed-use project that provides affordable housing and local-serving commercial uses that may reduce VMT, GHG emissions, and improve Air Quality. **E.17**

6.0 Growth Inducing Impacts

The EIR has not provided an adequate or accurate cumulative analysis discussion here to demonstrate the impact of the proposed project in a cumulative setting. For example, other recent industrial projects such as such as Project Jupiter Distribution Warehouse (1,360,875 square feet of industrial/warehouse space[19]) and 1M Warehouse (1,080,125 square feet of industrial/warehouse space[20]) cumulatively with the proposed project generate 3,648,544 square feet of industrial/warehouse space, which is 10.2% of the General Plan buildout capacity accounted for by only three projects. Other recent industrial projects such as 1M Warehouse (1,080,125 square feet of industrial/warehouse space; 1,049 employees), Apple Valley 143 (2,628,000 square feet of industrial/warehouse space; 2,552 employees), and Apple Valley Commercial Project (49,995 square feet commercial space; 75 employees) combined with the proposed project will cumulatively generate 4,848 employees, which is 39.7% of Apple Valley's employment growth forecast over 29 years accounted for by only four projects. The EIR must be revised to include this information for analysis and also include a cumulative development analysis of projects constructed, approved projects not yet constructed, and projects in the pipeline" to determine if **E.18**

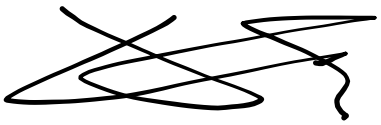
[19] Project Jupiter Distribution Warehouse https://ceqanet.opr.ca.gov/2016041058
[20] 1M Warehouse https://ceqanet.opr.ca.gov/2023020285

the proposed project exceeds the General Plan buildout, NAVISP buildout, and/or SCAG's growth forecasts. **E.18 Cont.**

Conclusion

For the foregoing reasons, GSEJA believes the EIR is flawed and a revised EIR must be prepared for the proposed project and circulated for public review. Golden State Environmental Justice Alliance requests to be added to the public interest list regarding any subsequent environmental documents, public notices, public hearings, and notices of determination for this project. Send all communications to Golden State Environmental Justice Alliance P.O. Box 79222 Corona, CA 92877. **E.19**

Sincerely,



Gary Ho
Blum, Collins & Ho LLP

Attachments:
1. SWAPE Analysis

F

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May 5, 2023

VIA EMAIL AND OVERNIGHT MAIL

Daniel Alcayaga, AICP, Planning Manager
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Re: Comments on Draft Environmental Impact Report – The Development at Dale Evans and Lafayette Project (SCH No. 2022120356; Project No. SPR 2022-004)

Dear Mr. Alcayaga:

We are writing on behalf of Californians Allied for a Responsible Economy ("CARE CA") to comments on the Draft Environmental Impact Report ("DEIR")[1] prepared by the Town of Apple Valley ("Town") for the Development at Dale Evans and Lafayette Project (SCH No. 2022120356; Project No. SPR 2022-004) ("Project"), proposed by RW Apple Valley LLC ("Applicant"). **F.1**

The Project proposes to develop a 1,207,544 square foot ("sf") warehouse distribution center on a 77.95± acre parcel of land located on the Southeast corner of Lafayette Street and Dale Evans Parkway in the Town of Apple Valley, San Bernardino County, California. The Project building is proposed to include 1,147,167 sf of warehouse space, and 60,377 sf of office space. The Project site consists of 10 existing parcels, identified as Assessor's Parcel Numbers 0463-231-11, -12, -13, -14, -15, -16, -34, -35, -36, and -37.

[1] Town of Apple Valley, Draft Environmental Impact Report (SCH No. 2022120356) for the Development at Dale Evans and Lafayette (March 2023), available at https://ceqanet.opr.ca.gov/2022120356/2.

Based on our review of the DEIR and supporting documentation, we conclude that the DEIR fails to comply with the requirements of the California Environmental Quality Act ("CEQA")[2]. The DEIR fails to adequately analyze many of the Project's significant environmental impacts and fails to propose feasible and enforceable mitigation measures to reduce those impacts to a less than significant level, as required by CEQA.

As explained in these comments, there is substantial evidence that the Project will result in significant unmitigated impacts relating to air quality, health risks and transportation. The Project also conflicts with applicable land use plans and policies, resulting in land use inconsistencies as well as significant impacts under CEQA. The Town may not approve the Project until the Town revises the Project's DEIR to adequately analyze the Project's significant direct, indirect and cumulative impacts, and incorporates all feasible mitigation measures to avoid or minimize these impacts to the greatest extent feasible. **F.2**

We reviewed the DEIR and its technical appendices with the assistance of traffic and transportation expert Daniel Smith[3] environmental health, air quality, GHG, and hazardous materials expert James Clark Ph.D.[4] We reserve the right to supplement these comments at a later date, and at any later proceedings related to this Project.[5]

I. STATEMENT OF INTEREST

CARE CA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental impacts of the Project. The coalition includes Apple Valley residents David Kimber, Brandon Walker and Greg Wright, the District Council of Ironworkers and Southern California Pipe Trades DC 16, along with their members, their families, and other individuals who live and work in Apple Valley and in San Bernardino County. **F.3**

CARE CA advocates for protecting the environment and the health of their communities' workforces. CARE CA seeks to ensure a sustainable construction industry over the long-term by supporting projects that offer genuine economic and

[2] Pub. Resources Code §§ 21000 et seq.; 14 Cal. Code Regs ("CEQA Guidelines") §§ 15000 et seq. ("CEQA Guidelines").
[3] Mr. Smith's technical comments and curricula vitae are attached hereto as Exhibit A.
[4] Dr. Clark's technical comments and curricula vitae are attached hereto as Exhibit B.
[5] Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* ("*Bakersfield*") (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

employment benefits, and which minimize adverse environmental and other impacts on local communities. CARE CA members live, work, recreate, and raise their families in the City of Apple Valley and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

F.3 Cont.

In addition, CARE CA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

II. LEGAL BACKGROUND

CEQA requires public agencies to analyze the potential environmental impacts of their proposed actions in an EIR.[6] "The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."[7]

F.4

CEQA has two primary purposes. First, CEQA is designed to inform decisionmakers and the public about the potential significant environmental effects of a project.[8] "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'"[9] The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have

[6] PRC § 21100.
[7] *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal ("Laurel Heights I")* (1988) 47 Cal.3d 376, 390 (internal quotations omitted).
[8] Pub. Resources Code § 21061; CEQA Guidelines §§ 15002(a)(1); 15003(b)-(e); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 517 ("[T]he basic purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.").
[9] *Citizens of Goleta Valley,* 52 Cal.3d at p. 564 (quoting *Laurel Heights I*, 47 Cal.3d at 392).

reached ecological points of no return."[10] As the CEQA Guidelines explain, "[t]he EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected."[11]

Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring consideration of environmentally superior alternatives and adoption of all feasible mitigation measures.[12] The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to "identify ways that environmental damage can be avoided or significantly reduced."[13] If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment" to the greatest extent feasible and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns."[14]

F.4 Cont.

While courts review an EIR using an "abuse of discretion" standard, "the reviewing court is not to 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference."[15] As the courts have explained, a prejudicial abuse of discretion occurs "if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process."[16] "The ultimate inquiry, as case

[10] *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810; *see also Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs*. (2001) 91 Cal.App.4th 1344, 1354 ("*Berkeley Jets*") (purpose of EIR is to inform the public and officials of environmental consequences of their decisions *before* they are made).
[11] CEQA Guidelines § 15003(b).
[12] CEQA Guidelines § 15002(a)(2), (3); *see also Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at p. 564.
[13] CEQA Guidelines § 15002(a)(2).
[14] PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090(a), 15091(a), 15092(b)(2)(A), (B); *Covington v. Great Basin Unified Air Pollution Control Dist*. (2019) 43 Cal.App.5th 867, 883.
[15] *Berkeley Jets*, 91 Cal.App.4th at p. 1355 (emphasis added) (quoting *Laurel Heights I*, 47 Cal.3d at 391, 409, fn. 12).
[16] *Berkeley Jets*, 91 Cal.App.4th at p. 1355; *see also San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722 (error is prejudicial if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process); *Galante Vineyards*, 60 Cal.App.4th at p. 1117 (decision to approve a project is a nullity if based upon an EIR that does not provide decision-makers and the public with information about the project as required by CEQA); *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946 (prejudicial abuse of discretion results where agency fails to comply with information disclosure provisions of CEQA).

law and the CEQA guidelines make clear, is whether the EIR includes enough detail 'to enable who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.'"[17]

F.4 Cont.

III. THE DEIR FAILS TO ADEQUATELY DESCRIBE THE PROJECT

The DEIR does not meet CEQA's requirements because it fails to include an accurate, complete and stable description of key Project components, rendering the DEIR's impact analysis inadequate. California courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR."[18] CEQA requires that a project be described with enough particularity that its impacts can be assessed.[19] Without a complete, stable and accurate project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review.[20]

Here, many of the DEIR's impact analyses are based on unenforceable assumptions regarding future uses of the warehouse. The DEIR's project description states that "no user has been identified for this space [and for] purposes of this analysis, it has been assumed that 85% of the space would be used for dray warehousing, and 15% for cold storage."[21] This "assumption" is repeated throughout the DEIR, including in the analysis of air quality, energy, and greenhouse gas ("GHG") impacts.[22] While the DEIR assumes for purposes of the CEQA analysis that the warehouse will be limited to 15% cold storage, there is no condition of approval, mitigation measure, or other Project provision restricting cold storage to 15%, and therefore nothing in the record to ensure that cold storage will be so limited if the Project is constructed. Because "no user has been identified" for this warehouse space and because there are no conditions or other mechanism to ensure that the warehouse will be limited to 15% cold storage in practice, it is reasonable to expect that actual cold storage uses may exceed 15%. Depending on the actual percentage of cold storage uses, the Project's air quality, greenhouse gas, and energy impacts could be significantly higher than estimated in the DEIR, as explained below.

F.5

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[17] *Sierra Club,* 6 Cal.5th at p. 516 (quoting *Laurel Heights I*, 47 Cal.3d at 405).
[18] *Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 17; *Communities for a Better Environment v. City of Richmond* ("*CBE v. City of Richmond*") (2010) 184 Cal.App.4th 70, 85–89; *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 193.
[19] CEQA Guidelines § 15124; *see, Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376, 192–193.
[20] *Id.*
[21] DEIR, pg. 1-1.
[22] DEIR, pgs. 2.4-12, 2.7-8, 2.7-10 and 2.9-9; *see also,* DEIR Appendix B (Air Quality and Greenhouse Gas Report), pgs. 5, 21 and 41.

The DEIR's air quality and greenhouse gas analysis uses CalEEMod, a statewide land use emissions model, to estimate Project construction and operational emissions.[23] The model output is based on a number of assumptions about the Project, including that only 15% of the warehouse space will be used for cold storage and 85% for dry storage.[24] Changing these assumptions directly affects the Project's estimated emissions. For example, the DEIR estimates that the Project's operation will generate a daily maximum of 86.20 lbs/day of CO_2 and 127.32 lbs/day of N_{ox}, assuming 15% cold storage.[25] The DEIR also analyzes a Project alternative in which the only difference from the proposed Project is 100% dry storage and no cold storage.[26] Under this alternative, the DEIR finds that the Project's operation will generate a daily maximum of 82.41 lbs/day of CO_2 and 122.51 lbs/day of N_{ox}.[27] The DEIR makes clear that eliminating cold storage from the analysis decreases emissions. Conversely, if the Project were to have in excess of 15% cold storage uses, emissions would increase. This is especially relevant with respect to N_{ox}, given that the DEIR's estimates of the Project's operational N_{ox} emissions are close to the Mojave Desert Air Quality Management District's ("MDAQMD") daily threshold of 137 lbs/day. **F.6**

Similarly, the DEIR finds that the Project's operational GHG emissions (assuming 15% cold storage) will be 17,768.97 metric tons/year of CO_2e.[28] The "high-cube only" alternative (i.e., no cold storage) is estimated to generate 16,084.87 metric tons/year of CO_2e.[29] Reducing the amount of the Project's cold storage uses demonstrably reduces GHG emissions, and increasing the amount of cold storage beyond the DEIR's 15% assumption will likewise increase GHG emissions. **F.7**

Finally, the amount of the Project's cold storage usage will have a significant impact on the Project's energy usage. "In addition to standard warehouse and office energy uses, such as space heating and cooling, **the refrigerated warehouse component of the proposed development will be considerably more energy intensive**. While the cold storage portion of the warehouse is assumed to occupy 15% of the floorspace, it will be responsible for approximately 75% of the building's electricity consumption and 82% of the natural gas consumption [emphasis added]."[30] With respect to the "no cold storage" alternative, the DEIR states that this alternative "would use 30% of the electricity used by the proposed Project and **F.8**

[23] DEIR, Appendix B, pg. 4.
[24] *Id.*, pg. 21.
[25] *Id.*, Table 3-2 at pg. 23.
[26] DEIR, pg. 3.4-2.
[27] DEIR, Appendix B, Table 6-2 at pg. 50.
[28] DEIR, Table 2.9-2 at pg. 2.9-11.
[29] *Id.*, Table 3.9-1 at pg. 3.9-3.
[30] *Id.,* pg. 2.7-11.

