Public Comment – Items from the Audience

From: Raymond Dart <[redacted]>
Sent: Tuesday, August 15, 2023 5:05 PM
To: Public Comment <publiccomment@cityoftracy.org>
Subject: Item from the audience for Council Meeting on August 15, 2023.

Good evening Mayor, Mayor Pro Tem, and Council Members,

It upsets me to see Mayor Young, a leader of a city, constantly harasses our city attorney to the point that has put our city attorney in poor health due to severe stress. A clerical error, which has since been restored by the state bar, was displayed and publicized by the you, Mayor Young, and called for the city attorney's termination. Mayor Young, it is a disgrace for a city leader to air hatred for one employee while covering for another former employee using the race card.

Fact: Mayor Young received campaign contributions from Surland, a developer in Tracy.

Fact: our city attorney, Patel, has background in land use and has been relentlessly holding the developers accountable by making them build infrastructure before building more houses and warehouses.

Fact: Mayor Young harasses the city attorney at every council meeting.

Fact: Mayor Young has been voting in the interests of the developers time again and again.

Fact: while presiding over city council meetings, Mayor Young allows parties from Surland developer clapping and making comments loudly from the audience and not giving these parties any repercussions.

Fact: Mayor Young would argue with a speaker while this speaker was making a public comment.

Mayor Young, respect is earned, not given! Start earning your respect! Stop airing YOUR dirty laundry to the public. Stop harassing the city attorney and let her do her job! Our city needs an attorney who can stand up to developers and hold them accountable. We do not need more houses or more warehouses. What we need is another hospital. Our city has doubled its population in the last 20 years. Yet we still have one same hospital. Mayor Young, instead of attacking the city attorney, put your energy in building another hospital so your name can be attached to something positive, not the dirty politics you have been spreading with your name.

From: Chrystena Rockett <[redacted]>
Sent: Tuesday, August 15, 2023 5:29 PM
To: Tracy City Council <tracycitycouncil@cityoftracy.org>
Subject: Agenda item 3A - 08/15/2023 Council meeting

Tracy City Council

Re: City Council Meeting 08/15/2023

Agenda item 3A

Members of the Tracy City Council:

Land use decisions made by local officials must balance development with public facilities and services while addressing the economic, environmental and social needs of the community. Communities thrive when there is harmony between economic growth, environmental preservation, and the social needs of their residents. The proposed addition of such an extensive warehousing space seems to disregard these critical considerations.

The uncertainty surrounding future tenants/occupants of these warehouses is particularly troubling.

Given the existing situation in our area, where numerous warehouses have remained vacant for extended periods plus the other 15 million plus square feet of warehouse/industrial projects already approved, there is legitimate concern that this new development could result in more empty structures. The prospect of unused warehousing not only fails to contribute to our community's growth but potentially exacerbates existing challenges, including blight and economic stagnation.

This community's well being greatly depends on sustainable development that benefits ALL stakeholders. Introducing a massive amount of warehouse space without a clear understanding of it's purpose and occupants does not align with the responsible growth that our city deserves. Instead, we should be focusing on projects that promote real job creation, enhance local infrastructure, and address the evolving needs of our residents.

In light of these concerns, I urge you to reconsider the approval of the agenda item 3A. I believe that our city council has a responsibility to ensure that development aligns with our community's values and long-term vision and needs.

Thank you for your time and consideration.

Sincerely,

Christina Gonzaga – Rockett

Resident, Tracy

Public Comment – Item 3.A

From: Genna McIntosh [redacted]
Sent: Tuesday, August 15, 2023 1:18 PM
To: Public Comment <publiccomment@cityoftracy.org>
Subject: Tracy Alliance Project, Council mtg 8/15

My name is Genna McIntosh, I'm a resident of Banta and live across the street from the Tracy Alliance site, with my husband and 3 daughters. I'm writing you to ask you to vote against this project.

I've spoken to many of you Council members before and I've heard the same sentiments . "The pros have to outweigh the cons" and "Tracy wants to be a good neighbor". And I can tell you as a Banta community member there are no pros, Banta will not see any of the revenue from this project. In fact, the school district will actually lose money from the loss of property tax revenues from the annexed land.
And I understand the importance of jobs it'll bring, my husband is also a union trade worker who has to commute to the bay area, I know what local jobs would mean to the trades. But these jobs will be short-lived, and then my family, and the Banta community will be left with the repercussions, pollution and traffic. Tracy is not in need of any more warehouse jobs, prior to this meeting I searched for warehouse job listings in Tracy and they were not in short supply. The pros do not outweigh the cons, and this project does not make sense for Tracy. I have a petition with close to 500 signatures of people who also agree that this is not something Tracy wants.The only pro for this site is the revenue that it will bring Tracy, and if the only reason to approve this is for Tracy's financial gain, then that doesn't sound like being a good neighbor to me.

With more warehouses will come more traffic, which means more semi trucks, traveling down Grantline, through Banta illegally, I see them every day that I drive that road, huge trucks ignoring a little sign. Not only are those trucks going to destroy our road, but they're driving in front of residence and near our school. They shouldn't be there, and nothing is being done to stop them, which leads me to believe that

nothing will be done to stop the influx of trucks that will come with more warehouses.

You are all aware of the air quality in our area, we have the highest asthma rates. Allowing this project to go less than a mile from a school is not being a good neighbor to Banta, allowing that much pollution to happen near children is unacceptable. You've all seen the EIR Air quality findings, after mitigation the impacts are still "significant and unavoidable", Banta School children deserve better, Banta residents deserve better, Tracy residents deserve better, and this council has the power to make sure that happens. You have the power to make sure that Tracy is a good neighbor to Banta.

I'm asking that you really look at the pros and cons of this project and not think about how it will help Tracy's revenue, but how it will actually affect the people who live here, the people who will be affected by this decision.

Please vote against this project or at the very least, postpone until better mitigation measures are made.

Appreciate your time,
Genna McIntosh

Public Comment – Agenda Item 3A

From: George Condon <[redacted]
Sent: Wednesday, August 9, 2023 1:24 PM
To: Tracy City Council <tracycitycouncil@cityoftracy.org>; Web - City Manager <CM@cityoftracy.org>; Midori Lichtwardt <Midori.Lichtwardt@cityoftracy.org>; William Dean <William.Dean@cityoftracy.org>; Victoria Lombardo <Victoria.Lombardo@cityoftracy.org>; Adrianne Richardson <Adrianne.Richardson@cityoftracy.org>
Cc: [redacted]
Subject: Tracy Alliance: Economic Benefits

Dear Mayor and Council,

Today's exhibit focuses on the considerable economic benefits the City of Tracy will receive once the Tracy Alliance is complete and operational based on an analysis by Economic Planning Systems. On August 15th, we will present Economic Planning Systems' slide deck to you.

The recurring economic output, public sector revenues and new jobs will provide significant benefits to the City itself, its workforce and residents while helping local business grow and thrive.

Please email me back or call me at 916-956-0033 if you have questions or suggestions.

Thank you,

George Condon
PARTNER, WEST REGION
[redacted]

Tracy Alliance Brings Ongoing **Economic Outputs, Revenues and Jobs**

Economic Planning Systems conducted an economic analysis of the Tracy Alliance project benefits to the City of Tracy and the greater San Joaquin County area.

Annual Public Sector Revenues

$4 million in property taxes

$382,000 in sales tax

$22,000 in public safety tax

Direct New Jobs & Labor Compensation

1,871 jobs

$63,000 average wages & benefits

The past few years, the City of Tracy and other cities with specific Amazon buildings have deservedly benefited from sales tax generated from e-commerce sales.

In the near future, California may decide to shift the sales tax to the city where the point of delivery occurs.

With the City of Tracy's General Fund budget now balanced, a loss of sales tax revenues would put the general fund budget in deficit.

Cities like Tracy across the state are looking to increase recurring revenues to help offset any future losses in sales tax revenues from e-commerce sales.

Recurring Economic Output from Tracy Alliance

$210 million in goods and services produced from Tracy Alliance

$66 million from business-to-business transactions

$58 million in employee income spent locally

EPS

QUESTIONS?
PLEASE CONTACT GEORGE CONDON
Gcondon@dermody.com
916-956-0033

Public Comment – Item 3.A

From: Geri F <[redacted]>
Sent: Tuesday, August 15, 2023 4:38 PM
To: Public Comment <publiccomment@cityoftracy.org>
Subject: Agenda Item 3A

Dear City Council:

The City of Tracy does not need anymore warehouses or distribution centers when there are still vacant warehouses in existence within the city of Tracy. Tracy is a "Bedroom" community, as such we should be looking at getting amenities that would bring couples and families in to enjoy our assets. We should be looking at bringing more entertainment venues for the youth and families, a hospital, more recreational venues instead of more warehouses that will sit vacant. With the number of new residential buildings that are being constructed, we should be looking at how we can keep and bring consumer dollars into this area, instead of residents here going to other cities for purchases of goods and services.

We are in desperate need of these types of amenities and not warehouses and distribution centers that will sit vacant or under utilized for a short period of time. Generating more money for Tracy's economy will be through consumers being entertained in recreational, retail and through restaurants, not through warehousing and distribution.

Sincerely,

Gerilyn Martin Featherston
Resident and Advocate

--

Golden State Environmental Justice Alliance
Green Jobs & Clean Communities
P.O. Box 79222
Corona, CA 92877

To: City of Tracy City Council

From: Golden State Environmental Justice Alliance

Subject: Tracy Alliance Project EIR

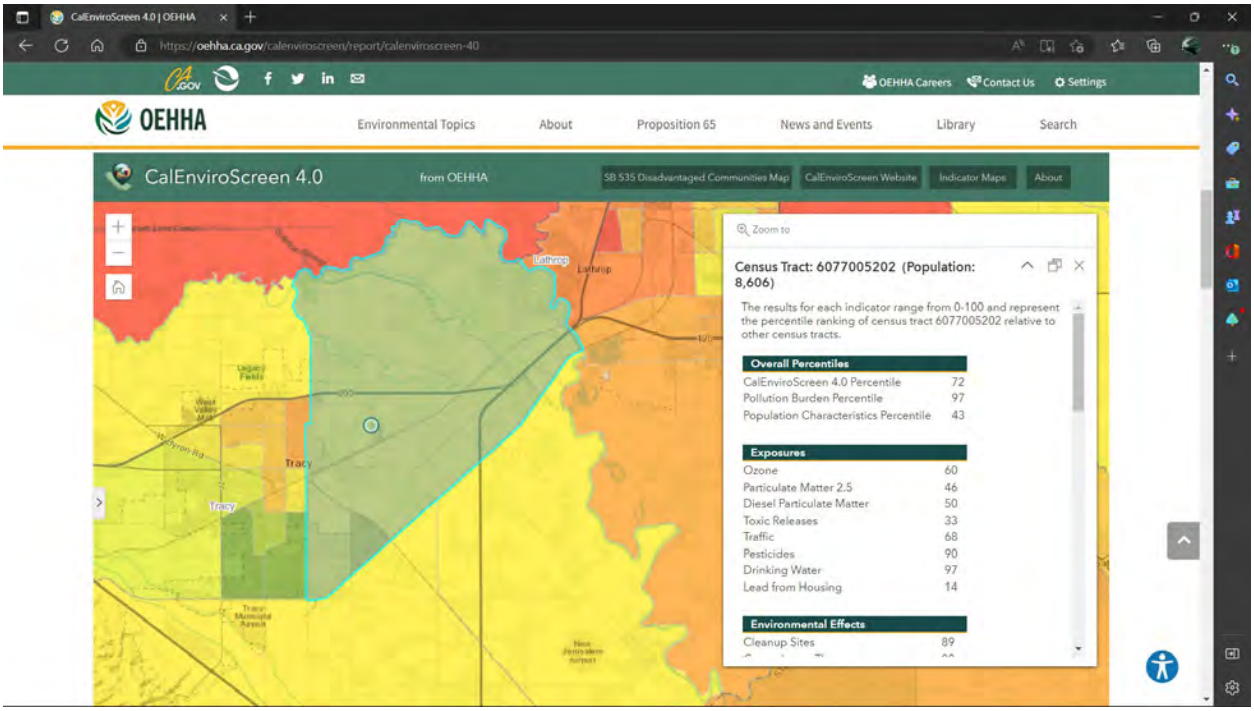
This letter is to serve as further comment in addition to all previously submitted comments and documents by Golden State Environmental Justice Alliance.

CalEnviroScreen Information

CalEnviroScreen is a mapping tool that helps identify California communities that are most affected by many sources of pollution, and where people are often especially vulnerable to pollution's effects. CalEnviroScreen uses environmental, health, and socioeconomic information to produce scores for every census tract in the state. The scores are mapped so that different communities can be compared. An area with a high score is one that experiences a much higher pollution burden than areas with low scores. CalEnviroScreen ranks communities based on data that are available from state and federal government sources. CalEnviroScreen is updated and maintained by The Office of Environmental Health Hazard Assessment, on behalf of the California Environmental Protection Agency.

CalEnviroScreen Data on Tracy Alliance Project Location/Area

The above listed project is in census tract **6077005202** . Overall, when compared to other census tracts, the project site census tract is in the 72nd percentile regarding pollution. As far as pollution burden is concerned, this census tract is in the 97th percentile, meaning only 3% of census tracts have worse pollution burden on their residents. In terms of Ozone, this census tract is in the 60th percentile, Particulate Matter 2.5 46thpercentile, Diesel Particulate Matter 50th percentile, Toxic Releases 33rd percentile and Traffic 68th percentile to name a few.



Conclusion

Consider the above referenced information when making this important decision. Realize that you and the citizens of this area face some of the WORST POLLUTION BURDEN in the entire state of California.

It is the responsibility of the City's elected and appointed officials to make environmentally responsible development decisions. Based on the CalEnviroScreen data, this is more than sufficient evidence of the further air quality impacts that the citizenry of Tracy will continue to encounter with further development of another warehouse. We are not against development, as we believe it is necessary for further economic growth in our current society. Development needs to be conducted with the highest of expectations to ensure the local population does not suffer further air quality burdens.

We stand by our comments and believe the EIR is flawed and should be redrafted and recirculated for public review.

Respectfully Submitted,

Peter Sheehan

Peter Sheehan
GSEJA

Source -
https://experience.arcgis.com/experience/4af93cf9888a424481d2868391af2d82/page/home/?data_id=dataSource_2-1754d6afdb4-layer-9%3A7306

Glossary of Terms

Ozone - Amount of daily maximum 8-hour Ozone concentration

Particulate Matter 2.5 - Annual mean PM 2.5 concentrations

Diesel Particulate Matter - Diesel PM emissions from on-road and non-road sources

Toxic Releases - Toxicity-weighted concentrations of modeled chemical releases to air from
facility emissions and off-site incineration.

Traffic -Traffic density, in vehicle-kilometers per hour per road length, within 150 meters of the census tract boundary.

Public Comment – Item 3.A

From: Karen Moore <[redacted]>
Sent: Monday, August 14, 2023 11:59 AM
To: Public Comment <publiccomment@cityoftracy.org>
Subject: City Council Comment Letter Re: Tracy Alliance Project 8/15/23 agenda item 3A

I am writing to ask you to not approve this project due to the lack of adequate solutions to mitigate health and safety issues that adding another warehouse to this area will cause.

For years Banta citizens have been asking the City of Tracy to consider how their expansion in warehouses is hurting their community, (See link below). The city has made promises but as of today many of the solutions have not materialized and the one that has been implemented (signage) is largely ignored. With each million square feet of warehouses comes increased pollution and decreasing health and safety for this community. While Tracy will see the tax benefit of this project Banta only sees the negatives.

The city and county continues to make promises but when asked when those deadlines do not materialize by the projected timelines they are told that their city, county, state and federal representatives just have not been able to secured enough financing to meet those promises.

Here are some links to articles that shows how in years past the citizens of Banta have been promised mitigations and still they wait, and the area becomes more dangerous become of increased truck traffic. The recent Transportation report published by SJCOG shows a significant deficit in needed funds for road maintenance and improvements. Therefore, without the funds Banta's health and safety statistics will be in decline. For what more construction jobs? More tax revenue? Why do our elected leaders not require sensible standards? The California's Attorney General wrote Best Practices for Warehouse Growth. Many city's have passed ordinances and I am hoping someday soon Tracy will pass an ordiance similar to Fontana California
https://oag.ca.gov/system/files/attachments/press-docs/Final%20Signed%20Fontana%20Ordinance.pdf

Voters expect their elected public official educate themselves before voting on a Warehouse project. Without reading and understanding the Attorney General's guidance document their vote on approving any warehouse project does a disservice to the voters who elected them. (Here is a presentation I created to educate the community on warehouse growth.

https://docs.google.com/presentation/d/1UJMLZFEbYSee595KWVHqj1orMtF8yZqxWQzgtRforps/edit)

Article on increasing truck traffic.
https://www.ttownmedia.com/tracy_press/banta-community-fear-for-public-safety-with-increasing-truck-traffic/article_bc12556c-0149-11ec-84f5-17c44fde2920.html

"According to a study put out by the county in 2017, traffic on Grant Line Road is projected to increase from 7,000 vehicles per day to 21,000 vehicles per day with approximately 16% of the increase resulting

from heavy truck traffic in the next 20 years. The study also says that Grant Line Road currently has a higher-than-average collision rate.

"The statewide average is 1.20 per-million vehicle miles traveled, as compared to the existing 1.88 per-million vehicles miles traveled on this corridor," the document says."

Article on Banta asking for warehouse mitigation and the signage
https://www.ttownmedia.com/tracy_press/news/banta-off-limits-to-large-trucks/article_cbda3b18-667a-11e7-b47e-83421156687e.html
CHP officer
"Rashid said the road is restricted because it was not built to handle the wider turn radius that longer trucks need."

The trucking and warehouse industry is referred to as a "captive industry" by regulators in the NTSA, EPA and other protection agencies because they have failed to pass rules that would mitigate health and safety rule for these industries. Therefore, the communities they move into, which so often are disadvantaged communities, do not have the power or the money to fight them they only have their voice. (They are referred to as a captive industry because its powerful lobbyists fight sensible legislation leaving the citizens as the victims of this quid pro quo relationships in higher fatalities, low birth rates, asthma and lung cancer that comes from diesel fuel which is many times more hazardous that automobile exhaust.)

Furthermore, there is an incentive for the truck drivers to ignore the laws:

"Although regulations limit the number of hours a truck driver is allowed to be behind the wheel, most truckers are paid on a per-mile basis; essentially, if they are not moving, they do not get paid.

Because of this, there is an incentive to skirt regulations in order to log as many miles as possible. At the same time, there is a labor shortage in the trucking industry – and companies lose revenue when goods are not delivered on time. Therefore, trucking companies have an incentive not to enforce regulations.

Another reason truckers and their employers are able to get around the rules is because miles are still logged on paper. Although electronic logging technology has been available for many years, trucking companies as well as independent owner-operators have resisted the adoption of such record keeping methods – and the accountability it would bring.

Yet another factor that litigation attorneys are seeing is equipment failure due to a lack of proper maintenance. Again, this goes back to trucking companies' ongoing attempts to maximize profits by cutting operation costs – and ultimately, **big rig accident victims**pay the price."

I ask that you please listen to the voices and vote to not approve this project without better mitigation measures.

Karen Moore

Public Comment – Agenda Item 3A

From: Karen Moore <[redacted]>
Sent: Monday, August 14, 2023 3:54 PM
To: Public Comment <publiccomment@cityoftracy.org>
Subject: Battery pack weight vs diesel fuel as it concerns Agenda Item 3A

I keep hearing the trucking lobbyists talking points they are using to block legislation on Zero Emission trucks, some of their talking points are weight, time to fill their tanks and/or batteries and distance they can travel before needing to refill. A typical truck has a 150 gallon gas tank that equal 1249 pounds (because liquid is very heavy). Hence why even now they are tearing up our streets by ignoring their approved truck routes to save time.

Here is an article that addresses this talking point for a electric battery.

https://www.teslarati.com/how-much-tesla-semi-truck-battery-pack-weigh/#google_vignette

"…That means that the Semi, under our estimates, is roughly two tons heavier than would be a standard day cab big truck in the Class 8 category. This means the Semi would be that much less capable in terms of freight hauling that's offset by its **unprecedented all-electric performance**. That amount, however, is probably not enough to stop the primary buyers of a day cab truck like this from balking at a purchase. The weight difference alone would be repaid in potential fuel savings, tax incentives, green marketing, and maintenance costs."
Bottom line is technology very quickly moving in this direction and probably faster then legislation (thanks to the lobbyist), and certainly before the Tracy Alliance Project is completed we should see even more advancements in this field, making the talking point on truck weight moot. But this isn't the only technology being brought to market in the Zero Emissions race in logistics. Truck manufacturers are also testing Hydrogen fueled trucks which. I have no doubt they tricking counter talking points to scare uninformed leader and legislator with some other talking point. It would appear gas (hydrogen) wins out over battery and fueling time. So I would ask you to push back on the lobbyist and developer's talking points.

We asked the developers to require their tenant move into Zero Emission vehicles when the supply becomes available. We are open to a step process for truck replacement so as to not put to much economic burden on their renter or buyer. But again there is so much funding and tax benefit and economic benefits it hard to hear the talking point that its an economic disadvantage on any of our request.

Such a small request when we still are aware of the damage the trucks will be doing to the community roads by ignoring approved truck routes and yet they have no problem saying them with a straight face.

We hope our city leaders will protect the voters health and safety and push back on these talking points.

Thank you,

Karen Moore

Public Comment – Item 3.A

From: Margo Praus <[redacted]>
Sent: Tuesday, August 15, 2023 8:35 AM
To: Public Comment <publiccomment@cityoftracy.org>
Subject: Agenda Item 3.A , Tracy City Council Meeting 8/15/20223

Good evening, Mayor and Councilmembers,

I am Margo Praus, a long-time resident of San Joaquin County and chair of the local Sierra Group.

We know that warehouse development in San Joaquin county has exploded in recent years, with severe environmental consequences that cannot be denied. The thousands of daily truck trips that each project adds, causes serious pollution to our already failing air quality and harms nearby communities.

This Alliance Project is one of these many projects and we must start to look at the cumulative effects of these projects. It's not one project with a small set of severe consequences. It's many projects all adding to the harm to our community. This particular project will impose an excessive burden on Banta, a small, disadvantaged community. It harms the air we breathe, the safety of our streets, the effects to our Ag land and to our waterways which also must be protected! Our failing air quality has led to a significant increase of asthma cases, of exacerbated respiratory and cardiac diseases, and of early death in our county. A health risk assessment ought to have been completed but was not.

At a minimum, to improve project developments in our community, this project must follow the California Attorney General's report on Warehousing Best Practices.
https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf

At this time, Tracy is not the only city working on this problem. The Manteca City Council is discussing incorporating these potential mitigations within their General Plan; the Stockton City Council is working on an ordinance with mitigations that would apply to the many projects in their area. And we're here today hoping to hear that you, the leaders of Tracy, will act to protect the health and environment of our community.

● Each building should include sufficient rooftop solar array and battery storage to provide the necessary power for the facilities.

● Facility operations must use domiciled, clean fleet vehicles.

● Adopt standards to provide 100% electrification of all heavy-duty trucks domiciled on the project by the end of 2025 or when commercially available, whichever date is later.

● Sufficient electric fast charging stations shall be available for the domiciled fleet and employee vehicles.

● Sufficient heavy-duty truck charging stations shall be on-site and available to accommodate and stay ahead of the need as our world transitions to Zero Emission heavy-duty vehicles.

● Truck idling should be limited to a max of three minutes. No truck parking on residential streets.

● A significant buffer zone with a wall and vegetative barrier separating the project from residences and other sensitive receptors.

● Each project shall comply with LEED green building standards

● Noise and Light pollution must also be taken into account.

● A comprehensive community benefits agreement for the community to use as improvements to the area such as air filtration improvements and tree planting projects.

● A hiring policy to train and recruit a good portion of the workforce locally

For many years, the San Joaquin Valley Air Pollution Control District has stated that our region cannot meet federal air quality standards. That the Valley needs to go beyond the already strict control limits and implement further emission restrictions. An ordinance put forth by the city of Tracy that would require all developers to incorporate these standards, would be a welcome approach and a sign that Tracy understands its responsibility to our citizens. It's time for Tracy to insist that developers treat the city and our citizens as a Good Neighbor and implement standards that will protect the health of our community.

Thank you for the opportunity to speak.
Margo Praus
Chair, Delta-Sierra Group of the Sierra Club
[redacted]

Public Comment – Agenda Item 3A

From: Mike Burton [redacted]>
Sent: Tuesday, August 15, 2023 4:03 PM
To: Tracy City Council <tracycitycouncil@cityoftracy.org>; Web - City Clerk <CityClerk@cityoftracy.org>; Web - City Manager <CM@cityoftracy.org>
Cc: [redacted]>
Subject: Re-submittal of Exhibits to the Sierra Club's April 13, 2023 Letter re the Tracy Alliance Project and FEIR, 2 of 2

Dear Mayor Young and Honorable Members of the City Council:

Attached please find Exhibits F-I of the April 13, 2023 letter from Heather M. Minner on behalf of our client, the Sierra Club, in regards to the Tracy Alliance Project.

Please contact me directly if you have any trouble accessing the document.

Would you please reply to this email confirming you have received the exhibits? Thank you.

Sincerely,
Mike Burton

Public Comment – Item 3A

From: Mike Burton <[redacted]>
Sent: Tuesday, August 15, 2023 4:03 PM
To: Tracy City Council <tracycitycouncil@cityoftracy.org>; Web - City Clerk <CityClerk@cityoftracy.org>; Web - City Manager <CM@cityoftracy.org>
Cc: [redacted]
Subject: Re-submittal of Exhibits to the Sierra Club's April 13, 2023 Letter re the Tracy Alliance Project and FEIR, 1 of 2

Dear Mayor Young and Honorable Members of the City Council:

On April 13, 2023, I transmitted to you correspondence from attorney Heather M. Minner on the Tracy Alliance Project and Final EIR, on behalf of our client, the Sierra Club. Due to file size, the exhibits to the April letter were not included as an attachment to the e-mail, but were provided through a OneDrive link. We noticed the Response to Comments included within the City's Agenda for the August 15 hearing did not include or refer to any of the exhibits to the April 13 letter. To ensure the City acknowledges the exhibits, we are re-sending them as e-mail attachments. This e-mail contains Exhibits A-E. I will send a follow-up e-mail that contains Exhibits F-I.

Please contact me directly if you have any trouble accessing the document.

Would you please reply to this email confirming you have received the exhibits? Thank you.

Sincerely,
Mike Burton

[redacted]

Public Comment – Item 3.A

From: Mike Burton <[redacted]>
Sent: Tuesday, August 15, 2023 5:55 PM
To: Tracy City Council <tracycitycouncil@cityoftracy.org>; Web - City Clerk <CityClerk@cityoftracy.org>; Web - City Manager <CM@cityoftracy.org>
Cc: [redacted]
Subject: Comments on Agenda Item 3.A (Tracy Alliance Project) City Council August 15 Meeting

Dear Mayor Young and Honorable Members of the City Council:

Please find attached a letter from Shute, Mihaly & Weinberger and attaching responses from expert air quality consultants, submitted on behalf of the Sierra Club, detailing how the EIR for the Tracy Alliance Project fails to comply with CEQA and the Project contains numerous significant impacts without sufficient mitigation, threatening local air quality and public health. The Sierra Club will also be handing in these comments at the hearing.

Please contact me if you unable to open the attachment.

Please acknowledge receipt of this email and attached letter. Thank you.

Sincerely,
Mike Burton

SHUTE, MIHALY & WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

HEATHER M. MINNER
Attorney
Minner@smwlaw.com

August 15, 2023

Via Hand Delivery and Electronic Mail

Tracy City Council
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
tracycitycouncil@cityoftracy.org
cityclerk@cityoftracy.org
cm@cityoftracy.org

Re: City Council Consideration of the Tracy Alliance Project

Dear Mayor Young and Honorable Members of the City Council:

This firm represents the Sierra Club Mother Lode Chapter's Delta-Sierra Group in matters relating to the proposed Tracy Alliance Industrial Project. To date, the Delta-Sierra Group has transmitted three letters to the City detailing the myriad ways the Project would adversely impact the health and well-being of nearby residents, in addition to how the Draft and Final Environmental Impact Reports ("DEIR" and "FEIR") prepared in connection with the Project fail to comply with the California Environmental Quality Act ("CEQA"). This includes a letter transmitted on April 13, 2023, which the City posted a last-minute response to after normal business hours the night before the hearing.

Inadequate mitigation

The City failed to meaningfully address the concerns raised in the Delta-Sierra Group's letters. To begin with, contrary to the City's claims, the Project still does not include measures to reduce Air Quality and GHG impacts to the extent feasible.

While the City revised a single air mitigation measure and the Project applicants agreed to certain additional conditions of approval on a voluntary basis, the proposed mitigation measures still fall far short of complying with CEQA. The Project fails to incorporate feasible measures, many of which are being required at similar facilities, such

as specific measures proposed by the Sierra Club to address the following (to name just a few):

- Phasing of construction, so all three parcels cannot be under construction at once,
- funds to provide air filters to the nearby residences and elementary school,
- the installation of solar photovoltaics beyond minimal building code requirements (see Exhibit A),
- zero-emission truck requirements to reduce diesel emissions over the life of the project,
- a prohibition on natural gas use for all facilities,
- sufficient building setbacks from adjacent residences, and
- use of clean, back-up generators.

The City's failure to impose these mitigation measures not only endangers the health of nearby residents, but also violates CEQA.

Incomplete Health Risk Assessment

The City also failed to require any changes to the woefully deficient analysis of environmental impacts contained in the DEIR as discussed in our April 13, 2023 letter. This includes the failure to prepare a comprehensive health risk assessment—which the City attempts to justify by claiming that an assessment of the health risks posed by the Project cannot be done at this stage. (DEIR, 3.3-49.) However, the State Attorney General recently rejected an identical argument put forward by the developer of the Inland Empire-based Airport Gateway Specific Plan. Like the Project, the Airport Gateway Specific Plan simply consisted of land use and zoning changes, but did not propose any particular development. Because of this, the developer asserted no health risk assessment could be conducted. The Attorney General disagreed:

> First, the PEIR fails to conduct a health risk assessment that would measure the impacts of the Project's diesel particulate matter emissions on nearby sensitive receptors. Given that the Project would bring thousands of daily heavy duty truck trips to the surrounding community, the health impacts of emissions from those trucks are one of the most critical pieces of

> information the public and decision-makers need in order to evaluate the environmental effects of this Project. The PEIR asserts that it cannot conduct a health risk assessment "that would accurately reflect risk to sensitive receptors within the project area" because the Project lacks specific development proposals within the plan area. This is not a sufficient justification for omitting discussion of the Project's health impacts. While it is true that conducting a health risk assessment would require making assumptions about the location of emission sources within the plan area, the PEIR in the transportation section discloses the projected location of all truck trips associated with Project buildout. Given that this projection is not too speculative for the transportation section, it is also not too speculative for a health risk assessment. Even if the PEIR's transportation section did not estimate truck locations, the PEIR could make reasonable assumptions about the likely location of the expected truck trips from Project buildout and conduct a health risk assessment.
>
> (Attorney General Letter, Exhibit B, pg. 19.)

The same logic applies here. Like with the Airport Gateway Specific Plan, the DEIR and FEIR prepared in connection with the Project evaluated transportation impacts based on an estimated full build-out of the Project. (DEIR, 3.14-24 ["the proposed project at full buildout is anticipated to generate a total of approximately 4,715 daily trips"].) The Project applicant therefore possesses sufficient information to conduct a comprehensive health risk assessment. The failure to do so threatens the health and well-being of nearby residents, in addition to violating CEQA.

The HSR also still fails to analyze impacts from the very Project timeline contained *in the project description.* It does not evaluate the higher health risks posed by overlap of construction and operation of the three Project phases. Nor does not evaluate risks to sensitive receptors on the south side of the project site, as our air quality expert pointed out and the City completely failed to respond to (since it failed to directly respond to any of our air quality expert's comments).

Air quality experts at Baseline Environmental Consulting reviewed the City's responses to comments regarding the inadequate Health Risk Assessment and concluded that the responses do not address these issues. They identify several disturbing instances where the City failed to conduct the required analysis to analyze the Project's significant health impacts. Baseline's letter is attached as Exhibit C to this letter.

Other responses to our comments simply provide excuses: they do not demonstrate a good faith effort to inform the public and mitigate significant impacts.

A few of the most egregious attempts to dodge the EIR's deficiencies in responding to our comments are discussed below.

- SHUTE-4: We noted the failure to analyze or mitigate emissions from diesel generators. Use of back-up diesel generators is not speculative given the frequent public safety power shutdowns experienced in the state. *See* *https://www.cpuc.ca.gov/consumer-support/psps/utility-company-psps-reports-post-event-and-post-season*

  These shut downs can cover enormous territories. *See*

  https://www.cnn.com/2019/10/09/us/pge-power-outage-wednesday/index.html

  Moreover, CAO 3 does not prohibit the use of diesel generators during these events.

- SHUTE-6: The City's claims that it could not effectively impose or enforce zero-emission truck standards is not correct. Measures can require leases to commit to use zero-emission trucks (either the tenants own trucks or those they contract with), and require occupants to provide compliance reports to the City. There are already zero emission trucks on the road, and more will be on the road in the near term.

  Under the California Air Resources Board's (CARB) Advanced Clean Trucks (ACT) regulation, vehicle manufacturers must sell an increasing percentage of ZE trucks on an annual basis, beginning in 2024. *See* CARB, Final Regulation Order – Advanced Clean Truck Regulation 5 (2021), available at https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2019/act2019/fro2.pdf

  The City can require that those zero-emission (ZE) trucks be used at facilities near its environmental justice communities already burdened by unhealthy air.