21% of the natural gas, due to the elimination of refrigerated storage, which generates high demand for energy."[31] Due to the outsized effect on energy consumption of refrigerated storage, any increase in cold storage use over the assumed 15% will cause a significant increase in energy consumption which is not considered in the DEIR and may require additional mitigation. Without some enforceable mechanism to limit the Project to 15% cold storage, the DEIR's energy use analysis is unreliable and may significantly underestimate the Project's actual energy use.

F.8 Cont.

Ultimately, the DEIR's estimated emissions and energy usage are dependent on the assumption that 15% of the Project's warehouse space will be used for cold storage. Absent any mechanism to enforce that assumption, the DEIR cannot accurately assess the Project's air quality, GHG and energy impacts, and the DEIR's conclusions regarding the significance of the Project's operational emissions and energy use are not supported by substantial evidence. The Town must prepare a revised EIR that clearly defines the Project's uses with respect to cold storage.

F.9

IV. THE DEIR FAILS TO DISCLOSE, ANALYZE AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS

An EIR must fully disclose all potentially significant impacts of a Project and implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.[32] An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.[33]

F.10

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.[34] Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.[35] In reviewing challenges to an

[31] *Id.*, pg. 3.7-3.
[32] CEQA Guidelines § 15064(b).
[33] *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.
[34] *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.
[35] *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."[36]

F.10 Cont.

Additionally, CEQA requires agencies to commit to all feasible mitigation measures to reduce significant environmental impacts.[37] In particular, the lead agency may not make required CEQA findings, including finding that a project impact is significant and unavoidable, unless the administrative record demonstrates that it has adopted all feasible mitigation to reduce significant environmental impacts to the greatest extent feasible.[38] Yet, as explained below, the DEIR falls far short of this mandate by adopting mitigation measures that are vague, ineffective, and unenforceable and by failing to commit to other feasible and effective mitigation strategies to address the significant transportation, air quality, GHG emissions and noise impacts of the Project.

F.11

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.'"[39]

A. The DEIR Fails to Adequately Disclose, Analyze and Mitigate Air Quality and Health Impacts

1. Valley Fever

The DEIR fails to acknowledge, let alone analyze and mitigate, the potentially significant health impacts from Valley Fever associated with Project construction. Valley Fever is a disease that can infect people when they are exposed to fungal spores during ground disturbance, such as the site preparation and grading associated with this Project's construction. Symptoms include fever, cough, headache, rash, muscle aches, or joint pain. In severe cases, patients develop

F.12

[36] *Id., Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.
[37] CEQA Guidelines § 15002(a)(2).
[38] PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090, 15091; *Covington v. Great Basin Unified Air Pollution Control Dist*. (2019) 43 Cal.App.5th 867, 883.
[39] *Berkeley Jets*, 91 Cal.App.4th at 1355.

pneumonia or meningitis, sometimes resulting in death.[40] Valley Fever is endemic in the Southwestern United States, including San Bernardino County and the Mojave Desert.[41] Dr. Clark's comments describe the increasing incidence of Valley Fever in San Bernardino County over the last several years.[42]

F.12 Cont.

As discussed in detail in Dr. Clark's comments, there is a significant risk of Valley Fever to both workers constructing the Project and employees at the adjacent existing warehouses. Dr. Clark describes the known presence of Valley Fever spores in the soils of the Southern California high desert and San Bernardino County, where the Project site is located. Workers involved in soil-disturbing activities, such as grading, can be exposed to Valley Fever in disturbed and windblown dust containing Valley Fever spores. Nearby workers and other receptors downwind of disturbed soils are also at risk.

Dr. Clark points out that standard fugitive dust mitigation measures are inadequate to protect construction workers and other nearby receptors from the risk of Valley Fever, and identifies several mitigation measures that can actively suppress the spread of Valley Fever. These include:

F.13

(1) including Valley Fever-specific requirements in the Project's Injury and Illness Prevention Program;

(2) controlling dust exposure with specific measures that exceed conventional dust control, such as (a) applying chemical stabilizers at least 24 hours prior to high wind events, (b) applying water to all disturbed areas a minimum of three times per day, and at least four times per day if there is any evidence of visible wind-driven fugitive dust, (c) providing National Institute for Occupational Safety and Health (NIOSH) approved respirators for workers with a history of Valley Fever, (d) half-face respirators equipped with a minimum N-95 protection factor for use by workers in areas of ground disturbing activities and half-face respirators equipped with N-100 or P-100 filters for use during digging activities, (e) prohibiting eating and smoking at the worksite and providing separate, clean eating areas with hand-washing facilities, (f) avoiding outdoor construction operations during unusually windy conditions or in dust storms, and (g) limiting outdoor construction during the fall to essential jobs only, as the risk of infection is higher during this season;

[40] See County of San Bernardino Environmental Health Services Fact Sheet: Coccidioidomycosis, available at https://wp.sbcounty.gov/dph/wp-content/uploads/sites/7/2017/06/News-Coccidioidomycosis-6.1.17.pdf (last visited 10/29/22).
[41] *Id.*; see also, *Valley Fever: Environmental Risk Factors And Exposure Pathways Deduced From Field Measurements In California*, Int J Environ Res Public Health 2020 Jul 22;17(15):5285, abstract available at https://pubmed.ncbi.nlm.nih.gov/32707996/ (last visited 12/10/2022).
[42] Clark Comments, pg. 5.

(3) preventing transport of Valley Fever spores outside endemic areas by (a) thoroughly cleaning equipment, vehicles and other items before they are moved offsite to other work locations, (b) preventing spillage or loss of bulk material from holes or other openings in the cargo compartment's floor, sides, and/or tailgate, (c) loading all haul trucks such that the freeboard is not less than six inches when material is transported on any paved public access road and applying water to the top of the load sufficient to limit VDE to 20 percent opacity, or covering haul trucks with a tarp or other suitable cover, (d) providing workers with coveralls daily, lockers (or other systems for keeping work and street clothing and shoes separate), daily changing and showering facilities, (e) training workers to recognize that cocci may be transported offsite on contaminated equipment, clothing, and shoes, and ; and (f) posting warnings onsite and consider limiting access to visitors, especially those without adequate training and respiratory protection;

F.13 Cont.

(4) providing medical surveillance for employees, such as (a) prompt access to medical care, (b) working with a medical professional to develop protocols to evaluate employees who have Valley Fever symptoms.[43]

Dr. Clark's comments and analysis provide substantial evidence that the Project may have significant unmitigated health risks to Project construction workers and nearby receptors, risks which are completely unexamined in the DEIR. The City must prepare a revised EIR that evaluates the risk of Valley Fever and includes appropriate mitigation measures.

2. Operational Emissions

The DEIR's analysis of the Project's operational emissions fails to consider potentially significant sources of emissions, which means that Project emissions are underestimated.

As discussed above, the DEIR assumes that the Project will include cold storage for 15% of the warehouse space. As Dr. Clark points out, the CalEEMOD outputs provided in the air quality analysis show that no backup generators were included in the analysis.[44] For a warehouse like this one that includes refrigerated storage, a backup generator will be required for emergency situations including power outages at the Project site.[45]

F.14

[43] *Id.,* pgs. 5-7.
[44] Clark Comments, pg. 11.
[45] *Id.*

Even more glaring is the failure to consider emissions from Transport Refrigeration Units ("TRUs") that will serve the refrigerated components of the Project warehouse. While the DEIR's emissions analysis assumes the use of 15% of the warehouse space for cold storage, it completely omits any emissions from the refrigerated trucks that will serve the warehouse. TRUs are refrigeration systems powered by diesel internal combustion engines designed to refrigerate perishable products transported in various containers, including truck vans, semi-truck trailers, shipping containers, and rail cars.[46] The CalEEMOD modeling fails to include any emissions from TRUs associated with the trucks and trailers coming to the Project site.[47] This leads to an underestimation of the Project's operational emissions, including $PM_{2.5}$ and GHG emissions from operation of TRUs on the Project site. For example, the DEIR's CalEEMod analysis shows that 780.7 trucks per day will utilize the Project site; assuming 15% of the trucks have TRUs (consistent with the DEIR's assumption of 15% cold storage usage in the warehouse), there would be 117 TRUs onsite each day.[48] The TRUs would generate an additional 1.3 lbs/day of $PM_{2.5}$ as diesel exhaust that is unaccounted for in the DEIR.[49] **F.15**

Because the DEIR completely omits any analysis of TRU use on the Project site, it underestimates the Project's GHG emissions and air quality impacts, including $PM_{2.5}$ emissions and potential health risks from TRU diesel exhaust. The Town therefore must prepare a revised DEIR that includes the impacts of TRU use, and include mitigation measures for any significant air quality impacts. **F.16**

3. Cumulative Emissions

The DEIR recognizes that the Project is within a non-attainment area for PM_{10} and ozone, but concludes that Project-related impacts with respect to non-attainment pollutants will not be cumulatively considerable.[50] However, the DEIR fails to actually analyze the Project's cumulative air quality emissions, instead relying on the following conclusion: "The MDAQMD does not currently provide thresholds of significance for the cumulative emissions of multiple projects. A project's potential cumulative contributions can instead be analyzed using the criteria for project-specific impacts, assuming that if an individual development generates less than significant construction and operational emissions, then it would not generate a cumulatively considerable increase in non-attainment criteria **F.17**

[46] *Id.*, pg. 9.
[47] *Id.*
[48] *Id.,* pg. 10.
[49] *Id.*
[50] DEIR, pg. 2.4-17.

pollutants."[51] The MDAQMD's approach is not authorized by law and has been rejected by the Courts for failing to comply with CEQA's requirement that a project mitigate impacts that are "cumulatively considerable."[52] The MDAQMD's failure to set a threshold for cumulative project emissions does not authorize the City to ignore CEQA's requirement to analyze cumulative impacts.

The leading case on this issue is *Kings County Farm Bureau v. City of Hanford*.[53] In *Kings County*, the city prepared an EIR for a 26.4-megawatt coal-fired cogeneration plant. Notwithstanding the fact that the EIR found that the project region was out of attainment for PM_{10} and ozone, the city failed to incorporate mitigations for the project's cumulative air quality impacts from project emissions because it concluded that the Project would contribute "less than one percent of area emissions for all criteria pollutants."[54] The city reasoned that, because the project's air emissions were small in ratio to existing air quality problems, that this necessarily rendered the project's "incremental contribution" minimal under CEQA. The court rejected this approach, finding it "contrary to the intent of CEQA." The court stated:

> We find the analysis used in the EIR and urged by GWF avoids analyzing the severity of the problem and allows the approval of projects which, when taken in isolation, appear insignificant, but when viewed together, appear startling. Under GWF's "ratio" theory, the greater the over-all problem, the less significance a project has in a cumulative impacts analysis. We conclude the standard for a cumulative impacts analysis is defined by the use of the term "collectively significant" in Guidelines section 15355 and the analysis must assess the collective or combined effect of energy development. The EIR improperly focused upon the individual project's relative effects and omitted facts relevant to an analysis of the collective effect this and other sources will have upon air quality.[55]

F.17

The Town made the same error here. While the DEIR admits that the Project region is out of attainment for ozone and PM_{10}, the City fails to analyze or mitigate the Project's emissions' cumulative air quality impacts. Given that there

[51] *Id.*, pg. 2.4-16.

[52] PRC § 21083(b)(2); 14 CCR § 15130.

[53] *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692 ("Kings County"); *see also, Friends of Oroville v. City of Oroville* (2013) 219 Cal. App. 4th 832, 841-42.

[54] *Id.* at 719.

[55] *Id.* at 721.

are two existing large warehouses immediately adjacent to the proposed Project site, as well as the proliferation of warehouse projects in the region and San Bernardino County, the DEIR is woefully inadequate in its analysis of the Project's potentially significant cumulative air quality impacts.

F.17 Cont.

Moreover, the Town's approach directly conflicts with the California Attorney General's recent guidance document setting forth best practices for evaluating the environmental impacts of warehouse projects like this one under CEQA.[56] With respect to cumulative air quality and GHG emissions analysis, the Attorney General's guidance states that best practices include "[w]hen analyzing cumulative impacts, thoroughly considering the project's incremental impact in combination with past, present, and reasonably foreseeable future projects, *even if the project's individual impacts alone do not exceed the applicable significance threshold* [emphasis added]."[57]

F.18

The DEIR's cumulative impacts analysis with respect to air quality and GHG emissions does not comply with CEQA and is in direct conflict with the Attorney General's suggested best practices, and the Town must prepare a revised EIR that properly evaluates and mitigates such impacts.

B. The DEIR Fails to Adequately Disclose, Analyze and Mitigate Transportation Impacts

The DEIR's analysis of the Project's impacts on vehicle miles traveled ("VMT") concludes that, even with the inclusion of a handful of mitigation measures, the Project's VMT impacts will be significant and unavoidable.[58] This conclusion is based on the technical VMT analysis performed by the Town's consultant, finds that the Project would, in the current baseline condition, generate 39.72 VMT per unit service population and in the cumulative General Plan buildout condition, generate 56.77 VMT per unit service population.[59] These levels are well in excess of the Town's adopted VMT significance threshold of 26.41 VMT per unit service population. While the DEIR proposes some VMT mitigation measures, the VMT analysis concludes "[i]mplementation of feasible VMT reduction measures would not definitively reduce Project VMT or Project VMT impacts. Therefore, even with implementation of these measures, the Project VMT impact is assumed to

F.19

[56] *Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act* (Updated September 2022), available at https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf .
[57] *Id.*, pg. 7.
[58] DEIR, pg. 2.17-20.
[59] Smith Comments, pg. 1.

exceed the Town VMT threshold. The Project VMT is therefore considered significant and unavoidable."[60]

F.19 Cont.