  The state also operates numerous incentive programs that offer significant subsidies for purchasing new medium- and heavy-duty ZE trucks, such as

the Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project (HVIP), the Carl Moyer Memorial Air Quality Standards Attainment Program, and the Truck Loan Assistance Program. *See Advanced Clean Fleets Regulation Summary*, CARB (May 17, 2023), https://ww2.arb.ca.gov/resources/fact-sheets/advanced-clean-fleets-regulation-summary

https://californiahvip.org/

https://californiahvip.org/vehicle-category/van/

https://californiahvip.org/vehicle-category/straight-truck/

https://californiahvip.org/vehicle-category/heavy-duty/

As ZE technology improves and the upfront costs of purchasing a ZE vehicle continue to decline, the total lifetime cost of ownership for all classes of ZE trucks is expected to be lower than for comparable diesel trucks within the next five years. In other words, any given medium- or heavy-duty ZE truck will soon be cheaper to purchase, own, and operate than its diesel counterpart, and some already are. *See* Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3, 88 Fed. Reg. 25926, 25942 (proposed Apr. 27, 2023) (to be codified at 40 C.F.R. pts. 1036, 1037, 1054, 1065, 1074), https://www.govinfo.gov/content/pkg/FR-2023-04-27/pdf/2023-07955.pdf.

Private companies with large delivery operations have already begun voluntarily transitioning their truck fleets to ZE technologies, proving that requiring use of Zero Emission trucks at a Tracy warehouse facility is entirely feasible. *See, e.g.*, FedEx, 2023 ESG Report 15–18 (2023), https://www.fedex.com/content/dam/fedex/us-united-states/sustainability/gcrs/FedEx_2023_ESG_Report.pdf; *IKEA U.S. to Convert Its New York Last Mile Delivery Fleet to Electric Vehicles by May 2021*, IKEA (Sept. 29, 2021), https://www.ikea.com/us/en/newsroom/corporate-news/ikea-u-s-to-convert-its-new-york-last-mile-delivery-fleet-to-electric-vehicles-by-may-2021-pub61276adf.

The City's claim that simply complying with state standards is the "most effective and feasible" mitigation, fails to appreciate CEQA's mandate,

reiterated by the California Supreme Court, to adopt all mitigation to reduce significant impacts unless truly infeasible.

- SHUTE-13: Sierra Club and our air quality expert recommend a measure requiring model year 14 or newer for any diesel trucks. The City claims, without support, that laws supposedly requiring model year 2010 would be an equivalent standard. Given improved technology over time, however, 2014 would be less polluting.

- SHUTE-14. Oddly, the City's response states that measures for ZE light and medium duty trucks and Smart Way have been included in the MMRP, but that is not the case.

- SHUTE-15. The City claims that because the Project site is under different ownership it cannot require the Project to stage construction so that significant air quality impacts from all three properties being under construction at once can be reduced. This is not true. Mitigation can apply to all three owners, and any delay in construction of one property would only be temporary and entirely justified to avoid significant environmental impacts.

- SHUTE-17. The City has not shown why a 300 foot building setback would be infeasible.

Unsupported GHG threshold and analysis

The City's response to our comments regarding use of outdated thresholds of significance for its GHG analysis is simply to double down on its unsupported approach. By failing to conduct any new analysis or adopt a proper threshold, the EIR continues to violate California Supreme Court standards for GHG analyses.

Summary

The Delta-Sierra Group reiterates its firm opposition to the City Council's approval of the Project. If approved, the Project will generate over 1,500 daily truck trips, contributing substantially to the disproportionate pollution burden borne by nearby communities. The DEIR and FEIR fail to analyze and mitigate the Project's environmental impacts as required by CEQA, and yet those assessments still conclude that the Project would have numerous significant and unavoidable impacts. Complete rejection of the Project, or at the very least

rejection with direction to remedy the DEIR's and FEIR's deficient analysis, is therefore vital to protecting the health and well-being of the residents of the City and nearby jurisdictions.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Heather M. Minner

Exhibits:

A. Article, *U.S. warehouses can host enough solar to power nearly 20 million homes.*
B. Comments of the California Attorney General on the Draft Program Environmental Impact Report for the Airport Gateway Specific Plan (July 5, 2023).
C. Baseline Environmental Consulting *Opposition to Response to Comments for the Final Environmental Impact Report for the Tracy Alliance Project*

cc: Sierra Club, Delta-Sierra Group of the Motherlode Chapter
Tracy City Manager Michael Rogers (via email)
Tracy City Clerk Adrianne Richardson (via email)

Exhibit A

U.S. warehouses can host enough solar to power nearly 20 million homes

A report from two environmental groups shows how the roofs of warehouses and distribution centers offer 16.4 billion square feet of installation planes.

APRIL 21, 2023 **RYAN KENNEDY**

MARKETS MARKETS & POLICY UNITED STATES

Sonoco's Dayton, N.J., warehouse produces 999.95 kW of solar energy.

Image: Sonoco Products

Nationwide, over 450,000 warehouses and distribution centers have 16.4 billion square feet of roof space. A report by Environment California and the Frontier Group estimates this offers the potential to generate enough electricity for about 19.4 million homes.

Generating this estimated 186 TWh of electricity would be equivalent to more than 112 million metric tons of carbon emissions avoided. This is equivalent to the emissions contribution of over 24 million gas-powered cars over the course of the year. It would also preserve an estimated 376,000 acres, nearly double the size of New York City, from being sacrificed for electricity generation.

California alone is home to over 66,000 warehouses and distribution centers with 1.5 billion square feet of roof surface area, soaking up sun, ready to be turned into distributed clean energy generation centers. The electricity demand of nearly 5 million California homes could be met by installing solar on these buildings.

The report noted that Florida, Illinois, Georgia and Texas have great potential, as well, and contains an interactive map for viewing each state's solar warehouse potential.

Placing electricity generation closer to where it is needed reduces line losses, which occur when electricity travels along imperfect conductive wires. The Energy Information Administration reports that 5.2% of gross electricity generation is lost to transmission line losses. Furthermore, placing generation closer to demand centers reduces the need for expensive and land-intensive transmission infrastructure.

Altogether, the report estimates that warehouses on average could produce 176% of their annual energy needs, allowing them to export excess production to their communities.

The environmental organizations recommend that warehouse and distribution center decision makers investigate, catalog and report energy use and climate effects of their business. Wielding political influence, these industry leaders can advocate for supportive policies for solar on warehouses.

The report also recommends that political leaders at every level support legislation like net metering, feed-in tariffs, and value-of-solar payments to boost this market. Enabling financing tools like third-party and Commercial Property Assessed Clean Energy (C-OACE) financing can help remove barriers to adoption. Streamlining and lowering costs of solar permitting and interconnection costs would make the process easier and faster as well, it said.

Heading into Earth Day, Environment California will be joined by former governor Arnold Schwarzenegger to host a ribbon-cutting ceremony at a rooftop solar array on a 180,000 square foot warehouse in Los Angeles. Schwarzenegger will ceremonially "plug in" the panels and speak about the benefits of such projects.

"Putting solar on warehouse roofs is not just a great environmental decision, it's also a smart business decision. More warehouse owners should use these ideal spots to produce clean energy, avert harmful pollution, increase the value of their property, and save on their electricity bills," said Terry Tamminen, president and CEO of AltaSea at the Port of Los Angeles.

RYAN KENNEDY

Exhibit B

ROB BONTA
Attorney General

State of California
DEPARTMENT OF JUSTICE

1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 210-7808
E-Mail: Robert.Swanson@doj.ca.gov

July 5, 2023

Myriam Beltran
Inland Valley Development Agency
1601 E. Third Street
San Bernardino, CA 92408
mbeltran@sbdairport.com

Lawrence Mainez
Community Development Director
City of Highland
27215 Base Line Street
Highland, CA 92346
lmainez@cityofhighland.org

Mary Lanier
Interim Community, Housing, and Economic Development Director
City of San Bernardino
201 North E Street
San Bernardino, CA 92401
Lanier_Mary@sbcity.org

RE: Airport Gateway Specific Plan (Corrected Letter)

Dear Ms. Beltran, Mr. Mainez, and Ms. Lanier:

Thank you for the opportunity to comment on the Airport Gateway Specific Plan (the Project) and the Project's Draft Program Environmental Impact Report (PEIR). The Project, proposed by lead agency Inland Valley Development Agency (IVDA) and located in the Cities of Highland and San Bernardino (Highland and San Bernardino, respectively, and Agencies, collectively with IVDA), would initiate displacement of approximately 2,600 residents of a socioeconomically disadvantaged and environmentally overburdened majority-Hispanic community by streamlining development of up to 9.2 million square feet of new industrial uses. According to the PEIR, the Project, which borders sensitive land uses along nearly its entire 3.5-mile northern boundary, would also generate 3,171 heavy-duty diesel truck trips per day.

While we support economic development of the San Bernardino International Airport area, we have serious concerns with the Project as currently proposed. If the Project is approved as proposed, Highland's approval would violate the California Fair Employment and Housing Act (FEHA) and the federal Fair Housing Act (FHA) because the Project targets for displacement areas of Highland where residents are disproportionately Hispanic or Latino and Black or African American.[1] These residents are already highly burdened by housing costs and suffer from other socioeconomic disadvantages that exacerbate the Project's disparate impact. Many feasible and less discriminatory alternatives are available, such as a smaller plan area that minimizes displacement, guaranteed replacement housing and relocation assistance, environmental protections for residents as the Project area transitions, and enhanced mitigation of the Project's environmental impacts.

Highland and San Bernardino would also contravene the Housing Crisis Act of 2019 (SB 330) by approving the Project because it does not concurrently re-zone for replacement housing capacity to ensure no net loss of housing capacity. Moreover, the Project would violate all three Agencies' duties to affirmatively further fair housing under California Government Code Section 8899.50. Affirmatively furthering fair housing requires "meaningful action" that includes "combating discrimination" and addressing "significant disparities in housing needs."[2] By displacing overburdened residents, imposing significant environmental impacts in an inequitable manner, the Project would do the opposite. We are particularly troubled by the Project's violations of housing laws in light of Highland and San Bernardino's inadequate housing stock and failure to submit general plan housing elements that comply with state housing element law.

In addition, the IVDA does not adequately analyze and mitigate the Project's environmental impacts under the California Environmental Quality Act (CEQA). Specifically, the PEIR does not sufficiently analyze and mitigate the Project's displacement impacts; the air quality analysis is inadequate; the PEIR fails to disclose that the Project would have significant operational noise impacts; the PEIR does not recognize the Project's significant land use impacts; the PEIR does not adopt all feasible mitigation for the Project's significant impacts; and the PEIR omits consideration of reduced plan area alternatives. The PEIR should also consider whether the Project would induce additional air cargo flights to and from the San Bernardino Airport and clarify when and to what extent individual developments in the Project area will require further CEQA review. Finally, the Agencies should not approve other industrial developments in the Project area while the Project remains pending.

The IVDA, Highland, and San Bernardino should amend the Project to comply with all housing laws, including FEHA, the FHA, the duty to affirmatively further fair housing, and SB 330. The IVDA should also revise the PEIR to fully analyze and disclose all significant impacts

[1] This letter uses the terms "Hispanic or Latino" and "Black or African American" because those are the terms used in the most recent census data.
[2] Gov. Code, § 8899.50, subd. (a)(1).

and adopt all feasible mitigation, and the IVDA should recirculate the revised PEIR for further public review and comment as required by CEQA.[3]

I. THE PROJECT WOULD DESIGNATE 678 ACRES AS AN INDUSTRIAL DISTRICT, INITIATING DISPLACEMENT OF APPROXIMATELY 2,600 RESIDENTS OF A DISADVANTAGED COMMUNITY TO SITE UP TO 9.2 MILLION SQUARE FEET OF NEW INDUSTRIAL DEVELOPMENT.

The Project would establish a large industrial district that would allow for over 9.2 million square feet of new warehouse, industrial, and business park uses.[4] The Project would not authorize any specific building, but it would allow for streamlined approval of future development projects in the plan area. The lead agency is the Inland Valley Development Agency, a joint powers agency created in the early 1990s to facilitate development of the former Norton Air Force Base and surrounding area.[5] The Project area is contained entirely within incorporated areas of the Cities of Highland and San Bernardino.[6] Both cities would need to approve the Project for it to govern development in the Project area.[7]

Current general plan designations in the Project area include residential, industrial, commercial, and other uses.[8] The Project would designate approximately 468 acres of the Project area as Mixed-Use Business Park, with the remaining area having Right-of-Way or Floodway designations.[9] The PEIR assumes the Project would result in about 7.8 million square feet of distribution and industrial development such as high-cube warehouses, 1.4 million square feet of technology business park uses, and 140,000 square feet of commercial uses.[10] The PEIR estimates that the Project could generate 3,171 daily heavy-duty truck trips—or one truck every 27 seconds over the expected 24/7 operation of the warehouses.[11]

The Project area spans a 3.5-mile long, west-to-east strip of land comprising approximately 678 acres just north of the San Bernardino International Airport.[12] An annotated

---

[3] The Attorney General respectfully submits these comments pursuant to his independent power and duty to protect the environment and natural resources of the State. (*See* Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.)

[4] Draft Program Environmental Impact Report for the Airport Gateway Specific Plan, https://ceqanet.opr.ca.gov/2022060349/2 ("PEIR") at 3-4.

[5] *Id.* at 1-1.

[6] *Id.* at 3-1.

[7] *Id.* at 1-2.

[8] *Id.* at 4-379 Fig. 4.12-1, 4-384 Fig. 4.12-6.

[9] *Id*. at 3-4.

[10] *Id.* at 3-6 Table 3-3. However, note that the PEIR does not appear to be internally consistent on these assumptions. *See, e.g.*, *id.* at 4-537 Table 4.18-2.

[11] *Id*. at 4-539 Table 4.18-3.

[12] *Id*. at 3-1.

satellite image of the Project area is appended to this letter as Exhibit A. Existing land uses in the Project area comprise approximately 128 acres of residential uses, 76 acres of industrial uses, 20 acres of commercial uses, 290 acres of vacant land, and 2 total acres of educational and public facilities.[13] The PEIR estimates that about 2,600 people currently live in the Project area.[14] At full build out, the Project would displace these residents for industrial developments.[15] Highland Head Start, a state-funded preschool, is also within the Project area.[16] The Project's northern border consists primarily of residential communities in Highland. Indian Springs High School, Highland Community Park, the Highland Library, vacant land, and a warehouse also border the Project to the north.[17] The San Bernardino International Airport makes up the majority of the Project's southern border.

The Project area includes portions of five census tracts that are already highly polluted and suffer from socioeconomic disadvantages. According to CalEnviroScreen 4.0, CalEPA's screening tool that ranks each census tract in the state for pollution and demographic vulnerability to pollution,[18] the Project's census tracts rank worse than 81-87 percent of the rest of the state for combined pollution and vulnerability. All five census tracts are in the 100th percentile for ozone pollution, meaning they already have some of highest ozone pollution statewide. These communities also suffer from impaired drinking water and proximity to contaminated sites. The largest community where displacement would occur at build out, in the western portion of Highland, is among the most socioeconomically disadvantaged statewide—it is in the 99th percentile for households that are economically burdened by housing costs, in the 98th percentile for poverty, and in the 93rd percentile for unemployment. The four census block groups where displacement would occur[19] are heavily Hispanic and Latino. Combined, the population of those block groups is 66% Hispanic or Latino, 13% Black or African American,

[13] *Id*. at 3-5 Table 3-1.
[14] *Id*. at 4-447.
[15] The Project would cause displacement by streamlining approval of individual developments that displace current residents of the Project area, making it the catalyst for displacement of residents in the Project area. The PEIR further states that the Project is "intended" to "transition" the Project area to industrial uses. *Id*. at 1-4.
[16] *Id*. at 3-5 Table 3-1 n.5.
[17] *Id.* at 3-1.
[18] Office of Environmental Health Hazard Assessment, CalEnviroScreen 4.0, https://experience.arcgis.com/experience/11d2f52282a54ceebcac7428e6184203/page/CalEnviroScreen-4_0/ (as of June 20, 2023). CalEnviroScreen is a tool created by the Office of Environmental Health Hazard Assessment that uses environmental, health, and socioeconomic information to produce scores and rank every census tract in the state. A census tract with a high score is one that experiences a much higher pollution burden than a census tract with a low score. Office of Environmental Health Hazard Assessment, CalEnviroScreen 4.0 Report (October 2021), available at https://oehha.ca.gov/media/downloads/calenviroscreen/report/calenviroscreen40reportf2021.pdf.
[19] Census tract 65.02, block group 1; census tract 76.03, block group 1; census tract 76.06, block group 2; and census tract 76.04, block group 1.

12% white, and 5% Asian.[20] By contrast, the eastern part of Highland is 45% white, 33% Hispanic, and fares much better in CalEnviroScreen than the western part, where the Project is located—eastern Highland is only in the 38th percentile for combined pollution and vulnerability and 17th percentile for poverty.

II. THE PEIR CONCLUDES THAT THE PROJECT WOULD HAVE SIGNIFICANT AND UNAVOIDABLE IMPACTS TO AIR QUALITY, GREENHOUSE GASES, NOISE, TRANSPORTATION, AND UTILITIES AND SERVICE SYSTEMS.

The PEIR finds that the Project would have significant and unavoidable environmental impacts in five areas: air quality, greenhouse gases, noise, transportation, and utilities and service systems. Regarding air quality, the PEIR calculated that the Project's maximum daily construction air emissions would include 605.56 pounds of nitrogen oxides (NO_x) and 281.26 pounds of particulate matter (PM_{10}), compared to significance thresholds of 100 and 150 pounds per day, respectively.[21] The Project's net daily operational emissions were projected to include 508.45 pounds of NO_x and 178.70 pounds of PM_{10}, in excess of the significance thresholds of 55 and 150 pounds per day, respectively.[22] Similarly, the Project's net greenhouse gas emissions were estimated to be 69,512.06 metric tons per year of carbon dioxide equivalent, nearly seven times the significance threshold of 10,000 metric tons per year.[23] On noise, the PEIR finds that the Project would have significant and unavoidable off-site traffic noise impacts at dozens of road segments.[24] With respect to transportation, the Project's vehicle miles traveled per service population is 35.0, 10.8% higher than the countywide average (and significance threshold) of 31.6.[25] Finally, the PEIR discloses two significant and unavoidable impacts to utilities and services.[26] The Project would require new water reservoir and/or well infrastructure to meet demand for water, and the East Valley Water District has not yet determined sites for that infrastructure, which could result in significant impacts.[27] The Project would also require construction and/or relocation of stormwater infrastructure, which could result in significant construction impacts.[28]

---

[20] All citations to Census racial data are to data from Table P2 of the 2020 Census, available at data.census.gov. *See, e.g.*, https://data.census.gov/table?q=census+tract+65.02,+block+group+1&g=1500000US060710065021&tid=DECENNIALPL2020.P2.
[21] PEIR at 4-83 Table 4.4-12.
[22] *Id.* at 4-85 Table 4.4-14.
[23] *Id.* 4-281 Table 4.9-9.
[24] *Id.* at 4-443 to -444.
[25] *Id.* at 4-561 Table 4.18-8.
[26] *Id.* at 4-635.
[27] *Ibid.*
[28] *Ibid.*

III. THE PROJECT WOULD VIOLATE HOUSING LAWS BY DISPLACING 2,600 RESIDENTS AND SITING POLLUTING LAND USES IN A MANNER THAT DISPARATELY AFFECTS A DISADVANTAGED COMMUNITY OF COLOR.

The Project's plan to replace 2,600 residents of a majority Hispanic community with polluting industrial land uses would violate the federal Fair Housing Act (FHA), the California Fair Employment and Housing Act (FEHA), the Housing Crisis Act of 2019 (SB 330), and the duty to affirmatively further fair housing under Government Code Section 8899.50. The next section provides background on state housing policy and the Agencies' ongoing failure to supply sufficient housing, followed by discussion of each of the legal violations in turn.

A. The Project Would Frustrate State Housing Goals.

The Project would hinder state goals to increase housing supply and affordability. In recent years, California has adopted a comprehensive housing agenda that will build more housing, increase affordability, address systemic bias, streamline development, and hold local governments accountable.[29] These policies manifest in myriad laws, such as the Housing Crisis

[29] *See, e.g.*, Bill Fulton, et al., *New Pathways to Encourage Housing Construction: A Review of California's Recent Housing Legislation*, University of California at Berkeley Terner Center for Housing Innovation (2023), https://ternercenter.berkeley.edu/wp-content/uploads/2023/04/New-Pathways-to-Encourage-Housing-Production-Evaluating-Californias-Recent-Housing-Legislation-April-2023-Final-1.pdf (summarizing California legislation affecting housing); Office of Governor Gavin Newsom, *Governor Newsom Signs Legislation to Increase Affordable Housing Supply and Strengthen Accountability, Highlights Comprehensive Strategy to Tackle Housing Crisis* (Sept. 28, 2021), https://www.gov.ca.gov/2021/09/28/governor-newsom-signs-legislation-to-increase-affordable-housing-supply-and-strengthen-accountability-highlights-comprehensive-strategy-to-tackle-housing-crisis/ (describing State efforts to tackle the housing crisis).

Act (SB 330, 2019), SB 9's zoning requirements (SB 9, 2021),[30] the density bonus law (SB 10, 2021),[31] and Housing Accountability Act amendments (e.g., SB 167, 2017).[32]

To date, the Cities of San Bernardino and Highland have lagged behind State efforts to affordably house all Californians. San Bernardino failed to prepare a Sixth Cycle Housing Element by the submission deadline of October 21, 2021, and only in May 2023 released a draft.[33] While Highland submitted a Sixth Cycle Housing Element, the California Department of

---

[30] California Attorney General's Office, *California Attorney General Bonta and Department of Housing and Community Development Again Put City of Huntington Beach on Notice for Potentially Violating Multiple Housing Laws* (Feb. 21, 2023), https://oag.ca.gov/news/press-releases/california-attorney-general-bonta-and-department-housing-and-community; California Attorney General's Office, *Attorney General Bonta Puts City of Pasadena on Notice for Violating State Housing Laws* (Mar. 15, 2022), https://oag.ca.gov/news/press-releases/attorney-general-bonta-puts-city-pasadena-notice-violating-state-housing-laws; California Attorney General's Office, *Attorney General Bonta: Memorandum Declaring Woodside a Mountain Lion Sanctuary Does Not Exempt Town From State Housing Laws* (Feb. 6, 2022), https://oag.ca.gov/news/press-releases/attorney-general-bonta-memorandum-declaring-woodside-mountain-lion-sanctuary.

[31] California Attorney General's Office, *Attorney General Bonta Secures Court Decision Declaring State Housing Density Law Constitutional* (May 12, 2022), https://www.oag.ca.gov/news/press-releases/attorney-general-bonta-secures-court-decision-declaring-state-housing-density.

[32] California Attorney General's Office, *Attorney General Bonta to City of Elk Grove: Denial of Oak Rose Supportive Housing Project Violates State Laws, Demonstrates Discriminatory Effect* (Mar. 16, 2023), https://oag.ca.gov/news/press-releases/attorney-general-bonta-city-elk-grove-denial-oak-rose-supportive-housing-project; California Attorney General's Office, *Attorney General Bonta: We Will Hold Encinitas Accountable for State Housing Law Violations if City Fails to Take Corrective Action* (Mar. 24, 2022), https://oag.ca.gov/news/press-releases/attorney-general-bonta-we-will-hold-encinitas-accountable-state-housing-law; California Attorney General's Office, *Attorney General Bonta Hails Appellate Court Ruling Upholding Key California Affordable Housing Law* (Sept. 13, 2021), https://oag.ca.gov/news/press-releases/attorney-general-bonta-hails-appellate-court-ruling-upholding-key-california.

[33] California Department of Housing and Community Development, *Housing Element Review and Compliance Report*, https://www.hcd.ca.gov/planning-and-community-development/housing-open-data-tools/housing-element-review-and-compliance-report (as of June 20, 2023); City of San Bernardino, *City of San Bernardino draft 2021-2029 Housing Element* (May 2023), https://futuresb2050.com/wp-content/uploads/2023/05/SBdraft2021-2029HousingElement_V2.pdf. Three residents sued San Bernardino in February 2023, alleging violations of the Housing Element Law and other housing laws. *Gracia v. City of San Bernardino* (San Bernardino Sup. Ct.) CIVSB2301828.

Housing and Community Development rejected it as substantially out of compliance with state laws.[34]

Both San Bernardino and Highland have also fallen woefully short in recent years to construct enough housing. San Bernardino built only 856 units from 2010 to 2019, compared to the 4,384 units needed in its last Housing Element cycle.[35] Similarly, Highland constructed a meager total of 267 units from 2010 to 2020, all of which were single-family housing, even though it needed to build 1,500 units in the shorter period from 2014 to 2021 to meet basic housing demand.[36]

If built as intended, the Project would demolish hundreds of housing units and displace thousands of residents, with no guarantee that replacement housing will be available or built. The problem would be especially acute for renters, who would not have proceeds from the sale of property to search for another, likely more expensive residence. These impacts are egregious given the existing housing shortage. Moreover, the Project's effects would be highly inequitable. The communities in and near the Project area are among the communities that are most severely burdened by housing costs statewide. According to CalEnviroScreen, the census tracts where most displacement would occur are in the 99th, 96th, and 74th percentiles statewide for the proportion of residents that are both low-income and spend over half their income on housing. Separately from the Project's violations of housing laws discussed below, the Agencies should reconsider the Project's impacts on access to housing, particularly in light of current lack of housing stock and renewed statewide intention to quell the housing crisis.

B. By Approving the Project, the City of Highland Would Violate the Federal Fair Housing Act and the California Fair Employment and Housing Act.

The FHA prohibits actions or practices that "make unavailable or deny" housing to anyone because of their membership in a protected class, such as a racial group.[37] FEHA has a nearly identical provision.[38] FEHA also explicitly bars discrimination "through public or private

---

[34] California Department of Housing and Community Development, letter to City of Highland regarding City of Highland's 6th Cycle (2021-2029) Adopted Housing Element (Apr. 14, 2022), https://www.hcd.ca.gov/community-development/housing-element/docs/sbdhighlandadoptedout041422.pdf.

[35] City of San Bernardino, *City of San Bernardino draft 2021-2029 Housing Element* (May 2023), https://futuresb2050.com/wp-content/uploads/2023/05/SBdraft2021-2029HousingElement_V2.pdf, at 2-14 Table 2-12, 4-2.

[36] City of Highland, *6th Cycle Housing Element (2021-2029)* (2022), https://www.cityofhighland.org/DocumentCenter/View/2303/-Highland-6th-Cycle-Final-Housing-Element-Adopted-PDF, Appendix B at 9 Table 8; City of Highland, *2014-2021 Housing Element (5th Cycle)* (2013), https://www.hcd.ca.gov/housing-elements/docs/highland_adopted5cycle053013.pdf, at 8-5.

[37] 42 U.S.C. § 3604, subd. (a).

[38] Gov. Code, § 12955, subd. (k).

land use practices, decisions, and authorizations … that make housing opportunities unavailable."[39] These prohibitions encompass disparate impact claims, which assert that a facially neutral policy causes a disparate effect.[40]

Courts apply a three-step process to determine liability under these laws.[41] First, courts consider whether the plaintiff can establish a prima facie case of a violation.[42] Second, if a prima facie case has been established, courts look to whether the defendant can demonstrate whether there is a legitimate interest behind the policy.[43] Third, courts consider whether less discriminatory alternatives exist to further the legitimate interest.[44] The FHA places the burden of proof at this third step on plaintiffs,[45] but under FEHA defendants must show that no less discriminatory alternatives exist to further the legitimate interest.[46]

To prove a prima facie disparate impact claim, a plaintiff must satisfy three elements.[47] First, a plaintiff must challenge a particular practice by the defendant.[48] Second, a plaintiff must establish that there is a disparity in how the practice affects members of a protected class.[49] And third, a plaintiff must show that the disparity is caused by the challenged practice.[50]

Highland's approval of the Project as proposed would violate the FHA and FEHA. All elements for a prima facie disparate impact claim are satisfied. First, the Project is a particular practice because it is a concretely identified policy that sets zoning and development standards to guide the intended development of the whole plan area. Both the FHA and FEHA apply to land use practices, including those that facilitate displacement.[51] The regulations implementing FEHA further clarify that FEHA applies to a land use practice that "[m]akes housing opportunities unavailable," "[d]enies, restricts, … adversely impacts, or renders infeasible the

---

[39] Gov. Code, § 12955, subd. (l).
[40] *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.* (2015) 576 U.S. 519, 545-46.
[41] *Sw. Fair Hous. Council, Inc. v. Maricopa Domestic Water Improvement Dist.* (9th Cir. 2021) 17 F.4th 950, 960-61.
[42] *Id*. at p. 960.
[43] *Id*. at pp. 960-61.
[44] *Id*. at p. 961.
[45] *Ibid*.
[46] Cal. Code Regs., tit. 2, § 12062, subd. (b)(4); *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 270-71.
[47] *Sw. Fair Hous. Council*, 17 F.4th at p. 962.
[48] *Ibid*.
[49] *Ibid*.
[50] *Ibid.*
[51] *Inclusive Communities*, 576 U.S. at 539-40 (FHA generally); *Keith v. Volpe* (C.D. Cal. 1985) 618 F. Supp. 1132, 1151 (FHA, displacement impact specifically); Gov. Code, § 12955, subd. (l).

enjoyment of residence," or "[r]esults in the location of … polluting … land uses in a manner that denies, restricts, … adversely impacts, or renders infeasible the enjoyment of residence."[52]

Second, the Project would have a disparate impact on a protected class. The Project would deny housing to residents of the Project area by displacing them from their neighborhood. The Project's vision is to remove over 2,600 residents from their homes, including evicting renters, who would lack any agency over their landlords' decisions to sell to developers. The Project would also bring significant air quality, noise, and other adverse environmental impacts to those that remain. Those Project effects would fall disparately on members of protected racial groups, including non-white, Hispanic or Latino, and Black or African American individuals.[53] The Project would primarily impact four census tract block groups.[54] According to the 2020 census, those block groups are collectively 88.04% non-white, compared to 75.25% non-white in all other areas of Highland.[55] Those block groups are 66.49% Hispanic or Latino and 12.96% Black or African American, compared to 54.11% and 8.34% in the rest of Highland, respectively. These differences are highly statistically significant, meaning it is very unlikely that they occurred by chance alone.[56]

The disparate impact is particularly notable in light of the de facto segregation and inequality between the western and eastern portions of Highland. While the block groups in western Highland discussed above are 11.96% white, 66.49% Hispanic or Latino, and 12.96% Black or African American, census tract 76.05, in the privileged area of East Highland Ranch, is 45.53% white, 31.64% Hispanic or Latino, and 6.14% Black or African American. According to CalEnviroScreen, the primary area where displacement would occur ranks in the 99th percentile statewide for households that are economically burdened by housing costs, the 98th percentile for poverty, and the 93rd percentile for unemployment.[57] In contrast, the East Highland Ranch

---

[52] Cal. Code Regs., tit. 2, § 12161, subd. (b)(1), (b)(2), (b)(10).
[53] While this comment only elaborates on the Project's disparate impact on members of protected racial groups, the Project may also have disparate impacts on other protected classes under the FHA and FEHA. We reserve the right to raise these claims in the future, if necessary.
[54] Census tract 65.02, block group 1; census tract 76.03, block group 1; census tract 76.06, block group 2; and census tract 76.04, block group 1.
[55] All citations to Census racial data are to data from Table P2 of the 2020 Census, available at data.census.gov. *See, e.g.*, https://data.census.gov/table?q=census+tract+65.02,+block+group+1&g=1500000US060710065021&tid=DECENNIALPL2020.P2.
[56] Statistical tests were run on these data to determine the likelihood that chance alone would produce the observed racial disparities. The probability of chance alone producing the observed racial disparities was less than 0.1%. In technical terms, two-proportion Z-tests provided p-values of less than 0.001 for all tests, indicating statistical significance at the 99.9% level at minimum.
[57] CalEnviroScreen census tract 6071006500.

area ranks in the 15th percentile for households that are economically burdened by housing costs, the 17th percentile for poverty, and the 38th percentile for unemployment.[58]

Third, the Project would cause the disparate impact. The Project, by its terms, applies only to the Project area, only displaces residents of the Project area, and primarily imposes its environmental effects on residents in and near the Project area. The Project "explicitly bifurcate[s] a population based on a non-protected characteristic"—residence in a particular area.[59] This bifurcation would cause "a disproportionate effect that would not have existed in [the Project's] absence" and ensures the Project's adverse effects apply "only to the population subset that [is] overrepresented … by certain members of a protected group."[60] Causation is therefore "simple" to establish.[61] Accordingly, all three elements of a prima facie case of housing discrimination under both the FHA and FEHA would be satisfied.