With respect to VMT mitigation measures, the DEIR states "[a]s the future building tenants are not known for the Project, the effectiveness of each commute trip reduction measure may be limited. The Project shall implement the following measures that have the potential to reduce VMT, although no quantified benefit can be taken at this time."[61] The DEIR does not even attempt to quantify the effects of the proposed mitigation measures on Project VMT, yet concludes that VMT impacts will be significant and unavoidable with mitigation incorporated.

F.20

Transportation expert Dan Smith explains why the DEIR's proposed VMT mitigation measures are "unusually weak, low cost and unresponsive to the nature of the Project."[62] For example, mitigation measure VMT-1 provides:

> "The Project shall implement a Voluntary Commute Trip Reduction (CTR) measure. The purpose of the CTR would be to encourage alternative modes of transportation such as carpooling, which would reduce VMT. A proposed CTR program for this project could include providing on-site and/or online commute information services including information on available transit and ride coordination for employees."

This measure requires a CTR for the purpose of encouraging alternative transportation modes for Project employees, but contains no specifics of what must be included in the program, other than that it "could include" provision information on transit and ride coordination. Mitigation measure VMT-1 violates CEQA as improperly deferred mitigation, as it fails to include specific performance standards for reducing VMT impacts or to specify actions that may achieve those standards.[63] In addition, Mr. Smith notes that, because warehouse projects like this one normally operate around the clock, transit information is useless to workers whose shifts start or end during the night when transit is inoperative.[64] He also cites evidence that the maximum ride share potential is about 4 percent of workers in suburban areas and 0 in rural areas, and that participation in carpooling is close to zero among night shift workers.[65]

F.21

[60] DEIR, Appendix I.b.
[61] DEIR, pg. 2.17-21.
[62] Smith Comments, pg. 2.
[63] CEQA Guidelines § 15126.4(a)(1)(B).
[64] Smith Comments, pg. 2.
[65] *Id.*

As with mitigation measure VMT-1, Mr. Smith's comments explain why the DEIR's other proposed mitigation measures are completely ineffectual in reducing the Project's recognized significant VMT impacts.[66] He also proposes several feasible mitigation measures that could reduce such impacts, such as:

- Provide free parking in designated spaces for employees who carpool while charging daily or monthly fees for parking for employees who commute by driving alone.
- *Give* an electric bicycle to any employee who a) commits to commuting by that means at least 3 times per week while remaining employed at the Project for a period of, say, 2 years and b) commits to returning the bicycle in good working order or pay for it if they leave employment at the Project before the specified period or fail to commute by bike at the specified frequency.
- Make a cash payment to employees who agree to purchase a zero-emissions vehicle and use it for commute purposes at an agreed-upon frequency and for an agreed-upon period of time with further agreement by the employee to reimburse the payment if they fail to purchase the vehicle, fail to commute by it at the specified frequency and period of time or if they leave employment at the Project before the specified period of time. **F.22**
- Pay an excess VMT mitigation fee established by the Town to be used by the Town to fund transportation infrastructure such as active transportation linkages and transit route extensions and service frequencies in areas where they would be most productive in reducing area VMT. This is similar to off-site transportation improvement development fees.
- Or the excess VMT mitigation fee could be utilized to subsidize development of owner-purchased or rental housing at sites close to the Project site or in low VMT areas of the Town. Specific terms for Project employees to have priority in purchase or rental of said units would be established.

The DEIR fails to include any analysis of the feasibility of the above methods, or any other methods, to reduce the Project's significant VMT impacts and lacks substantial evidence to conclude that the City has eliminated or substantially lessened all significant effects on the environment to the greatest extent feasible. Therefore, the DEIR violates CEQA and the City cannot conclude that the Project's VMT impacts are significant and unavoidable.[67]

[66] *Id.*, pgs. 2-4.
[67] CEQA Guidelines § 15002(a)(2).

The City must evaluate the feasibility and effectiveness of additional mitigation measures in a revised and recirculated DEIR for the Project, including the measures proposed by Mr. Smith.[68] **F.22 Cont.**

C. The DEIR Fails to Adequately Disclose, Analyze and Mitigate Noise Impacts

The DEIR's noise analysis does not comply with CEQA, because it lacks the noise analysis required by CEQA.[69] Instead, the DEIR impermissibly defers analysis and mitigation of the Project's potentially significant noise impacts, including impacts to future residential receptors located directly across the street from the Project site. Though currently vacant, lands immediately to the west of the Project across Dale Evans Parkway are designated medium density residential in the Town's General Plan.[70] The DEIR recognizes that "multi-family residential development will occur in the future on the west side of Dale Evans Parkway, immediately west of the proposed Project."[71] **F.23**

The DEIR's noise analysis asserts that the Project site is "currently surrounded by properties that are either vacant or occupied by similar industrial uses."[72] It cites the standards in the Town's General Plan, which provide in part that noise levels of up to 75 CNEL dBA are "normally acceptable" for industrial uses.[73] Based on noise contours expected from buildout of the General Plan, noise levels would be 74.1 dBA CNEL at the center line of Dale Evans Parkway.[74] And based on the North Apple Valley Industrial Specific Plan ("NAVISP"), noise levels would be 71.7 dBA at 100 feet from the center line of the segment in the immediate area of the Project site.[75] Therefore, the DEIR finds, the Project will not result in significant noise impacts based on the Town's 75 CNEL dBA standard for industrial uses. **F.24**

However, the Town's General Plan also has a limit for outdoor noise levels in multi-family residential areas of 65 CNEL dBA.[76] Based on setback requirements, residential development on the west side of Dale Evans Parkway "would occur at a

[68] *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal. App. 5th 867, 879.
[69] CEQA Guidelines, Appendix G, section XII.
[70] DEIR, pg. 1-2.
[71] *Id.,* pg. 2.13-12
[72] DEIR, pg. 2.13-11.
[73] *Id.*
[74] *Id.*, pg. 2.13-12.
[75] *Id.*
[76] *Id.*

distance of at least 96 feet from centerline at this location, and would have unmitigated noise levels of about 71.7 dBA CNEL at the closest point."[77]

The Town's General Plan establishes goals and policies to "assure a controlled noise environment as the Town grows."[78] These policies include the following:

- Program 1.B.5- "Residential projects proposed adjacent to any street where the build out noise level at 50 feet from centerline is expected to exceed 65 dBA shall be required to submit a noise analysis in conjunction with entitlement applications."
- Program 1.B.6- "Commercial and industrial projects proposed adjacent to sensitive receptors, or lands designated for sensitive receptors, including residential, school or hospital sites, shall be required to submit a noise analysis in conjunction with entitlement applications."[79]

F.24 Cont.

The DEIR cites Program 1.B.5, and states that "[g]iven that residential projects proposed in the area immediately west of Dale Evans Parkway would be required to submit noise analysis, appropriate measures to mitigate by design could be identified at this stage, ensuring that the exterior noise standard for residential sites is met."[80]

The DEIR, however, ignores the requirement in Program 1.B.6 that commercial or industrial projects, like this one, proposed adjacent to sensitive receptors, or *lands designated for sensitive receptors*, shall be required to submit a noise analysis. The DEIR contains no noise analysis; it provides no baseline ambient noise measurements, nor does it attempt to estimate project operational noise. Rather, it relies on the noise contours from buildout of the General Plan and NAVISP. "Given that the Project is consistent with the land uses accounted for in the NAVISP and GP, the noise contours used in the NAVISP and GP EIRs would account for buildout of the Project on the subject site."[81]

The DEIR also fails to address the statement in the General Plan EIR's discussion of noise impacts that the "General Plan is a program-level document and **F.25**

[77] *Id.*
[78] *Id.*, pg. 2.13-5.
[79] *Id.*
[80] DEIR, pg. 2.13-12.
[81] *Id.*, pg. 2.13-11.

site-specific development is not within the scope of this EIR, but will be analysed and impacts mitigated on a project-by-project basis at the time such development is proposed."[82] The General Plan EIR also includes general mitigation measures for noise, including that "the Town shall require an acoustical analysis for all commercial and industrial projects that are proposed adjacent to residential land uses or land use designations. The acoustical analysis shall evaluate potential noise impacts of the project and provide mitigation measures that are adequate to meet Town noise standards for residential land uses."[83]

F.25 Cont.

Rather than analyzing and mitigating the Project's noise impacts as required by CEQA and the Town's General Plan, the DEIR improperly defers such analysis and mitigation to a later date and a different project applicant (i.e., the developer of a future residential project west of Dale Evans Parkway.) Deferring the noise analysis in this way violates the CEQA requirement that the DEIR disclose the severity of the Project's impacts and the probability of their occurrence *before* the Project is approved.[84]

This deferred analysis also precludes formulation of feasible mitigation measures that could be included in the Project now, to reduce future noise impacts to the reasonably foreseeable adjacent residential uses. The Town has the ability now, during the Project's CEQA review and permitting stage, to require that the Project implement mitigation on the Project site to reduce potentially significant operational noise impacts to future adjacent residential uses. Once the Project is approved, it will be too late to require the Project to include noise mitigation as the Town will lack the authority to require mitigation on the Project site based on a future noise study performed for a residential project on a different site. At that point, noise mitigation will be limited to measures that can be imposed on the residential development to avoid noise impacts from the Project's warehouse operations. The Town will lack jurisdiction to impose mitigation on the Project site.[85]

F.26

The Town's effort to pass off the requirement to analyze and mitigate this Project's potentially significant noise impacts to a future adjacent project violates the basic CEQA mandate to disclose, analyze and mitigate the Project's impacts

F.27

[82] Apple Valley General Plan and Annexations 2008-001 & 2008-002/Environmental Impact Report ("AV GP EIR"), pgs. III-224-225.

[83] AV GP EIR, pg. III-226.

[84] 14 CCR §§ 15143, 15126.2(a); *Cal. Build. Indust. Ass'n v. BAAQMD* (2015) 62 Cal.4th 369, 388-90; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307 (environmental review should be performed at earliest feasible stage in the planning process).

[85] *Tracy First v. City of Tracy* (2009) 177 Cal. App. 4th 912, 937-38 (agency cannot enforce mitigation over which it lacks jurisdiction).

before it can be approved. The Town therefore must revise and recirculate the DEIR to include a noise analysis and all feasible mitigation to reduce noise impacts. **F.27 Cont.**

D. The DEIR Fails to Adequately Disclose, Analyze and Mitigate Biological and Hydrological Impacts

The DEIR does not comply with CEQA as it impermissibly defers analysis and mitigation of the Project's potentially significant hydrological and biological impacts.

The Project site is currently undeveloped, and has two unnamed drainages running through it from north to south.[86] These drainages have a defined bed and bank in the northern portion of the site and become areas of sheet flow toward the southern portion of the site.[87] Development of the Project will include the relocation and re-routing of these drainages; nearly 2 acres of the Project site will be comprised of stormwater diversion and detention, with planned overflow discharge on the south end of the property that purportedly will be similar to existing conditions.[88]

Portions of both drainages are under Regional Water Quality Control Board ("RWQCB") and California Department of Fish and Wildlife ("CDFW") jurisdiction, and authorization to disturb them requires a Water Quality Certification from RWQCB and a Section1602 Streambed Alteration Agreement[89] from CDFW. The DEIR includes mitigation measures BIO-13 and BIO-14 to "ensure that impacts to the drainages during the development of the proposed Project will not cause adverse effects to associated sensitive communities and habitat."[90] The DEIR concludes that with this mitigation, impacts will be less than significant."[91] **F.28**

The relevant mitigation measures are as follows:

- BIO-13: "The Project proponent will obtain a CWA 401 Certification from the RWQCB. In addition to the formal application materials and fees (based on area of impact), a copy of the EIR and other appropriate California

[86] DEIR, pg. 2.5-10.
[87] *Id.*
[88] *Id.*, pg. 2.5-12.
[89] California Fish and Game Code § 1602.
[90] DEIR, pg. 2.5-16.
[91] *Id.*

Environmental Quality Act (CEQA) documentation shall be included with the application."[92]

- BIO-14: "The CDFW will require a 1602 Streambed Alteration Agreement (SSA) for activities that alter on-site drainages. In addition to the mitigation measures provided in BIO-1 through BIO-13, the SSA may include avoidance and minimization measures such as the monitoring of the site by a qualified biologist with stop-work authority; the use of Best Management Practices; restrictions on work activities within the wash to dry weather only; storm event inspections; protection measures relating to vegetation removal and habitat restoration; and/or the acquisition of habitat off-site at a ratio of up to 3:1."[93]

The DEIR recognizes that diverting the drainages may have significant impacts, and that RWQCB certification and CDFW agreement "may involve mitigation measures for permanent impacts at a ratio of up to 3:1."[94] Authorization from these agencies will be required prior to Project construction, which "would ensure that construction and operation of the Project complies with the RWQCB and CDFW, and if needed, appropriate measures would be identified and implemented to avoid any adverse effects through direct removal, filling, hydrological interruption, or other means. Overall, provided the Project obtains the applicable permits as provided in the mitigation measures below, impacts will be less than significant." **F.28 Cont.**

The finding that simply by obtaining the applicable permits, the Project's impacts will be less than significant is unsupported by substantial evidence and violates CEQA. The DEIR makes no effort to evaluate the Project's potentially significant impacts that may be caused by diversion and relocation of the existing stormwater drainage. As with noise impacts discussed above, the DEIR violates the CEQA requirement that the DEIR disclose the severity of the Project's hydrologic

[92] *Id.*, pg. 2.5-21.
[93] *Id.*
[94] *Id.*, pg. 2.5-17.

and biological resources impacts and the probability of their occurrence *before* the Project is approved.[95] The Town must prepare and circulate a revised EIR that fully discloses, analyzes, and mitigates such impacts before the Project can be approved.

F.28 Cont.

V. THE TOWN MAY NOT APPROVE THE PROJECT'S SITE PLAN REVIEW PERMIT

The Project requires approval by the Director of Economic and Community Development of a Site Plan Review ("SPR") permit; site plan review is a process unique to the NAVISP.[96] The Director may approve, approve with conditions, or deny an SPR permit, and this decision is appealable to the Planning Commission.[97] In order to approve an SPR permit, the Director must make a series of findings, including 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, the Development Code, and the development policies and standards of the Town."[98]

F.29

As discussed above, the Town has failed to conduct a noise analysis evaluating the Project's potential noise impacts on future residents west of Dale Evans Parkway as required by the Town's General Plan. Because the Project is to be located adjacent to lands designated for sensitive receptors (i.e., residential uses), the General Plan requires that the Town perform such an analysis. Because the Town failed to "evaluate potential noise impacts of the project and provide mitigation measures that are adequate to meet Town noise standards for residential land uses,"[99] the Director may not make the necessary finding that the location and intensity of the Project is consistent with the General Plan, the development code and the development policies and standards of the Town. An SPR permit may not be approved unless and until the Town conducts a proper acoustical analysis of the Project's potential noise impacts on future residents west of Dale Evans Parkway.

F.30

[95] 14 CCR §§ 15143, 15126.2(a); *Cal. Build. Indust. Ass'n v. BAAQMD* (2015) 62 Cal.4th 369, 388-90; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307 (environmental review should be performed at earliest feasible stage in the planning process).
[96] Town of Apple Valley NAVISP pg. II-13.
[97] *Id.*, pg. III-52.
[98] *Id.*, pg. III-53.
[99] AV GP EIR, pg. III-226.

VI. CONCLUSION

For the reasons discussed above, the DEIR for the Project is wholly inadequate under CEQA. It must be revised to provide legally adequate analysis of, and mitigation for, all of the Project's potentially significant impacts. These revisions will necessarily require that the DEIR be recirculated for additional public review. Until the DEIR has been revised and recirculated, as described herein, the Town may not lawfully approve the Project. **F.31**

Thank you for your consideration of these comments. Please include them in the record of proceedings for the Project.

Sincerely,

Richard M. Franco

RMF:ljl

6604-004j

EXHIBIT A

SMITH ENGINEERING & MANAGEMENT

May 4, 2023

Mr. Richard Franco
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

Subject: Redwood West (Development at Dale Evans and Lafayette) Draft EIReport, SCH # 2022120356 P23006

Dear Mr. Franco:

I reviewed the Draft Environmental Impact Report (the "DEIR") for the Redwood West Development Project (the "Project") in the Town of Apple Valley (the "Town"). My review is with respect to transportation and circulation considerations.

My qualifications to perform this review include registration as a Civil and Traffic Engineer in California, over 50 years professional consulting practice in these fields, and both the preparation and review of the traffic and transportation components of numerous environmental documents prepared under the California Environmental Quality Act ("CEQA"). My professional resume is attached hereto.

The DEIR Finds That the Project Would Generate VMT At Rates Per Employee That Are Vastly Greater Than the Town's Adopted VMT Significant Impact Thresholds

The DEIR and Its Appendix I-b find that the Project would, in the current baseline condition, generate 39.72 VMT per unit service population and in the cumulative general plan build-out condition, generate 56.77 VMT per unit service population[1]. These levels are respectively in excess of 150 percent and just under 215 percent of the Town's adopted Significant Impact Threshold of 26.41 VMT per unit service population. Hence, the VMT impact would be significant. This commenter concurs with the DEIR analysts' technical approach and finding in this regard.

[1] In this instance, per employee.

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The DEIR Concludes That the Project's VMT Impacts Are Significant and Unavoidable. It Outlines a Set of Weak and Ineffectual Mitigation Measures.

The DEIR concludes that the Project's VMT impacts are significant and unavoidable based on the above findings. However, the mitigation measures proposed in the DEIR are unusually weak, low cost and unresponsive to the nature of the Project. As a result, the DEIR's VMT is ineffective and incomplete and does not support the DEIR's conclusion that impacts are significant and unavoidable.

Below we repeat each mitigation measure from the DEIR's Summary of Impacts and Mitigation and offer comments on each.

VMT-1 *The Project shall implement a Voluntary Commute Trip Reduction (CTR) measure. The purpose of the CTR would be to encourage alternative modes of transportation such as carpooling, which would reduce VMT. A proposed CTR program for this project could include providing on-site and/or online commute information services including information on available transit and ride coordination for employees.*

We note that nearly 90 percent of the Project is comprised of a very large high cube warehouse. These normally operate round the clock with workers working on three different shifts per day. The refrigerated warehouse component may also operate on multiple shifts per day. Transit information is useless to workers whose shifts start or end in the deep night hours when transit is inoperative and nearly useless to day-shift workers when transit routes are sparse and infrequent, as they are in Apple Valley, per the routes and schedules of the Victor Valley Transit Authority that is the public transit provider in Apple Valley.[2]

The California Air Pollution Control Officers Association ("CAPCOA") indicates that the maximum ride share potential is about 4 percent of workers in suburban areas and 0 in rural areas. It also indicates that participation in carpooling is about zero among night shift workers.[3] All in all, mitigation measure VTM-1 is revealed as a sham mitigation. Additionally, since it is purely voluntary, the applicant can terminate it at any time, making it unenforceable.

VMT-2 *The Project shall provide designated carpool/vanpool parking in desirable locations on-site to encourage and facilitate employees to carpool/vanpool to work and reduce VMT.*

[2] https://www.applevalley.org/services/transit
[3] [3]See Op. Cit., 2022 Edition, Appendix C, Table T-8.1 and Op. Cit., page 93.

See comment above regarding impediments to meaningful car- and vanpooling for this Project. Since the applicant is providing copious light duty passenger vehicle parking, presumably intended for workers and all presumably free and none particularly more advantageous than other spaces, IVMT-2 is a sham mitigation measure with no effect. If the Town wanted to make this measure at least somewhat effective, it would require the Project to charge a daily or monthly fee for employee parking while making the designated carpool spaces free.

VMT-3 *The Project shall install end-of-trip facilities, including bicycle parking and lockers, which encourage and facilitate employees to use alternative modes of transportation and thus reduce VMT.*

End of trip facilities such as providing an unspecified and presumably small number of bike racks and lockers is a trifling measure unless there are significant connecting facilities through the community and a substantial number of local employees within a range where active transportation is practical. Given the DEIR's projection of the average VMT per employee in the cumulative condition being 56.77 miles, this suggests the *average employee* will commute about 28 miles to work and 28 miles home and that about half the workers will commute more to much more than 28 miles each way. This an unreasonably long distance to assume the use of bicycle transit. This means that, by the DEIR's own estimate, there will be very few workers living within commute distances in practical range of active transportation (say 4 or 5 miles) that would be served by Measure VMT-3.

The DEIR analysts could have computed this number adapting the same transportation model approach they used to compute the average VMT per employee but they didn't bother to do so. Realizing that no workers whose shifts start or end in the deep night hours are candidates to use active transportation, the obvious futility of measure VMT-3 is evident. If the Project actually wanted to achieve more active transportation commutes, it would *give* an electric bicycle to any employee who a) commits to commuting by that means at least 3 times per week while remaining employed at the Project for a period of, say, 2 years and b) commits to returning the bicycle in good working order or pay for it if they leave employment at the Project before the specified period or fail to commute by bike at the specified frequency.

VMT-4 *The Project shall install on-site electric vehicle charging stations beyond what is required by the California Green Building Code Standards (CALGreen), as amended, at designated parking areas. Although this measure would not directly reduce VMT, it would reduce greenhouse gas (GHG) emissions.*

While the assurance that they will be able to get their vehicles charged while at work may be helpful in influencing some employees decision to purchase and commute by electric vehicles, a more effective measure than just having the charging stations would be to having the charging be free to employees or at least at a below-market price. The Project could also have a program to make a cash payment to employees who agree to purchase a zero-emissions vehicle and use it for commute purposes at an agreed-upon frequency and for an agreed-upon period of time with further agreement by the employee to reimburse the payment if they fail to purchase the vehicle, commute by it at the specified frequency and period of time or if they leave employment at the Project before the specified period of time.

VMT-5 *The Project shall install sidewalks along the Project frontage on Lafayette Street and provide connections to existing and future bus stops to improve multi-modal access.*

Unless there is complete connectivity between facilities on the Project frontage and significant sections of the Towns residential development, this is like a bridge to nowhere. It also may be a false claim to consider as a mitigation feature things that are ordinarily required to conform to Town roadway and development standards.

The Town Can Only Approve the Project Under Findings of Overriding Considerations If the Project Implements All Feasible Mitigations. Clearly, If Mitigation Measures Are Limited To Those Defined In the DEIR, the Project Cannot Be Said To Have Done So.

The DEIR indicates the Project egregiously exceeds the Town's extremely lenient adopted VMT Significant Impact threshold. The significance threshold is extremely lenient as it is set at VMT per capita and per employee levels that will naturally occur with build-out of the Town's and surrounding area General Plans. It reflects zero effort to carry out the legislative intent of S.B. 743 to reduce VMT and thereby greenhouse gas emissions or to follow the specific guidance of the Governor's Office of Planning and Research ("OPR").[4] As documented above, the DEIR's proposed VMT mitigation measures are very ineffectual. The Project must implement all feasible mitigation measures in order to be eligible for approval under overriding considerations. Measures which could be implemented include:

[4] OPR is the organization that administers CEQA and its guidelines. The specific guidance regarding VMT is to set Significance Thresholds at 85 percent of current per capita and per employee baseline levels.

- Provide free parking in designated spaces for employees who carpool while charging daily or monthly fees for parking for employees who commute by driving alone.

- *Give* an electric bicycle to any employee who a) commits to commuting by that means at least 3 times per week while remaining employed at the Project for a period of, say, 2 years and b) commits to returning the bicycle in good working order or pay for it if they leave employment at the Project before the specified period or fail to commute by bike at the specified frequency.

- Make a cash payment to employees who agree to purchase a zero-emissions vehicle and use it for commute purposes at an agreed-upon frequency and for an agreed-upon period of time with further agreement by the employee to reimburse the payment if they fail to purchase the vehicle, fail to commute by it at the specified frequency and period of time or if they leave employment at the Project before the specified period of time.

- Pay an excess VMT mitigation fee established by the Town to be used by the Town to fund transportation infrastructure such as active transportation linkages and transit route extensions and service frequencies in areas where they would be most productive in reducing area VMT. This is similar to off-site transportation improvement development fees.

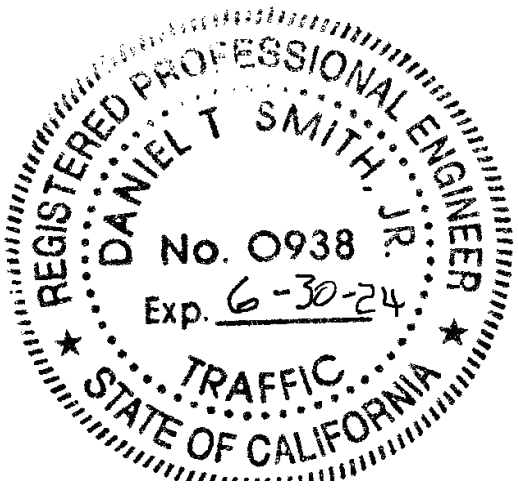
- Or the excess VMT mitigation fee could be utilized to subsidize development of owner-purchased or rental housing at sites close to the Project site or in low VMT areas of the Town. Specific terms for Project employees to have priority in purchase or rental of said units would be established.

Conclusion

This concludes my current comments on the Redwood West Development Project DEIR. Mitigation proposed in the DEIR is inadequate and further mitigation is feasible and necessary.