Less discriminatory alternatives to the Project are readily available. The Project could easily have a reduced plan area that substantially decreases or eliminates displacement. In addition, the Project could enhance relocation assistance and displacement protections. The Project could also include strengthened measures to mitigate the Project's environmental impacts. All of these alternatives, which are discussed in more detail elsewhere in this comment,[62] would feasibly reduce the Project's discriminatory displacement and environmental impacts.[63]

The Project should be modified to comply with the FHA and FEHA by ensuring the Project will not have a disparate impact on members of a protected class or, at minimum, by implementing the least discriminatory reasonable alternative to the Project.[64]

C. The Project Would Violate the Housing Crisis Act.

As proposed, the Project would also violate the Housing Crisis Act of 2019 (SB 330). SB 330 provides, in relevant part, that "an affected city shall not enact a development policy, standard, or condition that would … [c]hang[e] the general plan land use designation … or

---

[58] CalEnviroScreen census tract 6071007801.
[59] *Sw. Fair Hous. Council*, 17 F.4th at 966.
[60] *Ibid*.
[61] *Ibid*.
[62] *See* Sections IV.A (displacement mitigation), IV.E (other environmental impact mitigation), IV.F (reduced plan area alternative).
[63] Note that the IVDA may also violate FEHA for aiding, abetting, or inciting Highland's FEHA violation. Gov. Code, § 12940, subd. (i).
[64] For similar reasons to those outlined above, the Project may also violate Government Code Section 11135, which prohibits discrimination against a member of a protected class under any program or activity that receives financial assistance from the state. Planning and community development activities in Highland receive financial assistance from the state in a variety of ways, such that Section 11135 may apply.

zoning of a parcel to a less intensive use," where " 'less intensive use' includes … anything that would lessen the intensity of housing."[65] SB 330 creates an exemption for actions that "concurrently change[] the [restrictions] applicable to other parcels … to ensure that there is no net loss in residential capacity."[66]

The Project would re-zone and re-designate multiple areas currently zoned and designated for residential use to non-residential zoning. Specifically, the existing neighborhood in Highland bounded by Victoria Avenue to the west, Central Avenue to the east, 6th Street to the north, and 5th Street to the south, includes parcels designated and zoned low-density residential and R-1 (respectively), and parcels designated and zoned planned development.[67] In San Bernardino, the vacant parcels bounded by Roberts Street to the west, Victoria Avenue to the east, 6th Street to the north, and 3rd Street to the south are designated and zoned for medium-density residential.[68] The Project would re-designate these areas for mixed-use business park uses, which does not allow for residential uses.[69] Accordingly, the Project would change the general land use designation and zoning of these parcels to a less intensive use under Government Code Section 66300.

SB 330 thus bars the Project unless Highland and San Bernardino "concurrently change[] the [restrictions] applicable to other parcels … to ensure that there is no net loss in residential capacity."[70] Indeed, the PEIR acknowledges that "the loss of residential units will need to be offset in both jurisdictions, Highland and San Bernardino."[71] The PEIR, seemingly in an attempt to comply with SB 330, includes a mitigation measure requiring designation of replacement residential capacity at the time specific developments are approved under the Project.[72] However, this mitigation measure does not comply with SB 330 because SB 330 requires the no net loss in residential capacity be "concurrent[]" with the action that lessens the intensity of housing. Because Highland and San Bernardino will re-zone and re-designate parcels to non-residential uses at the time they approve the Project, they must designate replacement residential

---

[65] Gov. Code, § 66300, subd. (b)(1)(A).
[66] Gov. Code, § 66300, subd. (i)(1).
[67] City of Highland, GIS Map, http://maps.digitalmapcentral.com/production/VECommunityView/cities/highland/index.aspx (as of June 20, 2023).
[68] City of San Bernardino, GIS Map, https://www.sbcity.org/City_Hall/Information_Technology/GIS_Mapping (as of June 20, 2023).
[69] PEIR at 3-4.
[70] Gov. Code, § 66300, subd. (i)(1). Note that the Cities of Highland and San Bernardino are "affected cities" under SB 330. California Department of Housing and Community Development, *Affected Cities – 2023 Update*, https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/affected-cities.pdf (as of June 20, 2023).
[71] PEIR at 4-365.
[72] *Id.* at 4-365 to 4-366 (describing MM LU-1), 4-376 (MM LU-1).

capacity at that same time, not in the future when individual parcels previously zoned and designated for residential uses are later developed.

Finally, the PEIR misstates the amount of replacement residential capacity that Highland and San Bernardino must designate to ensure no net loss in residential capacity. The PEIR states that, "[i]n order to comply with SB-330, the City of Highland will need to shift an estimated 748 residential units to other properties in the City of Highland and the City of San Bernardino will need to shift 12 residential units to other properties in the area."[73] These figures appear to refer to the number of existing units that the Project would displace at full build-out, some of which are non-conforming uses in industrial zones. SB 330's requirements apply to residential capacity, not existing units. Therefore, Highland and San Bernardino will need to designate sufficient residential capacity to replace the full residential capacity that could be constructed in the areas the Project will re-zone and re-designate.[74]

D. The Project Violates the Duty to Affirmatively Further Fair Housing.

If the Agencies were to approve the Project in its current form, they would each contravene their duties to affirmatively further fair housing. Subdivision (b)(1) of Section 8899.50 of the California Government Code provides that "[a] public agency shall administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and take no action that is materially inconsistent with its obligation to affirmatively further fair housing." Public agencies, including the IVDA, Highland, and San Bernardino, have a mandatory duty to affirmatively further fair housing.[75] "The duty to affirmatively further fair housing extends to all of a public agency's activities and programs relating to housing and community development," including plans like the Project.[76]

The duty to affirmatively further fair housing includes "combating discrimination."[77] Accordingly, because the Project would violate housing discrimination laws, it would also violate the duty to affirmatively further fair housing.[78]

But the duty to affirmatively further fair housing also "does more than prohibit acts of discrimination."[79] It goes further in two ways. First, "[i]t prohibits certain acts by stating a public agency shall 'take no action that is materially inconsistent with its obligation to

---

[73] *Id.* at 4-365.
[74] *Ibid*. San Bernardino clearly must replace more than 12 units of residential capacity to comply with SB 330 because the areas in San Bernardino that the Project will re-zone for non-residential uses are currently zoned for a substantial number of residential units.
[75] Gov. Code, § 8899.50, subd. (b)(2).
[76] *Id.*, subd. (a)(1).
[77] *Ibid.*
[78] *Martinez*, 90 Cal.App.5th at p. 289.
[79] *Id.* at p. 287.

affirmatively further fair housing.' "[80] Second, "[i]t also requires action by stating a public agency must administer its programs 'in a manner to affirmatively further fair housing.' "[81] "The required 'meaningful action' includes 'combating discrimination,' addressing 'significant disparities in housing needs,' and 'replacing segregated living patterns' with balanced living patterns."[82]

Consequently, the Project would violate the duty to affirmatively further fair housing for three additional reasons. First, the Project is materially inconsistent with the obligation to affirmatively further fair housing because it would displace residents of a disadvantaged community that are already overburdened by housing costs. This displacement is particularly concerning given that both Highland and San Bernardino are out of compliance with state housing element law, which is intended to encourage housing construction to meet need. Second, the Project would impose significant environmental impacts on a community that is already highly polluted and segregated, reinforcing the conditions that formed the existing environmentally-overburdened community of color. Third, the Agencies do not adequately combat discrimination, address disparities in housing needs, and replace segregated living patterns because the Project fails to provide adequate relocation assistance and displacement protections, *see infra* Section IV.A. In the context of the extreme housing burdens and segregated living patterns endemic to the status quo in the Project area, the Project's lack of assistance for current residents would exacerbate these harms, contrary to Section 8899.50's mandate. The Project should be modified so that it will affirmatively further fair housing as Section 8899.50 requires.

IV. THE PEIR DOES NOT COMPLY WITH CEQA.

The PEIR is deficient under CEQA. The purpose of CEQA is to ensure that a lead agency fully evaluates, discloses, and, to the fullest extent feasible, mitigates a project's significant environmental effects.[83] An EIR serves as an "informational document" that informs the public and decisionmakers of the significant environmental effects of a project and ways in which those effects can be minimized.[84] Accordingly, an EIR must clearly set forth all significant effects of a project on the environment and adopt all feasible mitigation for those impacts.[85]

The PEIR does not comply with CEQA for nine reasons, elaborated in the sections below:

---

[80] *Ibid.* (quoting Gov. Code, § 8899.50, subd. (b)(1)).
[81] *Ibid.* (quoting Gov. Code, § 8899.50, subd. (b)(1)).
[82] *Ibid.* (quoting Gov. Code, § 8899.50, subd. (a)(1)).
[83] Pub. Resources Code, §§ 21000-21002.1.
[84] CEQA Guidelines, § 15121, subd. (a).
[85] Pub. Resources Code, § 21100, subd. (b); CEQA Guidelines, § 15126.2, subd. (a), § 15126.4.

(1) The PEIR does not sufficiently analyze and mitigate the Project's displacement impacts;

(2) The PEIR's air quality analysis is inadequate;

(3) The PEIR fails to disclose that the Project would have significant operational noise impacts, despite mitigation;

(4) The PEIR fails to disclose that the Project would have significant land use impacts;

(5) The PEIR does not adopt all feasible mitigation for the Project's significant impacts;

(6) The PEIR does not consider reduced plan area alternatives;

(7) The PEIR does not consider whether the Project would induce additional air cargo flights to and from the San Bernardino Airport;

(8) The PEIR lacks clarity on when and to what extent individual projects in the plan area will require further CEQA review; and

(9) Other industrial developments in the Project area are being approved while the Project is pending.

A. The PEIR's Analysis and Mitigation of Displacement-Related Impacts Is Insufficient.

The PEIR's analysis and mitigation of displacement-related impacts violates CEQA for two reasons. First, the PEIR fails to analyze and mitigate environmental impacts to sensitive receptors during transition of the Project area or from incomplete displacement. The Project envisions replacing substantial existing residential communities with industrial land uses. It is unlikely that all residents in the Project area will be displaced by industrial developments simultaneously. Instead, residents will likely be displaced over time as individual development projects are proposed for parcels on which they currently reside. As a result, many residents will experience environmental impacts from the Project as neighboring parcels are developed. For example, residents adjacent to a warehouse development under the Project will be subjected to construction emissions and noise, passing diesel trucks from operation, and all the environmental impacts from an operating warehouse literally next door. Such developments may also physically divide existing communities, creating significant land use impacts. The PEIR does not acknowledge these likely scenarios or analyze their environmental impacts. Similarly, the PEIR does not consider the possibility that some residents may remain in the Project area after buildout is complete. This scenario is likely because some homeowners may refuse to sell and because individual developments are unlikely to be designed to perfectly cover parcels currently used as residences. Consequently, some residents will likely stay in the Project area, permanently adjacent or proximate to industrial uses. While the IVDA may not know the precise

pattern of development that would occur if the Project is approved, the IVDA should analyze representative scenarios in the PEIR and commit to future site-specific analysis and mitigation where a development in the Project area is within 1,000 feet of a sensitive receptor.

Moreover, the PEIR does not include any measures to mitigate the Project's environmental impacts on sensitive receptors within the Project area during transition or after buildout. As the PEIR finds the Project will have significant environmental effects, including on sensitive receptors outside the Project area, the Project clearly will have significant environmental effects on sensitive receptors within the Project area. While the Project includes some—albeit insufficient—protections for sensitive receptors outside the Project area, such as enhanced landscaped buffers for developments bordering Sixth Street and truck restrictions on Sixth Street, none of these protections apply to sensitive receptors within the Project area. After the PEIR analyzes the environmental impacts on these sensitive receptors, it must adopt all feasible measures to mitigate the Project's significant environmental effects.

Second, the PEIR's mitigation of displacement impacts is insufficient and does not ensure the Project will have less than significant population and housing impacts. The PEIR acknowledges that the Project would displace substantial numbers of people and housing in the Project area, but it asserts that mitigation measures would reduce the impact to a less than significant level.[86] The primary mitigation measure, PH-1, requires that developers of any individual project "that may cause displacement of conforming residential occupants" would be required to "prepare a relocation plan that complies with the requirements of the California Relocation Assistance Law, California Government Code Section 7260."[87] The mitigation measure also lists several sections that relocation plans must include and refers to a "model" relocation plan in Appendix 10.[88]

Mitigation measure PH-1 would fail to adequately protect current residents of the Project area. PH-1 only requires relocation plans for projects that would displace "conforming" residential occupants. This language seemingly is a reference to the fact that many residents of the Project area live on parcels that San Bernardino and Highland re-designated for industrial use in 2005 and 2006, respectively, rendering those long-occupied housing units non-conforming uses.[89] By its terms, PH-1 would not require relocation plans for developments that displace these residents. Residents who live on parcels already designated for industrial development—possibly a majority of the 2,600 people the Project would displace—would therefore receive no relocation assistance or other protections under PH-1.

Moreover, PH-1 does not reduce displacement impacts to a less-than-significant level because it provides minimal substantive protections. While PH-1 requires relocation plans to comply with the California Relocation Assistance Act (CRAA), it is unclear whether the CRAA would apply to Project area residents displaced by developments proposed by private developers.

---

[86] PEIR at 4-462 to -464.
[87] *Id*. at 4-463.
[88] *Ibid*.
[89] *Id*. at 4-462.

In addition, PH-1 simply lists the sections that relocation plans must include, without imposing any substantive requirements. Specifically, and in full, PH-1 states that relocation plans must include an "introduction," "project description," "assessment of the relocation needs of persons subject to displacement," "assessment of available replacement housing units within proximity to the Project site," "description of the relocation program and guidelines to be followed," an "informational statement and notices to be provided," "description of any citizen participation or outreach efforts," "grievance procedures," "project schedule or timelines of any proposed displacement," and the "estimated budget to provide relocation benefits in accordance with the identified relocation program requirements."[90] Notably, while the relocation plan must describe items like "any citizen participation or outreach efforts," "grievance procedures," and the budget for relocation benefits, it does not actually require any outreach, grievance procedures, or relocation benefits. The only mandatory, substantive provision in PH-1 is the requirement that notice of the relocation plan be given to residents who will be displaced "30 days prior to submission to the Agency for approval."[91] But even this requirement is lacking—thirty days' notice is insufficient time for residents to review the relocation plan, provide feedback, and make arrangements for relocation. Thirty days also does not provide opportunity for community feedback to be incorporated into the relocation plan, precluding meaningful community engagement from occurring.

In addition, PH-1 references a "Model/Conceptual Relocation Plan" as a "sample outline" of the relocation plan components. However, the Model Relocation Plan is just a non-binding example, so it does not add mandatory protections for residents. The Model Relocation Plan itself also includes no new protections or guarantees.[92] Instead, it encourages description of various aspects of the relocation program, rather than mandating that the relocation program do anything in particular. For example, the Model Relocation Plan states that relocation plans should "[p]rovide a detailed description of the relocation advisory services program, including specific procedures for locating and referring eligible persons to comparable replacement housing," but it does not require that the relocation advisory services program actually successfully relocate anyone. Similarly, the Model Relocation Plan notes that relocation plans should "[p]rovide a description of the relocation payments to be made for each type of occupant, including a plan for disbursement based on the appropriate relocation guidelines," but this description does not require any relocation payments at all, let alone ensure that relocation payments are adequate.

The PEIR also includes two mitigation measures (PH-2 and PH-3) that require further CEQA analysis if comparable housing does not exist or the only means to provide replacement housing is to construct new housing.[93] While these two measures are useful, they cannot ensure displacement impacts would be less than significant. PH-2 and PH-3 are premised on the notion that measure PH-1 guarantees comparable replacement housing if such housing exists, but, as

---

[90] *Ibid*.
[91] *Ibid.* In addition, the quoted language is unclear on what is being submitted to the Agency for approval. We recommend clarifying this issue in the revised PEIR.
[92] *See id.* at Appendix 10.
[93] *Id.* at 4-463 to -464.

explained above, PH-1 contains no such protections. PH-2 and PH-3 cannot remedy PH-1's deficiencies. As a result, PH-2 and PH-3 just defer consideration of the Project's most severe potential displacement impacts to a later date. Those measures do not remove the need for robust displacement protections and guarantees in PH-1 now.

Therefore, while the displacement mitigation measures and accompanying PEIR text give the impression that displaced residents will be fairly notified, engaged, and provided with comparable replacement housing or equivalent relocation funds, the mitigation measures' precise language fails to secure substantive guarantees, protections, or benefits for displaced residents of the Project area. The PEIR's claim that the Project would have less than significant displacement impacts is thus incorrect. The PEIR must be revised to provide binding protections for all residents of the Project area, including at least the following:

- Notification of the proposed development at the earliest opportunity, and no later than when an application to develop is received;
- Individual outreach to all residents who may be displaced at the earliest opportunity, including explanation of relocation rights, benefits, and grievance procedures under the Project and an opportunity to have questions answered and provide feedback;
- At least one community meeting, held after typical working hours and at the earliest opportunity;
- Translation of all notices, meeting announcements, and public meetings into Spanish;
- Guarantee of permanent, comparable or better replacement housing, or financial benefits that ensure displaced individuals—especially residents that do not own their place of residence—can secure permanent, comparable or better replacement housing at prevailing market rates;
- Financial compensation for moving costs;
- Grievance procedures that, if necessary, allow for dispute resolution by a neutral third party prior to any displacement;
- Express recital and requirement of the CRAA's protections for all residents in the Project area.

B. The PEIR's Air Quality Analysis Is Inadequate.

The PEIR finds that the Project would have significant and unavoidable air quality impacts. In particular, the PEIR notes that Project construction would result in significant emissions of nitrogen oxides (NO_x) and large particulate matter (PM_{10}), but less than significant

emissions of volatile organic compounds (VOCs), carbon monoxide (CO), sulfur oxides (SO_x), and fine particulate matter ($PM_{2.5}$).[94] The PEIR also concludes that Project operation would cause significant NO_x and PM_{10} emissions, but less than significant emissions of the other pollutants.[95] Although the PEIR does not analyze health risks to nearby sensitive receptors, it asserts that air quality impacts to sensitive receptors would be less than significant with mitigation.[96] The PEIR finds that the Project would have significant cumulative air quality impacts.