Sincerely,

Smith Engineering & Management
A California Corporation



Daniel T. Smith Jr., P.E.
President

SMITH ENGINEERING & MANAGEMENT

DANIEL T. SMITH, Jr.
President

EDUCATION

Bachelor of Science, Engineering and Applied Science, Yale University, 1967
Master of Science, Transportation Planning, University of California, Berkeley, 1968

PROFESSIONAL REGISTRATION

California No. 21913 (Civil) Nevada No. 7969 (Civil) Washington No. 29337 (Civil)
California No. 938 (Traffic) Arizona No. 22131 (Civil)

PROFESSIONAL EXPERIENCE

Smith Engineering & Management, 1993 to present. President.
DKS Associates, 1979 to 1993. Founder, Vice President, Principal Transportation Engineer.
De Leuw, Cather & Company, 1968 to 1979. Senior Transportation Planner.
Personal specialties and project experience include:

Litigation Consulting. Provides consultation, investigations and expert witness testimony in highway design, transit design and traffic engineering matters including condemnations involving transportation access issues; traffic accidents involving highway design or traffic engineering factors; land use and development matters involving access and transportation impacts; parking and other traffic and transportation matters.

Urban Corridor Studies/Alternatives Analysis. Principal-in-charge for State Route (SR) 102 Feasibility Study, a 35-mile freeway alignment study north of Sacramento. Consultant on I-280 Interstate Transfer Concept Program, San Francisco, an AA/EIS for completion of I-280, demolition of Embarcadero freeway, substitute light rail and commuter rail projects. Principal-in-charge, SR 238 corridor freeway/expressway design/environmental study, Hayward (Calif.) Project manager, Sacramento Northeast Area multi-modal transportation corridor study. Transportation planner for I-80N West Terminal Study, and Harbor Drive Traffic Study, Portland, Oregon. Project manager for design of surface segment of Woodward Corridor LRT, Detroit, Michigan. Directed staff on I-80 National Strategic Corridor Study (Sacramento-San Francisco), US 101-Sonoma freeway operations study, SR 92 freeway operations study, I-880 freeway operations study, SR 152 alignment studies, Sacramento RTD light rail systems study, Tasman Corridor LRT AA/EIS, Fremont-Warm Springs BART extension plan/EIR, SRs 70/99 freeway alternatives study, and Richmond Parkway (SR 93) design study.

Area Transportation Plans. Principal-in charge for transportation element of City of Los Angeles General Plan Framework, shaping nations largest city two decades into 21'st century. Project manager for the transportation element of 300-acre Mission Bay development in downtown San Francisco. Mission Bay involves 7 million gsf office/commercial space, 8,500 dwelling units, and community facilities. Transportation features include relocation of commuter rail station; extension of MUNI-Metro LRT; a multi-modal terminal for LRT, commuter rail and local bus; removal of a quarter mile elevated freeway; replacement by new ramps and a boulevard; an internal roadway network overcoming constraints imposed by an internal tidal basin; freeway structures and rail facilities; and concept plans for 20,000 structured parking spaces. Principal-in-charge for circulation plan to accommodate 9 million gsf of office/commercial growth in downtown Bellevue (Wash.). Principal-in-charge for 64 acre, 2 million gsf multi-use complex for FMC adjacent to San Jose International Airport. Project manager for transportation element of Sacramento Capitol Area Plan for the state governmental complex, and for Downtown Sacramento Redevelopment Plan. Project manager for Napa (Calif.) General Plan Circulation Element and Downtown Riverfront Redevelopment Plan, on parking program for downtown Walnut Creek, on downtown transportation plan for San Mateo and redevelopment plan for downtown Mountain View (Calif.), for traffic circulation and safety plans for California cities of Davis, Pleasant Hill and Hayward, and for Salem, Oregon.

Transportation Centers. Project manager for Daly City Intermodal Study which developed a $7 million surface bus terminal, traffic access, parking and pedestrian circulation improvements at the Daly City BART station plus development of functional plans for a new BART station at Colma. Project manager for design of multi-modal terminal (commuter rail, light rail, bus) at Mission Bay, San Francisco. In Santa Clarita Long Range Transit Development Program, responsible for plan to relocate system's existing timed-transfer hub and development of three satellite transfer hubs. Performed airport ground transportation system evaluations for San Francisco International, Oakland International, Sea-Tac International, Oakland International, Los Angeles International, and San Diego Lindberg.

Campus Transportation. Campus transportation planning assignments for UC Davis, UC Berkeley, UC Santa Cruz and UC San Francisco Medical Center campuses; San Francisco State University; University of San Francisco; and the University of Alaska and others. Also developed master plans for institutional campuses including medical centers, headquarters complexes and research & development facilities.

Special Event Facilities. Evaluations and design studies for football/baseball stadiums, indoor sports arenas, horse and motor racing facilities, theme parks, fairgrounds and convention centers, ski complexes and destination resorts throughout western United States.

Parking. Parking programs and facilities for large area plans and individual sites including downtowns, special event facilities, university and institutional campuses and other large site developments; numerous parking feasibility and operations studies for parking structures and surface facilities; also, resident preferential parking .

Transportation System Management & Traffic Restraint. Project manager on FHWA program to develop techniques and guidelines for neighborhood street traffic limitation. Project manager for Berkeley, (Calif.), Neighborhood Traffic Study, pioneered application of traffic restraint techniques in the U.S. Developed residential traffic plans for Menlo Park, Santa Monica, Santa Cruz, Mill Valley, Oakland, Palo Alto, Piedmont, San Mateo County, Pasadena, Santa Ana and others. Participated in development of photo/radar speed enforcement device and experimented with speed humps. Co-author of Institute of Transportation Engineers reference publication on neighborhood traffic control.

Bicycle Facilities. Project manager to develop an FHWA manual for bicycle facility design and planning, on bikeway plans for Del Mar, (Calif.), the UC Davis and the City of Davis. Consultant to bikeway plans for Eugene, Oregon, Washington, D.C., Buffalo, New York, and Skokie, Illinois. Consultant to U.S. Bureau of Reclamation for development of hydraulically efficient, bicycle safe drainage inlets. Consultant on FHWA research on effective retrofits of undercrossing and overcrossing structures for bicyclists, pedestrians, and handicapped.

MEMBERSHIPS

Institute of Transportation Engineers Transportation Research Board

PUBLICATIONS AND AWARDS

Residential Street Design and Traffic Control, with W. Homburger *et al*. Prentice Hall, 1989.

Co-recipient, Progressive Architecture Citation, *Mission Bay Master Plan*, with I.M. Pei WRT Associated, 1984.

Residential Traffic Management, State of the Art Report, U.S. Department of Transportation, 1979.

Improving The Residential Street Environment, with Donald Appleyard et al., U.S. Department of Transportation, 1979.

Strategic Concepts in Residential Neighborhood Traffic Control, International Symposium on Traffic Control Systems, Berkeley, California, 1979.

Planning and Design of Bicycle Facilities: Pitfalls and New Directions, Transportation Research Board, Research Record 570, 1976.

Co-recipient, Progressive Architecture Award, *Livable Urban Streets, San Francisco Bay Area and London*, with Donald Appleyard, 1979.

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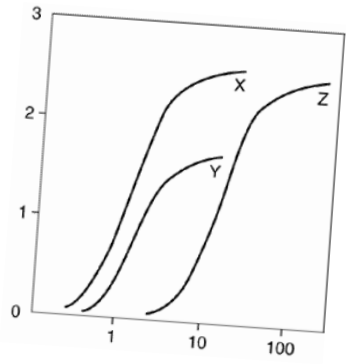
EXHIBIT B



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May 5, 2023

Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Attn: Mr. Richard Franco

Subject: Comment Letter on Draft Environmental Impact Report (DEIR) For The Development At Dale Evans and Lafayette SCH No. 2022120356, Apple Valley, California.

Dear Mr. Franco:

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the above referenced project.

Clark's review of the materials in no way constitutes a validation of the conclusions or materials contained within the DEIR. If we do not comment on a specific item, this does not constitute acceptance of the item.

Project Description:

The proposed project plans to develop a 1,207,544 square foot (sf) warehouse distribution center (high cube warehouse) on a 77.95± acre parcel of land in north Apple Valley (Town of Apple Valley, hereafter referred to as the "Town"). The Project site is bounded by Lafayette Street to the north, Dachshund Avenue to the east, Burbank Avenue to the south, and Dale Evans Parkway to the west. The Project will include half-width improvements of all four of these streets to their ultimate General Plan half-width. Specifically, the Town will require widening of Dale Evans Parkway to a 71 foot half-width consistent with its designation as a Parkway; Lafayette and Dachshund to a 44 foot half-width, consistent with their designation as a Secondary; and Burbank to

a 33 foot half-width, consistent with its designation as an Industrial roadway.

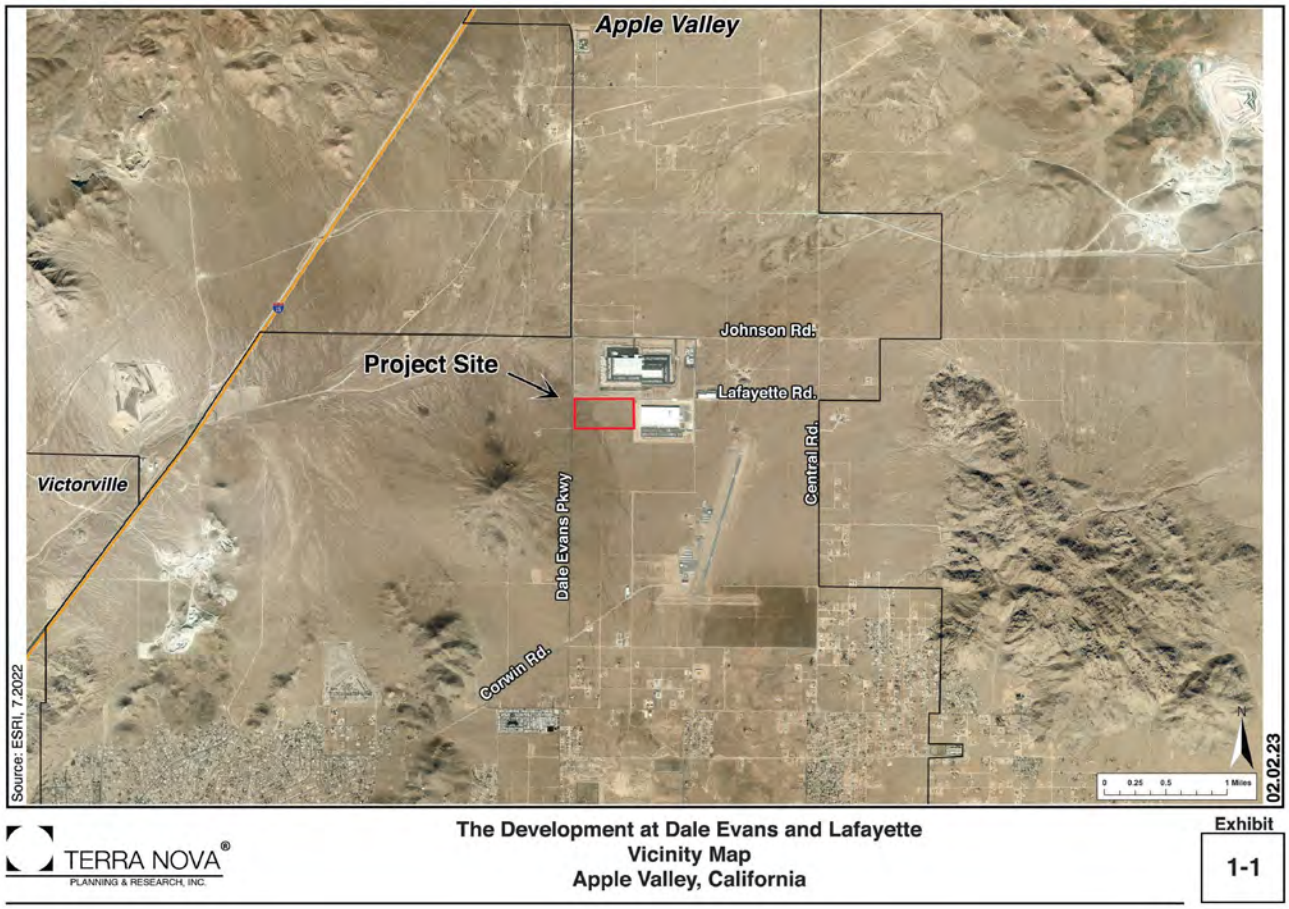

Figure 1: Project Site Location

According to the project description in the DEIR, the building footprint is proposed to total 1,207,544 square feet, with 1,147,167 square feet of warehouse space, and 60,377 square feet of office space. The building is expected to extend up to 50 feet in height. No user has been identified for the space. For purposes of this analysis, it has been assumed that 85% of the space would be used for dray warehousing, and 15% for cold storage. The warehouse will be accessible via 204 dock doors, while the offices will each be provided with a single man-door

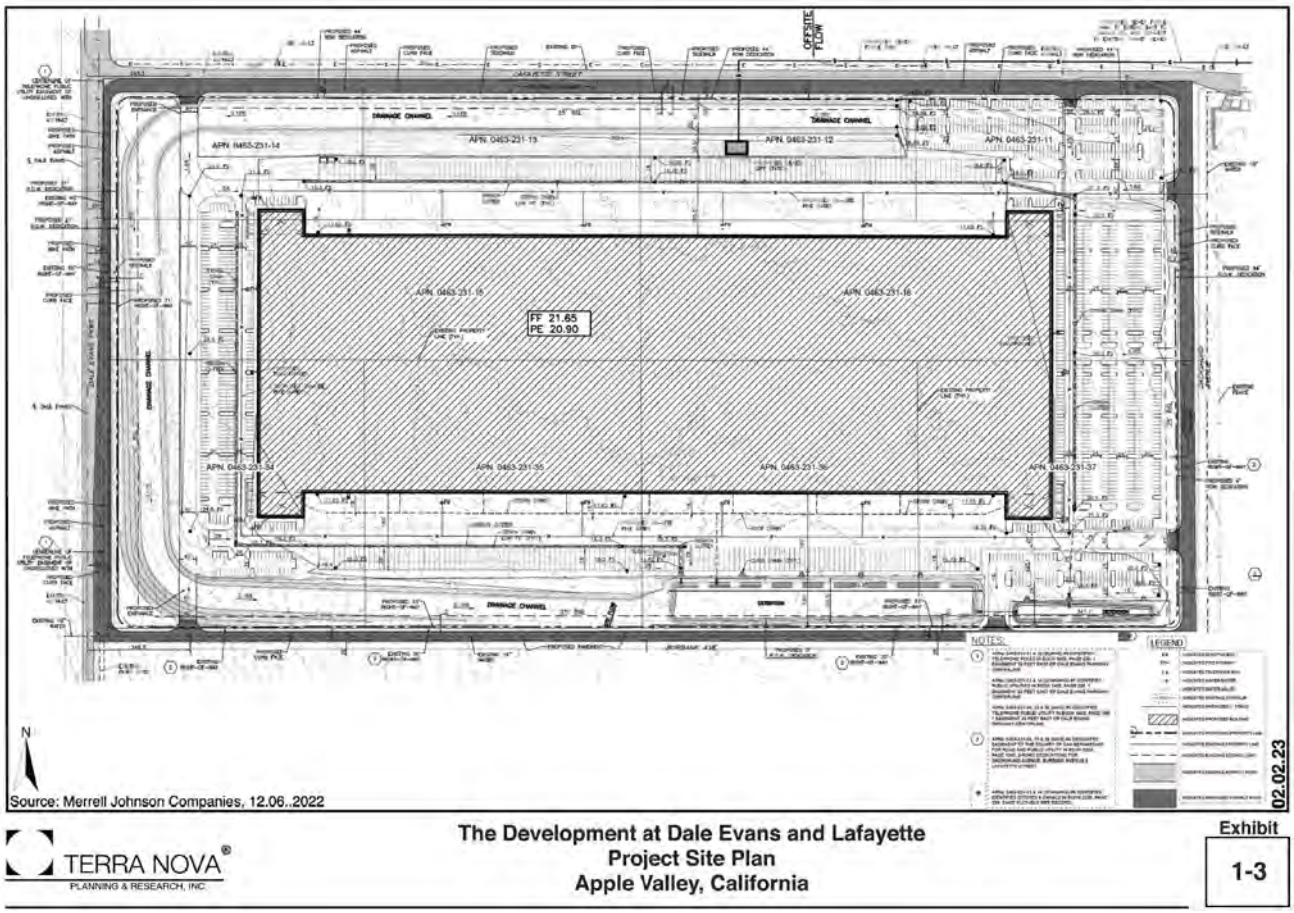

Figure 2: Project Site Plan

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The DEIR concludes that no mitigation is required to prevent impacts from the project on air quality in the area. This conclusion is in conflict with the facts provided within the DEIR.

Specific Comments:

1. The DEIR Fails To Address Impacts from Exposure to *Coccidiodes Immitis* (Valley Fever Cocci) From Particulate Matter Released From Site During Construction Activities of The Project.

The DEIR fails to adequately address the known presence/issue of *Coccidiodes Immitis* (Valley Fever Cocci) in the High Desert Portion of Southern California. Dust exposure is one of the primary risk factors for contracting Valley Fever (via *Coccidiodes imimitis (cocci)* exposure). When soil

containing the *cocci* spores are disturbed by construction activities, the fungal spores become airborne, exposing construction workers and other nearby sensitive receptors.

The fungus lives in the top 2 to 12 inches of soil. When soil containing this fungus is disturbed by activities such as digging, vehicles, construction activities, dust storms, or during earthquakes, the fungal spores become airborne. According to the Air Quality Analysis of the DEIR, the project will involve 40 days of site preparation which will disturb 60 acres of soil and 80 days of grading activities which will disturb 240 acres of soil.

3.0 Construction Detail

Construction Phase

Phase Number	Phase Name	Phase Type	Start Date	End Date	Num Days Week	Num Days	Phase Description
1	Site Preparation	Site Preparation	1/1/2023	2/24/2023	5	40	
2	Grading	Grading	2/25/2023	6/16/2023	5	80	
3	Building Construction	Building Construction	6/17/2023	12/1/2024	5	380	
4	Architectural Coating	Architectural Coating	6/1/2024	12/27/2024	5	150	
5	Paving	Paving	7/17/2024	9/10/2024	5	40	

Acres of Grading (Site Preparation Phase): 60

Acres of Grading (Grading Phase): 240

Acres of Paving: 13.81

Figure 3: Details From CalEEMOD Analysis of Project

The most at-risk populations are construction and agricultural workers.[1] Construction workers are the very population that would be most directly exposed by the Project. A refereed journal article on occupational exposures notes that "[l]abor groups where occupation involves close contact with the soil are at greater risk, especially if the work involves dusty digging operations."[2]

The potentially exposed population in surrounding areas is much larger than construction workers because the nonselective raising of dust during Project construction will carry the very small spores, 0.002–0.005 millimeters ("mm"), into nonendemic areas, potentially exposing large non-

[1] Lawrence L. Schmelzer and R. Tabershaw, Exposure Factors in Occupational Coccidioidomycosis, *American Journal of Public Health and the Nation's Health*, v. 58, no. 1, 1968, pp. 107–113, Table 3; available at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1228046/?page=1.

[2] *Ibid.*, p. 110.

Project-related populations.[3],[4] These very small particles are not controlled by conventional construction dust control mitigation measures.

Since 2015, the number of cases of Valley Fever in San Bernardino County has increased from 29 in 2015 to 229 in 2019, as reported by the California Department of Public Health (CDPH).[5] In 2021, 66 cases were recorded in San Bernardino County,[6] twice as many as the amounts reported in 2015. In the first quarter of 2023, San Bernardino County reported 45 cases.

Standard fugitive dust mitigation measures are not adequate to protect construction workers and nearby sensitive receptors from this risk. The City should require measures from the Proponent to actively suppress the spread of VF by:

1. Include specific requirements in the Project's Injury and Illness Prevention Program (as required by Title 8, Section 3203) regarding safeguards to prevent Valley Fever.
2. Control dust exposure:
    - Apply chemical stabilizers at least 24-hours prior to high wind event;
    - Apply water to all disturbed areas a minimum of three times per day. Watering frequency should be increased to a minimum of four times per day if there is any evidence of visible wind-driven fugitive dust;
    - Provide National Institute for Occupational Safety and Health (NIOSH)-approved respirators for workers with a prior history of Valley Fever.
    - Half-face respirators equipped with a minimum N-95 protection factor for use during worker collocation with surface disturbance activities. Half-face

[3] Schmelzer and Tabershaw, 1968, p. 110; Pappagianis and Einstein, 1978

[4] Pappagianis and Einstein, 1978, p. 527 ("The northern areas were not directly affected by the ground level windstorm that had struck Kern County but the dust was lifted to several thousand feet elevation and, borne on high currents, the soil and arthrospores along with some moisture were gently deposited on sidewalks and automobiles as 'a mud storm' that vexed the residents of much of California." The storm originating in Kern County, for example, had major impacts in the San Francisco Bay Area and Sacramento).

[5] CDPH. 2019. Epidemiologic Summary of Valley Fever (Coccidiodomycosis) In California, 2019. Surveillance and Statistics Section, Infection Diseases Branch, Division of Communicable Disease Control, Center For Infectious Diseases, California Department of Public Health. https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CocciEpiSummary2019.pdf

[6] CDPH. 2023. Coccidiodomycosis In California, Provisional Monthly Report, January – March 2023 (as of March 31, 2023). Surveillance and Statistics Section, Infection Diseases Branch, Division of Communicable Disease Control, Center For Infectious Diseases, California Department of Public Health. https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CocciinCAProvisionalMonthlyReport.pdf

respirators equipped with N-100 or P-100 filters should be used during digging activities. Employees should wear respirators when working near earth-moving machinery.

- Prohibit eating and smoking at the worksite, and provide separate, clean eating areas with hand-washing facilities.
- Avoid outdoor construction operations during unusually windy conditions or in dust storms.
- Consider limiting outdoor construction during the fall to essential jobs only, as the risk of cocci infection is higher during this season.

3. Prevent transport of cocci outside endemic areas:
    - Thoroughly clean equipment, vehicles, and other items before they are moved off-site to other work locations.
    - Prevent spillage or loss of bulk material from holes or other openings in the cargo compartment's floor, sides, and/or tailgate;
    - Load all haul trucks such that the freeboard is not less than six inches when material is transported on any paved public access road and apply water to the top of the load sufficient to limit VDE to 20 percent opacity; or cover haul trucks with a tarp or other suitable cover.
    - Provide workers with coveralls daily, lockers (or other systems for keeping work and street clothing and shoes separate), daily changing and showering facilities.
    - Clothing should be changed after work every day, preferably at the work site.
    - Train workers to recognize that cocci may be transported offsite on contaminated equipment, clothing, and shoes; alternatively, consider installing boot-washing.
    - Post warnings onsite and consider limiting access to visitors, especially those without adequate training and respiratory protection.
4. Improve medical surveillance for employees:
    - Employees should have prompt access to medical care, including suspected work-related illnesses and injuries.
    - Work with a medical professional to develop a protocol to medically evaluate employees who have symptoms of Valley Fever.
    - Consider preferentially contracting with 1-2 clinics in the area and communicate

with the health care providers in those clinics to ensure that providers are aware that Valley Fever has been reported in the area. This will increase the likelihood that ill workers will receive prompt, proper and consistent medical care.

- Respirator clearance should include medical evaluation for all new employees, annual re-evaluation for changes in medical status, and annual training, and fit-testing.
- Skin testing is not recommended for evaluation of Valley Fever.[7]
- If an employee is diagnosed with Valley Fever, a physician must determine if the employee should be taken off work, when they may return to work, and what type of work activities they may perform.

The mitigation measures identified in this comment, based on actual experience during construction of solar and wind projects in endemic areas, should be required for the Project. The Town must include concrete measures like the ones listed above in a revised DEIR of the Project.

2. The Average Truck Trip Length Of 40 Miles Used In The Air Quality Analysis Underestimates The Average Distance To Distribution Centers In Southern California.

According to the operations air quality analysis of Project,[8] SCAQMD assumes that truck trip length should be set to 40 miles in CalEEMod. This statement does not comport with the reality of where warehoused materials will ship from in the region. The 40-mile distance is insufficient to allow vehicles to travel to the major ports in the Southern California region – Los Angeles and Long Beach.

[7] Short-term skin tests that produce results within 48 hours are now available. See Kerry Klein, NPR for Central California, New Valley Fever Skin Test Shows Promise, But Obstacles Remain, November 21, 2016; available at http://kvpr.org/post/new-valley-fever-skin-test-shows-promise-obstacles-remain.

[8] Terra Nova Planning & Research, Inc. 2023. Air Quality and Greenhouse Gas Analysis Report for Development at Dale Evans and Lafayette and CalEEMod Runs. January 2023. Pg 22

Figure 4: 40 Mile Radius From Project Site

The distance from the Project Site to the Ports of Los Angeles/Long Beach is approximately 80 miles, almost twice the value assumed in the air quality analyis. Using the 80-mile daily truck trip will nearly double the daily emissions of pollutants associated with the Project, increasing the Regional burden and resulting in a potentially significant impact. The Town must address the impact of this issue in a revised DEIR.

3. The Project's Analysis Fails To Adequately Consider The Use of Mobile TRU's Onsite

The analysis performed of the Project fails to consider the use of Transport Refrigeration Units

(TRUs). Transport Refrigeration Units (TRU) are refrigeration systems powered by diesel internal combustion engines designed to refrigerate or heat perishable products that are transported in various containers, including truck vans, semi-truck trailers, shipping containers, and railcars. CARB[9] defines diesel exhaust as a complex mixture of inorganic and organic compounds that exists in gaseous, liquid, and solid phases. CARB and U.S. EPA identify 40 components of the exhaust as suspected human carcinogens, including formaldehyde, 1,3-butadiene, and benzo[a]pyrene. While acrolein is one of the most TAC in diesel exhaust it is not the only TAC. The inhalation unit risk factor identified by OEHHA for use in risk assessments is for the particulate matter (DPM) fraction of diesel exhaust and not the vapor phase components identified by CARB and U.S. EPA.

The DEIR's air quality and greenhouse gas analysis used CalEEMod, a statewide land use emissions model, to estimate Project construction and operational emissions.[10] Given the lack of a clear project description of the use of the Project Site, it is therefore reasonable to conclude that TRUs are a foreseeable project component. One option described in the DEIR is the assumption that 15% of the warehouse space could be used for cold storage. The CalEEMOD analysis does not include the emissions from the mobile refrigeration units (TRUs) that are associated with either the trucks or the trailers coming to the site.