Despite these findings, the PEIR's air quality analysis is inadequate for three reasons. First, the PEIR fails to conduct a health risk assessment that would measure the impacts of the Project's diesel particulate matter emissions on nearby sensitive receptors. Given that the Project would bring thousands of daily heavy duty truck trips to the surrounding community, the health impacts of emissions from those trucks are one of the most critical pieces of information the public and decision-makers need in order to evaluate the environmental effects of this Project. The PEIR asserts that it cannot conduct a health risk assessment "that would accurately reflect risk to sensitive receptors within the project area" because the Project lacks specific development proposals within the plan area.[97] This is not a sufficient justification for omitting discussion of the Project's health impacts. While it is true that conducting a health risk assessment would require making assumptions about the location of emission sources within the plan area, the PEIR in the transportation section discloses the projected location of all truck trips associated with Project buildout.[98] Given that this projection is not too speculative for the transportation section, it is also not too speculative for a health risk assessment. Even if the PEIR's transportation section did not estimate truck locations, the PEIR could make reasonable assumptions about the likely location of the expected truck trips from Project buildout and conduct a health risk assessment.

The PEIR also argues that a mitigation measure requiring individual developments within the plan area to conduct health risk assessments and mitigate any significant impacts (MM AQ-15) ensures that any Project health risks to sensitive receptors would be less than significant.[99] That assertion is incorrect because the mitigation measure avoids ever analyzing and mitigating the significance of the Project's health risks as a whole. Because health risk assessments for the Project and for individual developments in the plan area would likely use the same significance threshold, the Project's health risks could be well above the significance threshold, even if no individual development in the plan area alone exceeds the significance threshold. In that case, the Project would present significant health risks to sensitive receptors, but no measures would ever be adopted to mitigate those impacts.

---

[94] *Id.* at 4-83 Table 4.4-12.
[95] *Id*. at 4-85 Table 4.4-14.
[96] *Id*. at 4-86 to -91.
[97] *Id*. at 4-91.
[98] *Id*. Appendix 11a at 31-42.
[99] *Id*. at 4-91.

The PEIR admits that the Project is anticipated to impose some health risks on sensitive receptors, but it also admits that the extent of those health risks is "unknown."[100] CEQA requires the IVDA to analyze the Project's health risks so they become known to the public and decision-makers.[101] And if those risks are significant, they must be mitigated.[102] The IVDA cannot pass this obligation to individual developments via Mitigation Measure AQ-15, which would not tabulate or mitigate the Project's total health risks. Mitigation measure AQ-15 thus inappropriately piecemeals health risk assessment of the Project.

Second, the PEIR adopts unrealistic construction timeline assumptions. The Project is a specific plan that is expected to be built out over time via many individual developments. Some individual developments will be built and begin operating soon after Project approval, while others will not be proposed and built for many years. The PEIR's construction timeline, however, assumes that the entire area will be developed simultaneously, with all buildings taking up to 19 years to construct.[103] Specifically, all demolition, site preparation, and grading, is assumed to occur between June 1, 2021 and July 22, 2024; all building construction is assumed to occur from July 23, 2024 and December 31, 2040; all architectural coating application is assumed to occur from January 13, 2032 to December 31, 2040; and no paving is assumed to begin until October 5, 2038, over 17 years after construction starts.[104] These unrealistic assumptions evenly spread projected construction emissions over the entire 19-year construction period. As a result, the PEIR projects emissions of volatile organic compounds, fine particulate matter, and carbon monoxide to fall just under the significance thresholds in every year.[105] While the PEIR cannot know with certainty the timeline on which the Project area will develop, the PEIR should adopt more realistic assumptions in which buildings are constructed from start to finish in fewer than 19 years and construction emissions overlap with operational emissions in later years.

Third, the PEIR's truck trip length assumption is unjustified. In the operational air quality analysis, the PEIR assumes an average truck trip length of 40 miles.[106] To justify this assumption, the PEIR refers to the South Coast Air Quality Management District's (SCAQMD) use of an average truck trip length of 39.9 miles for its emissions estimates.[107] SCAQMD's truck trip length estimate, in turn, derives from the Southern California Association of Governments' (SCAG) estimate of average truck trip length in its 2016 Regional Transportation Plan.[108] But the SCAG estimate—which includes many short trips in the Los Angeles region—

---

[100] *Ibid*.
[101] Pub. Resources Code, § 21100, subd. (b)(1); CEQA Guidelines, § 15126.2, subd. (a).
[102] Pub. Resources Code, § 21100, subd. (b)(3); CEQA Guidelines, § 15126.4.
[103] PEIR at 4-76 Table 4.4-9.
[104] *Id*.
[105] *Id.* at 4-83 Table 4.4-12.
[106] *Id.* Appendix 1, at 49.
[107] *Id.* Appendix 1, at 49 n. 6.
[108] South Coast Air Quality Management District, *Preliminary Draft Staff Report: Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce*

underestimates the length of trips to and from the Project area, which is located in the Inland Empire, much further from the Ports of Los Angeles and Long Beach than the Los Angeles metro area. In fact, the Project area is approximately 80 miles from the Ports—twice as far as the PEIR's average truck trip length assumption. Rather than adopt SCAQMD's truck trip length estimate, the PEIR should use a methodology that recognizes the Project's truck trips will likely be a blend of local trips and trips to and from the Ports. The PEIR should use SCAG's 40-mile truck trip length estimate for its local trip length assumption and 80 miles for its Port trip length assumption.[109] The resulting average truck trip length for the operational air quality analysis would therefore land between 40 and 80 miles. As emissions from heavy-duty trucks are the primary source of the Project's operational emissions, and as heavy-duty truck emissions are directly related to truck trip length, the PEIR's improperly short truck trip length assumption causes the PEIR to substantially underestimate the Project's operational emissions.[110]

C. The Project Would Have Significant Operational Noise Impacts, Even After Mitigation.

The PEIR finds that the Project would have significant and unavoidable off-site traffic noise impacts. The PEIR also determines that operational noise from on-site sources would have a potentially significant impact on nearby sensitive receptors. The PEIR adopts mitigation measures that it claims would reduce impacts to sensitive receptors from on-site operational noise to less than significant levels. However, this conclusion is incorrect. The PEIR's analysis shows that the Project's on-site operational noise would result in significant noise increases at five of the eight studied sensitive receptor locations during daytime and at seven sensitive receptor locations during nighttime.[111] Many of these noise increases are well in excess of the significance threshold, such as the 12.7 CNEL[112] nighttime increase at R5 (compared to a 5.0

Emissions (WAIRE) Program and Proposed Rule 316 – Fees for Rule 2305 (2021), http://www.aqmd.gov/docs/default-source/planning/fbmsm-docs/preliminary-draft-staff-report.pdf?sfvrsn=14, at 47-48.

[109] For example, a recent vehicle miles traveled analysis by Urban Crossroads used this methodology to estimate truck trip length for warehouses in the area, including in San Bernardino County. *See* Exhibit B at 4-5.

[110] Relatedly, the PEIR's vehicle miles traveled analysis in the transportation section relies on an average truck trip length estimate from a study of Los Angeles, which is far closer to the Ports than the Project area. PEIR at 4-560. The PEIR's air quality and vehicle miles traveled analyses should use a consistent truck trip length assumption. As with the air quality analysis, if the vehicles miles traveled analysis employed a more appropriate truck trip length assumption, it would find the Project's already-significant vehicles miles traveled impact to be even larger.

[111] *Id.* at 4-434 (Table 4.14-21) (daytime), 4-435 (Table 4.14-22) (nighttime).

[112] CNEL refers to "Community Noise Equivalent Level," a 24-hour metric that incorporates a 10 dBA penalty during the night hours (10 p.m. to 7 a.m.) and 5 dBA penalty during the evening hours (7 p.m. to 10 p.m.) to account for the heightened sensitivity of people to noise at night.

CNEL increase significance threshold) or the 6.6 CNEL nighttime increase at R3 (3.0 CNEL increase significance threshold).[113]

The PEIR includes a handful of mitigation measures designed to reduce operational on-site noise. Measures include site-design features such as locating driveways and loading docks away from sensitive receptors, posting anti-idling signs, and requiring sound barriers that reduce noise levels to 65 CNEL at nearby sensitive receptors.[114] Contrary to CEQA's requirements, the PEIR does not explain how these measures will reduce noise impacts to a less than significant level.[115] It appears far from likely that the identified mitigation even could reduce noise increases to levels below the significance thresholds. For example, MM-NOI-1 requires sound barriers that reduce noise levels to 65 CNEL at nearby sensitive receptors. However, reducing noise levels to 65 CNEL at nearby sensitive receptors would not result in any changes to noise impacts, much less reduce noise impacts to a less than significant level. The PEIR finds significant noise impacts not because noise will exceed 65 CNEL, but because the Project will cause significant increases in noise. Specifically, the PEIR's modeling suggests that project noise will not exceed 65 CNEL at any sensitive receptor locations, and that total project plus ambient noise will not exceed 65 CNEL at any of the sensitive receptor locations where significant impacts were identified. Based on these findings, MM-NOI-1 would not require sound barriers to reduce on-site operational noise impacts to any of the sensitive receptors found to suffer from significant impacts.

The PEIR must adopt feasible mitigation that reduces on-site operational noise impacts to sensitive receptors to a less than significant level, and the PEIR must provide substantial evidence demonstrating how the mitigation measures achieve that result. If that is not possible, the PEIR should find that the Project would have significant and unavoidable on-site operational noise impacts to sensitive receptors and adopt all feasible mitigation to reduce those impacts.

D. The Project Would Have Significant Land Use Impacts.

The PEIR should have also found that the Project would have significant land use impacts. The PEIR states that the Project would have a significant impact if it would "physically divide an established community" or "conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect."[116] Contrary to the PEIR's conclusions, the Project would have a significant land use effect on both significant thresholds.

As discussed above in Section IV.A, the Project has the potential to induce physical division of an existing community, as it does not have safeguards to prevent portions of the

---

[113] *Ibid*.
[114] *Id*. at 4-441 to -442.
[115] *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 897-98 (holding that EIRs must support findings that mitigation reduces impacts to less than significant levels with substantial evidence).
[116] PEIR at 4-358.

currently-populated plan area from developing in ways that leave current residents partially or fully surrounded by warehouses. Those residents would be physically separated from the rest of their community, resulting in a significant land use impact. The PEIR must either acknowledge this scenario as a significant land use impact, or, preferably, include measures that would prevent this scenario from occurring. For example, the Project could require individual developments sited in areas that are currently populated to be contiguous with already-approved or constructed facilities and demand that these developments ensure that all residences within the plan area have non-industrial land uses on at least three sides.

In addition, the Project appears to be inconsistent with the Highland General Plan. Policy 5.1 of the Public Health, Safety and Environmental Justice Element of the Highland General Plan provides the goal of "[a]dopt[ing] land use regulations that protect residential and park uses from the impacts of industrial and roadway pollution."[117] Action 5.1c, under Policy 5.1, states "[d]isallow siting and construction of new industrial uses that could impact the health of residents in the [disadvantaged communities]."[118] The PEIR finds that the Project would have significant and unavoidable air quality and noise impacts, among others, thus making clear that the Project "could impact the health of residents in the disadvantaged communities." As discussed above at Section IV.B, the PEIR also improperly omitted a health risk assessment, which is likely to find significant impacts as well. Action 5.1c would directly disallow the Project, so the Project is not consistent with the Highland General Plan, even if it does not conflict with other General Plan policies.

The PEIR's reasoning to the contrary is illogical. The PEIR asserts that the Project is consistent with Action 5.1c because the Project includes mitigation measures to buffer industrial uses within the plan area from residents located outside of the plan area.[119] But measures that *buffer* polluting industrial uses from residents do not *disallow* polluting land uses as Action 5.1c requires. The PEIR finds that the Project would have significant air quality and noise impacts, among others, so Action 5.1c disallows the Project. Moreover, the Project includes landscaped buffers of 10-30 feet, which are inadequate given the size of the Project and the environmental impacts the Project would bring.[120] The buffers are also clearly insufficient to protect nearby residents, as the PEIR finds that the Project would have significant environmental impacts on nearby sensitive receptors despite these buffers. Finally, as discussed above in Sections IV.A and IV.B, the buffers provide no protections for residents within the plan area, and piecemeal, development-level health risk assessments do not adequately identify health risks to nearby sensitive receptors.

Other findings in the PEIR's consistency analysis are dubious. For example, the PEIR contends that the Project is consistent with the Regional Transportation Plan/Sustainable

---

[117] City of Highland, *General Plan, Public Health, Safety and Environmental Justice Element*, at 60.
[118] *Ibid.*
[119] PEIR at 4-371.
[120] *Id.* Appendix 8.4 at 63 Table 4.4.

Communities Strategy/Connect SoCal Goal 5 to "[r]educe greenhouse gas emissions and improve air quality" because the Project "requires incorporation of design measures to reduce greenhouse gas and air pollutant emissions."[121] But the PEIR finds that the Project would have significant and unavoidable greenhouse gas and air quality impacts, emitting nearly seven times the significance threshold for greenhouse gases and nine times the significance threshold for operational NO_x. The incorporation of design and mitigation measures to reduce these significant and unavoidable environmental impacts does not somehow mean that the Project will "improve air quality" in the region. Accordingly, the PEIR should have found that the Project would cause a significant land use impact due to a conflict with Highland's General Plan under significance threshold LU-2.

E. The PEIR Fails to Include All Feasible Mitigation.

CEQA prohibits agencies from approving projects with significant adverse environmental effects where there are feasible mitigation measures that would substantially lessen or avoid those effects.[122] "Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified."[123] The lead agency is expected to develop mitigation in an open public process,[124] and mitigation measures must be fully enforceable and cannot be deferred to a future time.[125]

The PEIR finds significant and unavoidable impacts to air quality, greenhouse gases, noise, transportation, and utilities and service systems. In addition, as discussed above, the PEIR should have also found significant population and housing and land use impacts. We encourage the IVDA to refer to a document published by the Attorney General's Office entitled "Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act" (Warehouse Best Practices Document).[126] The Warehouse Best Practices document includes example mitigation measures that have been adopted in other warehouse projects in California to help lead agencies identify all feasible mitigation. While the PEIR appears to include a large number of mitigation measures, they are inadequate, as key measures are unenforceable, many would become obsolete over the Project's life, several others would have little to no practical effect, and certain measures are inappropriately deferred. The PEIR also does not include additional feasible measures that would further mitigate the Project's

---

[121] PEIR at 4-362; *see also id.* at 4-368 to -369 (analyzing consistency with Goal 1 of the Public Health, Safety and Environmental Justice Element of the Highland General Plan to "[p]rotect the health of community members by improving air quality").
[122] Pub. Resources Code, § 21100, subd. (b)(3).
[123] CEQA Guidelines, § 15126.4, subd. (a)(1)(B).
[124] *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 93.
[125] CEQA Guidelines, § 15126.4.
[126] California Attorney General's Office, *Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act* (2022), https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf.

significant impacts. These issues are elaborated below via comments on individual mitigation measures.[127]

Unenforceable mitigation or measures that would become obsolete:

- Key measures AQ-11, AQ-12, AQ-22, AQ-37 and GHG-1, which respectively relate to alternative-fueled construction equipment, zero-emission or near-zero emission (ZE/NZE) trucks, electric on-site cargo handling equipment, electric landscaping equipment, and clean energy systems such as solar, all contain undefined feasibility conditions that render them unenforceable. Several of these provisions contain other undefined conditions that function as loopholes—for example, AQ-11 only requires non-diesel construction equipment that "can perform adequately," AQ-12 refers to cost differentials between diesel and near-zero-emission and zero-emission trucks, and GHG-1 does not specify the level of energy generation required. The PEIR should remove these conditions and loopholes, clearly define feasibility parameters, and consider use restrictions that phase over time.

- HAZ-1 provides the critical truck route restriction. While the PEIR and Project documents assume that 6th Street will not be a truck route, HAZ-1 actually states that "6th Street shall *mostly* be designated for local deliveries only," rendering the measure entirely unenforceable. HAZ-1 and the Project documents should be revised to state that trucks shall not be permitted on 6th Street, except for local deliveries (as that term is defined in the applicable truck route ordinances or Vehicle Code).

- AQ-35 refers to coordination with Edison to install electric vehicle charging stations. Not only is this deferred mitigation (see below), but it also provides no mechanism or standard to ensure that any electric vehicle charging stations will be built. This measure should be revised to provide specific and binding electric vehicle charger requirements.

- LU-2 provides that "[o]nce the [Project] is adopted," the Agencies "will explore the establishment of a community facilities district, or comparable mechanism, to provide a source of funding for common infrastructure elements within the [Project]; to seek grant funds; and secure low-interests loans." LU-2 should be revised to require "establishment of a community facilities district or comparable mechanism," rather than exploration of establishment of a funding mechanism.