The CALEEMOD model output is based on a number of assumptions about the Project, including that only 15% of the warehouse space will be used for cold storage and 85% for dry storage.[11] When the underlying assumptions of the Project are changed the emissions calculated for the Project will also change. For example, the DEIR estimates that the Project's operation will generate a daily maximum of 86.20 lbs/day of CO_2 and 127.32 lbs/day of NO_x, assuming 15% cold storage.[12] The DEIR also analyzes a Project alternative in which the only difference from the proposed Project is 100% dry storage and no cold storage.[13] Under this alternative, the DEIR finds that the Project's operation will generate a daily maximum of 82.41 lbs/day of CO2 and 122.51 lbs/day of

[9] CARB. 1998. Report to the Air Resources Board on the Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Part A, Public Exposure To, Sources and Emissions of Diesel Exhaust In California. April 22, 1998. Pg A-1.

[10] DEIR, Appendix B, pg. 4.

[11] *Id.,* pg. 21.

[12] *Id.*, Table 3-2 at pg. 23.

[13] DEIR, pg. 3.4-2.

NO_x.[14] The DEIR makes clear that eliminating cold storage from the analysis decreases emissions; conversely, if the Project were to have in excess of 15% cold storage uses, emissions would increase. This is especially relevant with respect to NO_x, given that the DEIR's estimates of the Project's operational NO_x emissions are close to the Mojave Desert Air Quality Management District's ("MDAQMD") daily threshold of 137 lbs/day.

Based on the 2022 Amendments to the TRU Airborne Toxic Control Measure (ATCM), a trailer TRU, domestic shipping container TRU, railcar TRU, or TRU generator set with a model year 2023 or newer engine, must ensure that the engine is certified to meet or outperform the PM emission standard of 0.02 grams per brake horsepower-hour or lower.

The emissions of DPM expressed as $PM_{2.5}$ from the TRUs on site would therefore be equal to the averaged brake horsepower of the TRU multiplied by the load factor multiplied by the number of hours of operation multipled by the $PM_{2.5}$ emission rate of 0.02 grams per brake horsepower multipled by the number of TRUs.

$$PM_{2.5} = BHP * Load * Hrs\ Operation * Emission\ Rate * Number\ TRUs$$

The CALEEMOD analysis shows that 780.07 trucks per day will be utilizing the Project Site. Assuming 15% of the trucks have TRUs there would be 117.01 TRUs onsite per day. On average TRUs are operated 12 hours per day. The TRUs would generate an additional 1.3 pounds per day of $PM_{2.5}$ as diesel exhaust unaccounted for in the DEIR.

4.2 Trip Summary Information

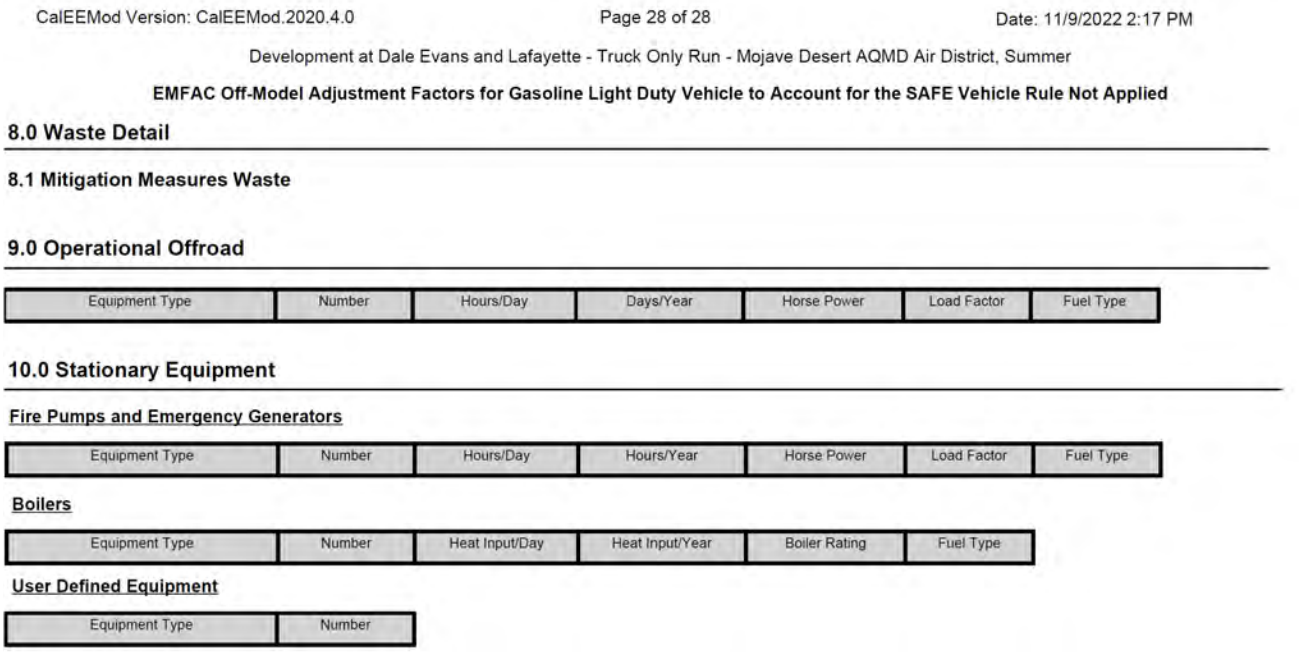
	Average Daily Trip Rate			Unmitigated	Mitigated
Land Use	Weekday	Saturday	Sunday	Annual VMT	Annual VMT
Parking Lot	0.00	0.00	0.00		
Unrefrigerated Warehouse-No Rail	780.07	780.07	780.07	11,357,831	11,357,831
Total	780.07	780.07	780.07	11,357,831	11,357,831

Since the TRU DPM emissions have not been quantified in the DEIR, there is an intentional underestimation of the foreseeable health risk to the community as well as the associated GHG emissions from the operation of the TRUs. The Town must assess the impacts of the use of TRUs in a revised EIR since they assume the Project will include cold storage and are allowing for the potential future use of TRUs onsite.

[14] DEIR, Appendix B, Table 6-2 at pg. 50.

4. The Air Quality Analyis Of Operational Emissions Is Incomplete And Fails To Include Emissions From The Fire Pump System That Will Be Installed Onsite.

According to the operations air quality analysis of Project,[15] operational emissions were calculated using the CalEEMOD (Version 2020.4.0) software. In the CalEEMOD outputs provided in the air quality analysis no fire pump system or back up generator systems is included in the analyses.



CalEEMod Version: CalEEMod.2020.4.0 Page 28 of 28 Date: 11/9/2022 2:17 PM

Development at Dale Evans and Lafayette - Truck Only Run - Mojave Desert AQMD Air District, Summer

EMFAC Off-Model Adjustment Factors for Gasoline Light Duty Vehicle to Account for the SAFE Vehicle Rule Not Applied

8.0 Waste Detail

8.1 Mitigation Measures Waste

9.0 Operational Offroad

Equipment Type	Number	Hours/Day	Days/Year	Horse Power	Load Factor	Fuel Type

10.0 Stationary Equipment

Fire Pumps and Emergency Generators

Equipment Type	Number	Hours/Day	Hours/Year	Horse Power	Load Factor	Fuel Type

Boilers

Equipment Type	Number	Heat Input/Day	Heat Input/Year	Boiler Rating	Fuel Type

User Defined Equipment

Equipment Type	Number

Figure 5: CalEEMOD Output

Since the Project includes the option for cold storage a back-up generator (BUG) will be required for emergency situations at the Project site. The Town's analysis is therefore incomplete and must be corrected in a revised environmental impact report for the Project.

[15] Terra Nova Planning & Research, Inc. 2023. Air Quality and Greenhouse Gas Analysis Report for Development at Dale Evans and Lafayette and CalEEMod Runs. January 2023. Pg 21

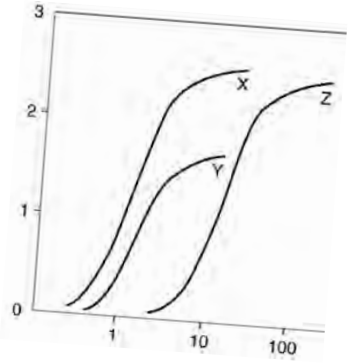
Conclusion

The facts identified and referenced in this comment letter lead me to reasonably conclude that the Project could result in significant impacts if allowed to proceed. A revised environmental impact report should be prepared to address these substantial concerns.

Sincerely,

Exhibit A:

Curriculum Vitae



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James J. J. Clark, Ph.D.

Principal Toxicologist

Toxicology/Exposure Assessment Modeling

Risk Assessment/Analysis/Dispersion Modeling

Education:

Ph.D., Environmental Health Science, University of California, 1995

M.S., Environmental Health Science, University of California, 1993

B.S., Biophysical and Biochemical Sciences, University of Houston, 1987

Professional Experience:

Dr. Clark is a well-recognized toxicologist, air modeler, and health scientist specializing in dose reconstruction. He has 30 years of experience in tying together environmental contaminants measurements to human health impacts. Using environmental fate and transport modeling (SCREEN3, AEROMOD, ISCST3, Johnson-Ettinger Vapor Intrusion Modeling, RESRAD, GENII); exposure assessment modeling (partitioning of contaminants in the environment as well as PBPK modeling); Dr. Clark has testified in Federal and State courts on dose reconstructions for personal injury and in mass tort claims.

LITIGATION SUPPORT

1. Ann Jordan, Bruce Howard Brown, David Gutierrez, Amber Tuffield, Geraldine Valdez, Martha Ann Ratzloff, Bradley Schaak, Cindy Fuhrmann, ,Kay Noble, Cynthia Bauman, and Susan Kaberline v. Terumo-BCT Sterilization Services, Inc. a Colorado Corporation, and Terumo BCT, Inc., a Colorado Corporation. Blake Richard Darnell v. Terumo BCT Sterilization Services, Inc. Terumo BCT, Inc., and John Does No. 1-20. District Court, Jefferson County, Colorado. Case Number 2020CV031457, Case Number 2021CV030474 (consolidated with 2020CV031457), Case Number 2020CV031481.
   Client: Edelson PC & Zaner Harden Law, Denver, Colorado
2. Charles Johnson, Jr. v. BP Exploration & Production Inc., and BP America Production Company United States District Court Eastern District of Louisiana. Case No. 20-01329
   Client: Downs Law Group, Coconut Grove, Florida

3. Deepwater Horizon BELO Cases. (Kenneth Davenport, 5:18-cv-245); (Lester Jenkins, 5:19-cv-260); (Micheal Moulder, 5:19-cv-12); (Dwight Stiples, 5:19-cv-310). United States District Court Northern District of Florida, Pensacola Division. Case 3:19cv363
   Client: Downs Law Group, Coconut Grove, Florida
4. James Noel v. BP Exploration and Production Inc. et al. United States District Court Southern District of Alabama (Mobile) Civil Action No 1:19-cv-00694
   Client: Downs Law Group, Coconut Grove, Florida
5. Richard Allen Dufour v. BP Exploration and Production Inc. et al. U.S District Court Southern District of Mississippi Southern Division Civil Action No. 19-cv-00591
   Client: Downs Law Group, Coconut Grove, Florida
6. Client: Marc and Jill Czapla v. Republic Services, Inc., Bridgeton Landfill, LLC, vs. Cotter Corporation, N.S.L., Circuit Court of St. Louis County, State of Missouri, Division 17
   Client: Humphrey, Farrington & McClain, P.C., Independence, Missouri
7. Don Strong, et al. vs. Republic Services, Inc., Bridgeton Landfill, LLC, vs. Cotter Corporation, N.S.L., Case No.: 17SL-CC01632-01 Circuit Court of St. Louis County, State of Missouri, Division 17
   Client: Humphrey, Farrington & McClain, P.C., Independence, Missouri
8. Arnold Goldstein, Hohn Covas, Gisela Janette La Bella, et al.. vs. Exxon Mobil Corporation, PBF Energy Inc., Torrance Refining Company LLC, et al., Case No.: 2:17-cv-02477DSF United States District Court for the Central District of California
   Client: Sher Edling, LLP, San Francisco, California and Matern Law Group , PC., El Segundo, California
9. Mary Ann Piccolo V. Headwaters Incorporated, et al. Seventh Judicial Court In and For Carbon County, State of Utah. Case No. 130700053
   Client: Law Offices of Roy L. Mason. Annapolis, Maryland
10. Case: Tracey Coleman V. Headwaters Incorporated, et al. Seventh Judicial Court In and For Carbon County, State of Utah. Case No. 140902847
    Client: Law Offices of Roy L. Mason. Annapolis, Maryland
11. Case: Scott D. McClurg, et al. v. Mallinckrodt Inc. and Cotter Corporation. Lead Case No.: 4:12CV00361 AGF United States District Court Eastern District of Missouri Eastern Division.
    Client: Environmental Law Group, Birmingham, AL.
12. Louise Kowall, Donna Kopecek, and Evelyn Vehouc v, United States Steel Corporation. Count of Common Pleas of Washington County, Pennsylvania Civil Division. Case No. 2017-3355
    Client: Bonnet, Fairbourn, Friedman & Balint, PC, Phoenix, Arizona, Jacks Legal Group, PLLC, Morgantown, West Virginia, and The Calwell Law Practice, LC, Charleston, West Virginia.

SELECTED AIR MODELING RESEARCH/PROJECTS

Client(s) – Multiple

Indoor Air Evaluations, California: Performed multiple indoor air screening evaluations and risk characterizations consistent with California Environmental Protection Agency's (Cal/EPA) Department of Toxic Substances Control (DTSC) and Regional Water Quality Control Board (RWQCB) methodologies. Characterizations included the use of DTSC's modified Johnson & Ettinger Model and USEPA models, as well as the attenuation factor model currently advocated by Cal/EPA's Office of Environmental Health and Hazard Assessment (OEHHA).

Client – Confidential

Dr. Clark performed a comprehensive evaluation of criteria pollutants, air toxins, and particulate matter emissions from a carbon black production facility to determine the impacts on the surrounding communities. The results of the dispersion model were used to estimate acute and chronic exposure concentrations to multiple contaminants and were be incorporated into a comprehensive risk evaluation.

Client – Confidential

Dr. Clark performed a comprehensive evaluation of air toxins and particulate matter emissions from a railroad tie manufacturing facility to determine the impacts on the surrounding communities. The results of the dispersion model have been used to estimate acute and chronic exposure concentrations to multiple contaminants and have been incorporated into a comprehensive risk evaluation.

EMERGING/PERSISTENT CONTAMINANT RESEARCH/PROJECTS

Client: City of Santa Clarita, Santa Clarita, California

Dr. Clark managed the oversight of the characterization, remediation and development activities of a former 1,000 acre munitions manufacturing facility for the City of Santa Clarita. The site is impacted with a number of contaminants including perchlorate, unexploded ordinance, and volatile organic compounds (VOCs). The site is currently under a number of regulatory consent orders, including an Immanent and Substantial Endangerment Order. Dr. Clark assisted the impacted municipality with the development of remediation strategies, interaction with the responsible parties and stakeholders, as well as interfacing with the regulatory agency responsible for oversight of the site cleanup.

Client – Confidential, Los Angeles, California

Dr. Clark is performing a comprehensive review of the potential for pharmaceuticals and their by-products to impact groundwater and surface water supplies. This evaluation will include a review if available data on the history of

pharmaceutical production in the United States; the chemical characteristics of various pharmaceuticals; environmental fate and transport; uptake by xenobiotics; the potential effects of pharmaceuticals on water treatment systems; and the potential threat to public health. The results of the evaluation may be used as a briefing tool for non-public health professionals.

PUBLIC HEALTH/TOXICOLOGY

Client: Brayton Purcell, Novato, California

Dr. Clark performed a toxicological assessment of residents exposed to methyl-tertiary butyl ether (MTBE) from leaking underground storage tanks (LUSTs) adjacent to the subject property. The symptomology of residents and guests of the subject property were evaluated against the known outcomes in published literature to exposure to MTBE. The study found that residents had been exposed to MTBE in their drinking water; that concentrations of MTBE detected at the site were above regulatory guidelines; and, that the symptoms and outcomes expressed by residents and guests were consistent with symptoms and outcomes documented in published literature.

Client: Covanta Energy, Westwood, California

Evaluated health risk from metals in biosolids applied as soil amendment on agricultural lands. The biosolids were created at a forest waste cogeneration facility using 96% whole tree wood chips and 4 percent green waste. Mass loading calculations were used to estimate Cr(VI) concentrations in agricultural soils based on a maximum loading rate of 40 tons of biomass per acre of agricultural soil. The results of the study were used by the Regulatory agency to determine that the application of biosolids did not constitute a health risk to workers applying the biosolids or to residences near the agricultural lands.

Client: Kaiser Venture Incorporated, Fontana, California

Prepared PBPK assessment of lead risk of receptors at a 1,100-acre former steel mill. This evaluation was used as the basis for granting closure of the site by lead regulatory agency.

RISK ASSESSMENTS/REMEDIAL INVESTIGATIONS

Kaiser Ventures Incorporated, Fontana, California

Prepared health risk assessment of semi-volatile organic chemicals and metals for a fifty-year old wastewater treatment facility used at a 1,100-acre former steel mill. This evaluation was used as the basis for granting closure of the site by lead regulatory agency.

ANR Freight - Los Angeles, California

Prepared a comprehensive Preliminary Endangerment Assessment (PEA) of petroleum hydrocarbon and metal contamination of a former freight depot. This evaluation was as the basis for reaching closure of the site with lead regulatory agency.

Kaiser Ventures Incorporated, Fontana, California

Prepared comprehensive health risk assessment of semi-volatile organic chemicals and metals for 23-acre parcel of a 1,100-acre former steel mill. The health risk assessment was used to determine clean up goals and as the basis for granting closure of the site by lead regulatory agency. Air dispersion modeling using ISCST3 was performed to determine downwind exposure point concentrations at sensitive receptors within a 1 kilometer radius of the site. The results of the health risk assessment were presented at a public meeting sponsored by the Department of Toxic Substances Control (DTSC) in the community potentially affected by the site.

Unocal Corporation - Los Angeles, California

Prepared comprehensive assessment of petroleum hydrocarbons and metals for a former petroleum service station located next to sensitive population center (elementary school). The assessment used a probabilistic approach to estimate risks to the community and was used as the basis for granting closure of the site by lead regulatory agency.

Client: Confidential, Los Angeles, California

Managed oversight of remedial investigation most contaminated heavy metal site in California. Lead concentrations in soil excess of 68,000,000 parts per billion (ppb) have been measured at the site. This State Superfund Site was a former hard chrome plating operation that operated for approximately 40-years.

Client: Confidential, San Francisco, California

Coordinator of regional monitoring program to determine background concentrations of metals in air. Acted as liaison with SCAQMD and CARB to perform co-location sampling and comparison of accepted regulatory method with ASTM methodology.

Client: Confidential, San Francisco, California

Analyzed historical air monitoring data for South Coast Air Basin in Southern California and potential health risks related to ambient concentrations of carcinogenic metals and volatile organic compounds. Identified and reviewed the available literature and calculated risks from toxins in South Coast Air Basin.

IT Corporation, North Carolina

Prepared comprehensive evaluation of potential exposure of workers to air-borne VOCs at hazardous waste storage facility under SUPERFUND cleanup decree. Assessment used in developing health based clean-up levels.

Past Professional Associations

American Public Health Association (APHA)
Association for Environmental Health and Sciences (AEHS)
American Chemical Society (ACS)
International Society of Environmental Forensics (ISEF)
Society of Environmental Toxicology and Chemistry (SETAC)

Publications and Presentations:

Books and Book Chapters

Sullivan, P., **J.J. J. Clark,** F.J. Agardy, and P.E. Rosenfeld. (2007). *Synthetic Toxins In The Food, Water and Air of American Cities*. Elsevier, Inc. Burlington, MA.

Sullivan, P. and **J.J. J. Clark**. 2006. *Choosing Safer Foods, A Guide To Minimizing Synthetic Chemicals In Your Diet*. Elsevier, Inc. Burlington, MA.

Sullivan, P., Agardy, F.J., and **J.J.J. Clark**. 2005. *The Environmental Science of Drinking Water*. Elsevier, Inc. Burlington, MA.

Sullivan, P.J., Agardy, F.J., **Clark, J.J.J.** 2002. *America's Threatened Drinking Water: Hazards and Solutions*. Trafford Publishing, Victoria B.C.

Clark, J.J.J. 2001. "TBA: Chemical Properties, Production & Use, Fate and Transport, Toxicology, Detection in Groundwater, and Regulatory Standards" in *Oxygenates in the Environment.* Art Diaz, Ed.. Oxford University Press: New York.

Clark, J.J.J. 2000. "Toxicology of Perchlorate" in *Perchlorate in the Environment.* Edward Urbansky, Ed. Kluwer/Plenum: New York.

Clark, J.J.J. 1995. Probabilistic Forecasting of Volatile Organic Compound Concentrations At The Soil Surface From Contaminated Groundwater. UMI.

Baker, J.; **Clark, J.J.J.**; Stanford, J.T. 1994. Ex Situ Remediation of Diesel Contaminated Railroad Sand by Soil Washing. Principles and Practices for Diesel Contaminated Soils, Volume III. P.T. Kostecki, E.J. Calabrese, and C.P.L. Barkan, eds. Amherst Scientific Publishers, Amherst, MA. pp 89-96.

Journal and Proceeding Articles

Tam L. K.., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) A Statistical Analysis Of Attic Dust And Blood Lipid Concentrations Of Tetrachloro-p-Dibenzodioxin (TCDD) Toxicity Equialency Quotients (TEQ) In Two Populations Near Wood Treatment Facilities. Organohalogen Compounds, Volume 70 (2008) page 002254.

Tam L. K.., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) Methods For Collect Samples For Assessing Dioxins And Other Environmental Contaminants In Attic Dust: A Review. Organohalogen Compounds, Volume 70 (2008) page 000527

Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** (2007). "Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." *Environmental Research.* 105:194-199.

Rosenfeld, P.E., **Clark, J. J.,** Hensley, A.R., and Suffet, I.H. 2007. "The Use Of An Odor Wheel Classification For The Evaluation of Human Health Risk Criteria For Compost Facilities" Water Science & Technology. 55(5): 345-357.

Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** 2006. "Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." The 26th International Symposium on Halogenated Persistent Organic Pollutants – DIOXIN2006, August 21 – 25, 2006. Radisson SAS Scandinavia Hotel in Oslo Norway.

Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2005. "The Value Of An Odor Quality Classification Scheme For Compost Facility Evaluations" The U.S. Composting Council's 13th Annual Conference January 23 - 26, 2005, Crowne Plaza Riverwalk, San Antonio, TX.

Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2004. "The Value Of An Odor Quality Classification Scheme For Urban Odor" WEFTEC 2004. 77th Annual Technical Exhibition & Conference October 2 - 6, 2004, Ernest N. Morial Convention Center, New Orleans, Louisiana.

Clark, J.J.J. 2003. "Manufacturing, Use, Regulation, and Occurrence of a Known Endocrine Disrupting Chemical (EDC), 2,4-Dichlorophnoxyacetic Acid (2,4-D) in California Drinking Water Supplies." National Groundwater Association Southwest Focus Conference: Water Supply and Emerging Contaminants. Minneapolis, MN. March 20, 2003.

Rosenfeld, P. and **J.J.J. Clark**. 2003. "Understanding Historical Use, Chemical Properties, Toxicity, and Regulatory Guidance" National Groundwater Association Southwest Focus Conference: Water Supply and Emerging Contaminants. Phoenix, AZ. February 21, 2003.

Clark, J.J.J., Brown A. 1999. Perchlorate Contamination: Fate in the Environment and Treatment Options. In Situ and On-Site Bioremediation, Fifth International Symposium. San Diego, CA, April, 1999.

Clark, J.J.J. 1998. Health Effects of Perchlorate and the New Reference Dose (RfD). Proceedings From the Groundwater Resource Association Seventh Annual Meeting, Walnut Creek, CA, October 23, 1998.

Browne, T., **Clark, J.J.J.** 1998. Treatment Options For Perchlorate In Drinking Water. Proceedings From the Groundwater Resource Association Seventh Annual Meeting, Walnut Creek, CA, October 23, 1998.

Clark, J.J.J., Brown, A., Rodriguez, R. 1998. The Public Health Implications of MtBE and Perchlorate in Water: Risk Management Decisions for Water Purveyors. Proceedings of the National Ground Water Association, Anaheim, CA, June 3-4, 1998.

Clark J.J.J., Brown, A., Ulrey, A. 1997. Impacts of Perchlorate On Drinking Water In The Western United States. U.S. EPA Symposium on Biological and Chemical Reduction of Chlorate and Perchlorate, Cincinnati, OH, December 5, 1997.

Clark, J.J.J.; Corbett, G.E.; Kerger, B.D.; Finley, B.L.; Paustenbach, D.J. 1996. Dermal Uptake of Hexavalent Chromium In Human Volunteers: Measures of Systemic Uptake From Immersion in Water At 22 PPM. Toxicologist. 30(1):14.

Dodge, D.G.; **Clark, J.J.J.**; Kerger, B.D.; Richter, R.O.; Finley, B.L.; Paustenbach, D.J. 1996. Assessment of Airborne Hexavalent Chromium In The Home Following Use of Contaminated Tapwater. Toxicologist. 30(1):117-118.

Paulo, M.T.; Gong, H., Jr.; **Clark, J.J.J.** (1992). Effects of Pretreatment with Ipratroprium Bromide in COPD Patients Exposed to Ozone. American Review of Respiratory Disease. 145(4):A96.

Harber, P.H.; Gong, H., Jr.; Lachenbruch, A.; **Clark, J.**; Hsu, P. (1992). Respiratory Pattern Effect of Acute Sulfur Dioxide Exposure in Asthmatics. American Review of Respiratory Disease. 145(4):A88.

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Gong, H., Jr.; Simmons, M.S.; McManus, M.S.; Tashkin, D.P.; Clark, V.A.; Detels, R.; **Clark, J.J.** (1990). Relationship Between Responses to Chronic Oxidant and Acute Ozone Exposures in Residents of Los Angeles County. American Review of Respiratory Disease. 141(4):A70.

Tierney, D.F. and **J.J.J. Clark.** (1990). Lung Polyamine Content Can Be Increased By Spermidine Infusions Into Hyperoxic Rats. American Review of Respiratory Disease. 139(4):A41.