[127] The individual mitigation measures mentioned below are examples of the identified issues. The list of measures discussed is non-exhaustive, and other measures may suffer from the same flaws. The Agency should review all mitigation measures in the PEIR to ensure they meet all legal requirements and will result in actual reductions in the Project's adverse environmental effects.

- GHG-2 would require certain individual developments to submit a GHG Emissions Reduction Plan, but the only specification on the plans are an apparently non-binding "objective" to "reduce GHG emissions by a minimum of 10%." GHG-2 should be revised to have a binding overall requirement.

- Many policies risk obsolescence over the timeframe for Project build out as technology and standards improve, including AQ-1 (requiring use of construction equipment that meets Tier 4 emission standards); AQ-11, AQ-12, and AQ-22 (referring to using zero-emission or near-zero-emission equipment); and AQ-25 to AQ-31, AQ-42, and AQ-43 (demanding compliance with existing laws and regulations). The IVDA should consider ways to ensure these measures remain relevant and effective over the entire Project time horizon, such as time-phased requirements and reference to potential future regulations and equipment meeting the highest-tier standard applicable.

Measures that may have little to no practical effect:

- Measures AQ-18, AQ-20, AQ-25 to AQ-31, AQ-42, and AQ-43 all require compliance with existing laws and regulations. Because the Project must comply with all applicable laws and regulations even without these mitigation measures, these measures will not reduce the Project's environmental impacts.[128]

- AES-2 and AES-5 refer to buffer requirements in the Project to reduce land use conflict between existing residential uses and industrial uses under the Project. However, the Project requires minimal buffering between conflicting residential and industrial uses. For example, the Project requires only a 6-foot wall with unspecified accompanying landscaping.[129] For 6th Street, which under the Project would have residential uses on one side and industrial uses on the other, the PEIR does not require additional setbacks beyond the 66-foot right of way, and only a 6-foot strip of planted trees on each side of the road would buffer the existing residential uses from industrial uses under the Project.[130]

- AQ-41 states that "[f]uture development under the AGSP shall be designed to require internal check-in points for trucks to minimize queuing outside of the project site." However, this measure has no size requirements for internal queuing areas to actually result in minimal queuing outside the project site. The Warehouse Best Practices Document recommends providing a minimum of 140

[128] Note that the environmental analysis of the Project's impacts assumes the Project will comply with laws and regulations.
[129] PEIR Appendix 8.4, at 77.
[130] *Id*. Appendix 8.4 at 88 Fig. 5.4.

feet for queuing and increasing the distance by 70 feet for every 20 loading docks beyond 50 docks.

Deferred mitigation:[131]

- Measure PH-1 requires future individual project developers to prepare a relocation plan for any development under the Project that may displace conforming residents. The measure includes no details or requirements for the future relocation plan other than that it comply with existing laws. This measure should be extensively revised, as discussed in Section VI.A above.

- TRAN-8 states that future individual project developers must later implement transportation demand management strategies to reduce project vehicle miles traveled. The measure places no minimum requirements on these strategies to ensure they are specific, enforceable, or effective. This measure should be revised accordingly.

- LU-2 provides that "[o]nce the [Project] is adopted," the Agencies "will explore the establishment of a community facilities district, or comparable mechanism, to provide a source of funding for common infrastructure elements within the [Project]; to seek grant funds; and secure low-interests loans." It requires this funding mechanism to be established within one year of Project approval by all three agencies. The IVDA should revise this measure to provide specifics on this district or fund and how it will operate, such that it can be established simultaneously with Project approval.

- AQ-35 requires future developments to coordinate with Edison to install electric vehicle charging stations, deferring consideration of the particulars to an unspecified future time. This measure should be revised as discussed above.

Feasible mitigation measures that should be added to the Project:[132]

- Designating an area in the construction site where electric-powered construction vehicles and equipment can charge;
- Forbidding idling of diesel-powered equipment for more than three minutes;
- Providing information on transit and ridesharing programs and services to construction employees;
- Providing meal options onsite or shuttles between the facility and nearby meal destinations for construction employees;

[131] These mitigation measures also lack sufficient details to be a clear, enforceable obligation and should be revised accordingly.
[132] These examples are drawn from the Warehouse Best Practices Document.

- Increasing physical, structural, and/or vegetative buffers along projected truck routes to reduce pollutant dispersal and noise between trucks visiting the Project and adjacent sensitive receptors;
- Constructing electric truck charging stations proportional to the number of dock doors at the project;
- Constructing electric light-duty vehicle charging stations proportional to the number of parking spaces at the project;
- Requiring all on-site motorized operational equipment, such as forklifts and yard trucks, to be zero-emission with the necessary charging or fueling stations provided;
- Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations;
- Installing solar photovoltaic systems on the project site of a specified electrical generation capacity that is equal to or greater than the building's projected energy needs, including all electrical chargers;
- Requiring all stand-by emergency generators to be powered by a non-diesel fuel;
- Requiring facility operators to train managers and employees on efficient scheduling and load management to eliminate unnecessary queuing and idling of trucks;
- Meeting CalGreen Tier 2 green building standards, including all provisions related to designated parking for clean air vehicles, electric vehicle charging, and bicycle parking;
- Designing to LEED green building certification standards;
- Posting signs at every truck exit driveway providing directional information to the truck route;
- Requiring that every tenant train its staff in charge of keeping vehicle records in diesel technologies and compliance with CARB regulations, by attending CARB-approved courses. Also require facility operators to maintain records on-site demonstrating compliance and make records available for inspection by the local jurisdiction, air district, and state upon request;
- Requiring tenants to enroll in the United States Environmental Protection Agency's SmartWay program, and requiring tenants who own, operate, or hire trucking carriers with more than 100 trucks to use carriers that are SmartWay carriers;
- Paving roads on the truck routes with low noise asphalt;
- Planting exclusively 36-inch box evergreen trees to ensure faster maturity and four-season foliage;
- Requiring all property owners and successors in interest to maintain onsite trees and vegetation for the duration of ownership, including replacing any dead or unhealthy trees and vegetation;
- Creating a fund to mitigate impacts on affected residents, schools, places of worship, and other community institutions by retrofitting their property. For example, retaining a contractor to retrofit/install HVAC and/or air filtration systems, doors, dual-paned windows, and sound- and vibration-deadening insulation and curtains;
- Providing electrical hook ups to the power grid for non-battery-powered electric construction equipment rather than using diesel-fueled generators to supply power;
- Unless the owner of the facility records a covenant on the title of the underlying property ensuring that the property cannot be used to provide refrigerated warehouse space,

constructing electric plugs for electric transport refrigeration units at every dock door and requiring truck operators with transport refrigeration units to use the electric plugs when at loading docks;

- Installing and maintaining, at the manufacturer's recommended maintenance intervals, an air monitoring station proximate to sensitive receptors and the Project, and making the resulting data publicly available in real time.

F. The PEIR Should Consider Reduced Plan Area Alternatives.

CEQA requires an EIR to identify "alternatives" to the proposed project.[133] The EIR must "describe a range of reasonable alternatives . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives."[134] The alternatives analysis must also "include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project."[135] "Evaluation of project alternatives and mitigation measures is the core of an EIR."[136] Discussion of alternatives allow governmental agencies to consider alternatives to proposed actions affecting the environment.[137] To consider alternatives under CEQA, an EIR measures the chosen alternatives' environmental impacts against the Project's environmental impacts. Selected alternatives must be able to meet some of the basic Project objectives,[138] though they need not meet all objectives.[139]

The PEIR considers only two alternatives: a no project alternative in which all undeveloped land remains undeveloped, and a no project alternative in which all undeveloped land is developed under the existing land use designations (the "NPA2").[140] The PEIR finds that the NPA2 is inferior to the Project because it would not result in many of the benefits of the Project's centralized specific planning effort—for example, the NPA2 would not include certain infrastructure or mobility improvements, and it would not have the distinctive design and integrated planning benefits of the Project.[141]

The PEIR's consideration of alternatives is overly narrow. Other alternatives exist that would retain the benefits of a centralized specific plan but result in reduced environmental

---

[133] Pub. Resources Code, § 21002.1(a).
[134] CEQA Guidelines, § 15126.6, subd. (a).
[135] CEQA Guidelines, § 15126.6, subd. (d).
[136] *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 937 (alterations omitted).
[137] *Laurel Heights Improvement Ass'n. v. Regents of Univ. of California* (1988) 47 Cal.3d 376, 400 (en banc) (citing Pub. Resources Code, § 21001, subd. (g)).
[138] CEQA Guidelines, § 15126.6, subd. (a).
[139] *Watsonville Pilots Ass'n. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1087 ("It is virtually a given that the alternatives to a project will not attain *all* of the project's objectives.").
[140] PEIR at 1-13.
[141] *Id.* at 1-14 to -15.

impacts and discriminatory effects. The PEIR should consider a reduced plan area alternative that excludes residential areas and/or parcels zoned for residential use from the Project area. Because most residential areas and parcels zoned for residential use are on the edges of the Project area, they could be excluded from the Project area without substantially affecting the areas available for industrial development. A reduced plan area alternative would still involve the Project's centralized planning effort, so it would achieve all Project objectives: it would create economic opportunities, provide comprehensive infrastructure improvements, feature distinctive design and appearance, build streetscape improvements, upgrade connectivity and mobility, and involve integrated planning. A reduced plan area alternative would also result in reduced environmental impacts: no displacement would mean no significant population and housing impacts, and slightly less industrial development would mean reduced air quality, noise, transportation, and other environmental impacts. A reduced plan area alternative would be less likely to violate FEHA, avoid the need to designate replacement residential capacity under SB 330,[142] and not contribute to the State's housing crisis. The IVDA should revise the PEIR to analyze a reduced plan area alternative, which would achieve the IVDA's goals to orderly develop the airport region with complementary uses, without many of the negative social and environmental impacts that the Project would cause.[143]

G. The PEIR Should Consider Whether the Project Will Induce Additional Air Cargo Flights to the San Bernardino Airport and, if so, Analyze the Resulting Impacts.

EIRs must analyze all reasonably foreseeable indirect project impacts.[144] As the Project's name indicates, the Project is intended to "function[] as the front door to the San Bernardino International Airport" and develop economic opportunities that complement the Airport and transition to more residential uses further from the Airport.[145] One possible consequence of expanding warehouse capacity adjacent to the Airport may be increased demand for air cargo flights to and from the Airport. For example, the Eastgate Air Cargo Logistics Center project is a 658,500 square-foot warehouse on San Bernardino Airport grounds.[146] The Environmental Assessment for the Eastgate project disclosed that the project was expected to induce twelve new aircraft takeoffs and landings daily.[147] Constructing approximately fifteen times the warehouse capacity in a similar location may also be expected to induce air cargo flights. Although these operations would bring economic benefits, they would also add

---

[142] A potentially viable reduced plan area alternative that does not exclude undeveloped parcels designated for residential development would need to simultaneously designate replacement residential capacity under SB 330.
[143] Note that CEQA still requires that the impacts of a reduced plan area alternative would still need to be studied and disclosed, and, if any impacts are significant, mitigated.
[144] CEQA Guidelines, § 15358, subd. (a)(2).
[145] PEIR at 1-1.
[146] Final Environmental Assessment for the Eastgate Air Cargo Facility (2019), https://www.sbiaa.org/wp-content/uploads/2022/05/SBD-Eastgate-Final-EA-122019.pdf, at 1-7.
[147] *Id.* at 1-8.

environmental impacts not considered in the PEIR. The IVDA should revise the PEIR to discuss this issue, including whether additional air cargo flights are a reasonably foreseeable indirect project impact, and if they are, analyze, disclose, and mitigate the resulting environmental impacts.[148]

H. The PEIR Should Clarify When and to What Extent Projects in the Plan Area Will Require Further CEQA Review.

The PEIR should clarify when and to what extent future development projects in the plan area will be subject to further CEQA review. Agencies may, in later CEQA analyses, incorporate by reference analyses of general matters in broader EIRs, allowing agencies to focus the later CEQA reviews on issues specific to the project at issue.[149] This practice, called "tiering," ensures all environmental impacts of broader projects are addressed together, and allows agencies to streamline CEQA review of individual development projects. Both the CEQA Guidelines and the Warehouse Best Practices Document encourage the use of broader, proactive planning projects, such as specific plans, to guide orderly development and streamline environmental review.[150] Proactive planning also ensures that all cumulative impacts can be identified and mitigated.

In addition, CEQA applies to "projects," which are discretionary actions by public agencies.[151] Actions that are ministerial—which are decisions that involve little or no personal judgment by the public official as to the wisdom or manner of carrying out the project—are not discretionary actions, and thus are not projects subject to CEQA.[152]

Throughout, the PEIR suggests that some individual developments under the Project may involve only ministerial approvals or tiered CEQA review. For example, mitigation measure AQ-13 states that a "regional and localized emissions analysis will be required for all projects subject to CEQA discretionary actions," implying that some project approvals may be ministerial and that CEQA review of discretionary projects may be tiered off the Project's EIR. While we support proactive, large-scale planning, the IVDA should clarify at this stage the types of future developments that would be subject to ministerial approval under the Project and the extent of CEQA review discretionary projects will undergo. This information is critical to the sufficiency

---

[148] Note that the environmental impacts from increased air cargo flights are a physical change to the environment that must be considered under CEQA. CEQA Guidelines, § 15064, subd. (d). The Agency must analyze those physical impacts even if the Agency determines that they would result from the Project's economic effects. In other words, the physical impacts from additional air cargo flights must be considered, even if the increase in air cargo flights is caused by economic effects (e.g., demand for air cargo flights increases due to new warehouse capacity in the Airport area). CEQA Guidelines, § 15064, subd. (e).

[149] CEQA Guidelines, § 15152.

[150] *Id*.; Warehouse Best Practices Document at 3-4.

[151] Pub. Resources Code, § 21080, subd. (a).

[152] Pub. Resources Code, § 21080, subd. (b).

of the PEIR, as the scope of anticipated later project reviews affects the level of detail required in the PEIR.[153] In addition, clarification would improve public transparency, avoiding later surprise if the level of review is above or below expectations.

I. The Agencies Should Not Approve Industrial Projects in the Project Area until the Project is Finally Approved or Denied.

While the Project's comment period was pending, Highland released a mitigated negative declaration for, and then approved, a warehouse development in the Project area called the Sixth Street and Del Rosa Drive Warehouse Project.[154] Although this development is small compared to full buildout of the Project, it is adjacent to residences and across the street from Indian Springs High School.[155]

Approving individual industrial developments within the Project area before the Project is considered risks violating CEQA by piecemealing consideration of the environmental impacts of the Project as a whole.[156] This approach also undermines the central planning effort that is a primary objective of the Project. Individual developments may not comply with Project requirements or mitigation measures, and necessary infrastructure—such as water supplies, stormwater management systems, and road improvements—may not be in place to support premature buildout of the Project area.[157] For the same reason that the Warehouse Best Practices Document recommends proactive planning efforts,[158] approving developments in the Project area before the Project is considered would be detrimental to orderly development of the Project area and full consideration of the Project's environmental impacts, including cumulative impacts. The Agencies should not approve individual industrial projects in the Project area before the Project is considered.[159]

V. CONCLUSION

The Project as proposed would violate the FHA, FEHA, the Housing Crisis Act, the duty to affirmatively further fair housing, and CEQA. We have serious concerns about the Project's

---

[153] CEQA Guidelines, § 15152, subd. (b)-(c).
[154] *See* Office of Planning and Research, CEQAnet Web Portal, Sixth Street and Del Rosa Drive Warehouse Project, Clearinghouse Number 2023030640, https://ceqanet.opr.ca.gov/Project/2023030640.
[155] *See* Mitigated Negative Declaration, Sixth Street and Del Rosa Drive Warehouse Project, https://files.ceqanet.opr.ca.gov/286447-1/attachment/4GvS8118KM4t53Dn6sKsfHobQWP3hEHX9VjUzho6yoFWAcDvd1w1yYCpNhWbpfzYvalCPM2B6lsq-_0F0, at 139 Fig. 1.
[156] *See Orinda Assn v. Bd. of Supervisors* (1986) 182 Cal. App. 3d 1145, 1171-72.
[157] *See, e.g.*, PEIR at 4-633 to -635.
[158] Warehouse Best Practices Document at 3-4.
[159] At minimum, compliance with all applicable requirements and mitigation measures that are ultimately adopted in the Airport Gateway Specific Plan should be made a legally enforceable condition of approval.

displacement of existing communities, particularly as it would affect communities of color that are highly socioeconomically disadvantaged and environmentally overburdened. While we support economic development of the San Bernardino International Airport area and recognize the value of industrial projects, development should be sustainable, comply with all applicable laws, and serve the local community. We urge the IVDA to more thoroughly consider project alternatives in coordination with all stakeholders, including affected residents. The IVDA should particularly study project permutations that would reduce or eliminate displacement of existing communities and loss of housing stock and/or provide sufficient safeguards and replacement housing for displaced communities. The IVDA should also revise the PEIR to fully analyze and disclose all significant impacts and adopt all feasible mitigation, and the IVDA should recirculate the revised PEIR for further public review and comment. We are available to meet with the IVDA as it works to comply with all applicable laws. Please do not hesitate to contact us if you have any questions or would like to discuss.

Sincerely,

ROBERT SWANSON
Deputy Attorney General

For ROB BONTA
Attorney General

Exhibit A: Annotated Map of the Project Area

Exhibit C

August 15, 2023
23210-00

Heather M. Minner
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102-4421

Subject: **Opposition to Response to Comments for the Final Environmental Impact Report for the Tracy Alliance Project**

Dear Ms. Minner:

Baseline Environmental Consulting (Baseline) has reviewed the Response to Comments prepared by FirstCarbon Solutions (FCS), regarding the proposed Tracy Alliance Project (project) in the City of Tracy, California (City), California, in which FCS provided responses to the comment letter from Shute, Mihaly, and Weinberger LLP (SHUTE), dated April 13, 2023. Based on our review, the responses provided by FCS do not adequately address the issues raised by SHUTE regarding the inadequate evaluation of health risks (SHUTE-7).

Response to SHUTE-7: Incomplete Evaluation of Health Risks

The original comments under SHUTE-7 stated that the FEIR's evaluation of health risks is incomplete and non-conservative for the following reasons: (1) operational health risks were only evaluated for Phase 1 of the proposed project and not Phases 2 and 3; (2) the combined health risks from the overlap of Phase 3 construction with Phase 1 and 2 operation (i.e., the worst-case scenario) were not evaluated; and (3) health risks to sensitive receptors on the south side of the project site along Grant Line Road from operation of Phases 2 and 3 were not evaluated or addressed by Mitigation Measure (MM) AIR-1e.

In response to part 1 of SHUTE-7 summarized above, FCS did not provide a direct response. However, they provided the following response to Valley Air District-2-5:

> *… the Draft EIR analyzed the health risk impacts during operation of Phase 1 of the proposed project as that is the only phase for which project-specific information was available, such as specific local truck travel routes, possible locations of on-site vehicle and equipment idling, and general building design and orientation on the project site. Nevertheless, it is reasonable to conclude that the health risk impacts resulting from*

> *operation of Phase 1 would be generally representative of and thus adequately identify and disclose operational impacts at full buildout.*

As explain in the original comment under SHUTE-7, this response is inadequate and lacks justification because health risks could readily be estimated for operation of Phases 2 and 3 using the information provided in the transportation section of the FEIR, such as the truck site access routes and estimated truck trips during project operation. In response to Valley Air District-2-5, FCS also states the following:

> *… because Phase 1 of the proposed project would represent 55 percent of potential trucking activities, the Draft EIR determined that Phases 2 and 3 could result in operational trucking activity that would generate significant toxic air contaminant (TAC) emissions and the overall project could exceed the 20 in a million threshold.*

We agree that the overall project could exceed the 20 in a million threshold, but the EIR has not completed a full analysis in a good faith effort to disclose the severity of the potential health risks or evaluate the effectives of proposed mitigation. It should be noted that 55 percent of potential trucking activities associated with Phase I is not directly proportional to the project's overall health risks, because predominant wind direction(s) and location of sensitive receptors relative to emissions sources are critical parameters in the health risk assessment. FCS has also not provided adequate justification for why the health risk analysis of all three phases was not performed.

In response to part 2 of SHUTE-7 summarized above, FCS indicates that concurrent construction of all phases of project construction is a reasonable worst-case scenario. As mentioned in SHUTE-7, Table 2-5 of the Project Description indicates that the construction of Phases 1 through 3 would occur sequentially and operation of Phases 1 and 2 would overlap with construction of the later phases. The FEIR analysis evaluated construction health risks associated with sequential and concurrent phasing options. However, for the sequential construction scenario, the FEIR failed to consider the DPM emissions from the operation of the earlier phase(s), and therefore underestimated the associated health risks for the maximally exposed residential and school sensitive receptors. To comprehensively assess the health risks to nearby sensitive receptors and properly identify the worst-case scenario, the health risk assessment should combine emissions from both the construction and operation phases that overlap. The combined health risks from construction and operation would be substantially higher than the individual health risks that were presented separately for construction and operation in the FEIR. In addition, the San Joaquin Valley Air Pollution Control District recommended thresholds of significant impact[1] do not explicitly state that when happen

[1] San Joaquin Valley Air Pollution Control District. CEQA Project Analysis Levels. Available via: https://www.valleyair.org/transportation/ceqaanalysislevels.htm#thresholds

concurrently, construction and operation emissions from the same project should not be both considered for the HRA.

In response to part 3 of SHUTE-7 summarized above, FCS did not provide a direct response. The FEIR includes MM AIR-1e, which prohibits the operational truck fleet to access Grant Line Road east of the project site where many sensitive receptors are located. However, health risks to sensitive receptors on the south side of the project site along Grant Line Road (residences and Banta Elementary School) from operation of Phases 2 and 3 were not evaluated or addressed by MM AIR-1e. It is reasonable to assume that the health risks may be greater on the south side of the project site because the predominant wind direction flows to the southeast toward the above-mentioned sensitive receptors.

Sincerely,

Patrick Sutton,
Principal Environmental Engineer

Yilin Tian, PhD
Environmental Engineer

Attachment

STAFF RESUMES

Patrick Sutton, P.E.

Principal Environmental Engineer

Areas of Expertise

Air Quality, GHGs, Noise, Hazardous Materials, Geology, and Hydrology

Education

M.S., Civil and Environmental Engineering, University of California – Davis

B.S., Environmental Science, Dickinson College

Registration

Professional Engineer No. 13609 (RI)

Years of Experience

19 Years

Patrick Sutton is an environmental engineer who specializes in the assessment of hazardous materials released into the environment. Mr. Sutton prepares technical reports in support of environmental review, such as Phase I/II Environmental Site Investigations, Air Quality Reports, Greenhouse Gas (GHG) Reduction Plans, and Health Risk Assessments. He has prepared numerous CEQA/NEPA evaluations for air quality, GHGs, geology, hazardous materials, and water quality related to residential, commercial, and industrial projects, as well as large infrastructure developments. His proficiency in a wide range of modeling software (AERMOD, CalEEMod, RCEM, CT-EMFAC) as well as relational databases, GIS, and graphics design allows him to thoroughly and efficiently assess and mitigate environmental concerns.

For mixed-use development projects, Mr. Sutton has prepared health risk assessments for sensitive receptors exposed to toxic air contaminants based on air dispersion modeling. He has also prepared GHG Reduction Plans to demonstrate how projects can comply with State and/or local GHG reduction goals. For large highway infrastructure improvement projects, Mr. Sutton has prepared air quality and hazardous materials technical reports in accordance with Caltrans requirements. Air quality assessments include the evaluation of criteria air pollutants, mobile source air toxics, and GHG emissions to support environmental review of the project under CEQA/NEPA and to determine conformity with the State Implementation Plan. Hazardous materials investigations include sampling and statistically analysis of aerially-deposited lead adjacent to highway corridors.

Project Experience

Oakland Downtown Specific Plan EIR. Prepared a program- and project-level Air Quality and GHG Emissions analysis. Developed a mitigation measure with performance standards to ensure GHG emissions from future projects comply with the Citywide 2030 GHG reduction target.

I-680 Express Lanes from SR 84 to Alcosta Boulevard Project. Prepared Initial Site Assessment and Preliminary Site Investigation to evaluate contaminants of potential concern in soil and groundwater. Prepared Air Quality Report to determine the project's conformity to federal air quality regulations and to support environmental review of the project under CEQA and NEPA.

Altamont Corridor Expressway (ACE/Forward) Project EIR/EIS. Prepared a program- and project-level Hazardous Materials analysis for over 120 miles of railroad corridor from San Jose to Merced. Hazardous materials concerns, such as release sites, petroleum pipelines, agricultural pesticides, and nearby school sites were evaluated in GIS.

Stonegate Residential Subdivision EIR. Prepared a project-level Hydrology and Water Quality analysis for a residential development located within the 100-year floodplain. The proposed project included modifications to existing levees and flood channels.

BART Silicon Valley Extension Project. Prepared Initial Site Assessment and Hazardous Materials EIS/EIR section for extending 6 miles of proposed BART service through the Cities of San Jose and Santa Clara.

Yilin Tian, Ph.D.

Environmental Engineer

Areas of Expertise

Air Quality, GHGs, Noise, Energy, and Environmental Compliance

Education

Ph.D./M.S., Environmental Science and Engineering, Clarkson University

B.S., Environmental Science, Beijing University of Technology

Registrations/Certifications

40-hour HAZWOPER training

Engineer-In-Training, No. 167986

Years of Experience

11 Years

Yilin Tian is an environmental engineer who specializes in the analysis of air quality and human exposure to toxic air contaminants. For CEQA environmental review, Yilin assists in the analysis of air quality, greenhouse gas (GHG), noise and vibration, and energy impacts. She is also familiar with state/local environmental regulations and guidelines related to CEQA review. Yilin has worked on variety of land uses development projects, including large mixed-use infill, wetland restoration, levee improvement, and highway expansion projects. She is experienced with preparing health risk assessments for sensitive receptors exposed to toxic air contaminants during construction and operation. Yilin is proficient with air pollution models (e.g., CalEEMod and AERMOD), noise models (e.g., FHWA TNM and SoundPLAN), geospatial data analysis, and database management.

Besides CEQA studies, Yilin has worked with the Bay Area Air Management District (BAAQMD) to improve existing emissions estimation techniques and update emission inventories related to wood-burning devises and ammonia emissions in the Bay Area. Her strong background in statistics and air pollutants emissions allows her to process and analyze data properly and efficiently.

Yilin has assisted the City of Berkeley and the San Francisco Public Utilities Commission (SFPUC) with environmental compliance and mitigation monitoring, including reviewing submittals and performing environmental field inspections. Beyond that, Yilin has experience with Phase I Environmental Site Assessments, air monitoring, noise monitoring, and the state's Underground Storage Tank Cleanup Fund application.

Project Experience

Belvedere Seismic Upgrade Project EIR – Prepared Air Quality, GHG Emissions, and Noise and Vibration analysis for the installation of sheet piling along specific roadway segments in an area of existing levees in Belvedere.

2136-54 San Pablo Project IS/MND – Prepared Air Quality, GHG Emissions, and Noise and Vibration analysis for the development of a new, six-story mixed-use building in Berkeley.

Saratoga Housing Element Update EIR – Prepared noise and vibration analysis for the Saratoga General Plan Housing Element Update.

I-80/Ashby Avenue Interchange Improvement Project. Prepared Air Quality Report to determine the project's conformity to federal air quality regulations and to support environmental review of the project under CEQA and NEPA.

Residential Wood Combustion for San Francisco Bay Area. Updated the methodology and datasets used by the BAAQMD to quantify residential wood combustion emissions within the San Francisco Bay Area Air Basin.

Environmental Compliance Monitoring for the City of Berkeley – Reviewed noise reduction plans submitted by the developers against the requirements of the MMRP and standard conditions of approval.

Exhibit A

Current and Proposed industrial/warehouse development along the I-205 corridor (Tracy/Manteca/Lathrop/Stockton)

Updated 4/13/2023

Jurisdiction	Project	Environmental Review	Size (SF)	Description
Tracy	Costco Annexation	DEIR published 9/14/2022	1,812,279	1,812,279 SF industrial at 16000 W. Schulte Rd.
Tracy	Tracy Alliance	FEIR published 1/17/2023	1,502,820	1,849,500 square feet of warehouse and office space located in three buildings. Buildout of these parcels is estimated to consist of 1,502,820 square feet of warehouse development.
Tracy	Tracy Hills Commerce Center	Specific Plan approved	1,690,000	1,690,000 SF industrial
Tracy	Schulte Warehouse Annexation	Preliminary review	217,466	217,466 SF industrial at 16286 W. Schulte Rd
Tracy	Cordes Ranch buildout	Specific Plan approved	31,000,000	1,850,000 SF industrial plus 150,159 SF commercial at 6050, 5070, and 5390 Promontory Pkwy in Cordes Rnach Specific Plan. CRSP allows for ultimate buildout of 31MSF commercial, office, and business park industrial uses over 1,780 acres. Development Agreement approved in 2013.
Lathrop	Lathrop Crossroads Industrial Project	MND published 9/27/2022	453,904	Industrial development of approximately 25 acres for up to 453,904 square feet of manufacturing or warehouse buildings, including on-site circulation, truck and light vehicle parking.
Lathrop	Central Lathrop Specific Plan	Future project	TBD	Update Specific Plan to address development of 700 acres of industrial uses.
Manteca	GBxManteca Project (SPC-21-136)	Project approved 1/10/2023	295,176	40 truck docks, and 3 bay truck maintenance facility. The building use is broken into 270,176 sf for warehouse space, and 25,000 sf for office space. Generates 132 truck trips per day, and 530 passenger vehicle trips per day. The parking area is designed with 251 car parking stalls, and 56 trailer stalls. The facility will provide temporary warehousing of beverage products, office administration of warehouse on site, and truck maintenance on site.
Stockton	Mariposa Industrial Center	Project approved 12/6/2022	3,600,000	203 acres of land located adjacent to and south of Mariposa Road to be developed with 3,600,000 SF of warehouse and ancillary office uses.
Stockton	South Stockton Commerce Center	Planning Commission/City Council hearing process.	6,091,551	6,091,551 square feet of industrial type land uses, 140,350 square feet of commercial land uses on 422.22 acre site adjacent to the Stockton Airport.
Stockton	Mariposa Industrial Park #2	NOP for DEIR published 3/21/2023	1,000,000	Annexation of 114 acres to the City of Stockton to develop 1,000,000 SF of high cube warehouse space.
Port of Stockton	T.C. NO. CAL. Warehousing and Distribution Facility Project	DEIR published 1/12/2022	655,200	655,200-square-foot (sf) warehouse, 293,951-sf outdoor storage area, employee parking, trailer parking, trailer storage, truck docks, rail service and spurs. Operations are expected to begin following warehouse construction and would involve truck and rail deliveries of commercial products.

San Joaquin County	Golden State Logistics Hub	Preliminary review	TBD	Pre-application for GPA, Specific Plan, and Rezoning for 1,573 acres currently consisting of 1,493 acres of General Agriculture (A/G) and 80 acres of Open Space/Resource Conservation (OS/RC) to provide for a mix of approximately 1,451 acres of General Industrial (I/G), 49 acres of OS/RC, 66 acres of Public (P/F), and 7 acres of General Commercial (C/G) designations. 31606 S Tracy Blvd.
San Joaquin County	International Park of Commerce - Phase 2	NOP for DEIR published 3/31/2023	5,300,000	General Plan Amendment, Zone Reclassification, and Specific Plan to establish a new industrial and warehousing development with 5.3 million square feet of building space on 284.3 acres adjacent to the City of Tracy and outside of its Sphere of Influence (SOI) within an unincorporated area of the County.
Manteca	Airport Business Centre North Project (SPC-22-045)	Project approved 1/10/2023	360,000	360,000-sf tilt up concrete building with 242 car parking stalls, 93 trailer stalls, 46 truck docks (3045, 3123, and 3157 N Airport Way). The building is broken into 355,000 sf for warehouse, and 5,000 sf for office
Manteca	CenterPoint South (SPC-19-155)			2205 N. Airport Way - two new concrete tilt-up warehouse buildings
Manteca	Raymus Development Office Bldg (SPC-21-074)			617 W Yosemite Ave
Manteca	E. Wetmore Office and Warehouse (SPC-21-127)			470 E. Wetmore St
Manteca	Prologis/Spreckels Dist Center (SPC-17-011)		305,000	Distribution center at 407 Spreckels Ave

Exhibit B

12 April 2023
23210-00

Kristi Bascom
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102-4421

Subject: **Review of Air Quality and Greenhouse Gas Impacts Analyzed in the Final Environmental Impact Report for the Tracy Alliance Project**

Dear Ms. Bascom:

Baseline Environmental Consulting (Baseline) has reviewed the Final Environmental Impact Report (FEIR) for the Tracy Alliance Project (project) in the City Tracy, California, to determine whether potential environmental impacts related to air quality and greenhouse gas (GHG) emissions were properly evaluated. Based on our review, we have identified flaws in the FEIR analysis used to support the significance determinations and to develop and assess mitigation measures. The specific concerns identified in our review of the FEIR for potential environmental impacts related to air quality and GHG emissions are described in detail below.

AIR QUALITY CONCERNS

Unsubstantiated Analysis of Operational Criteria Air Pollutant Emissions

The FEIR estimated the project's operational criteria air pollutant emissions from warehouse operations using the California Emissions Estimator Model (CalEEMod) version 2016.3.2. The most common air pollutants of concern for warehouse projects are nitrogen oxides (NOx) emissions due to the relatively high volume of diesel truck trips generated by facility operations. CalEEMod estimates emissions based on the total vehicle miles traveled (VMT) for each type of vehicle trip generated by the project. The project's VMT and associated air pollutant emissions are calculated based on the trip generation rates and travel distances used for each vehicle type in CalEEMod.

Underestimated Emissions from Warehouse Vehicle Trips

The FEIR air quality analysis used CalEEMod default parameters for trip length, trip type, and trip percentage to estimate the project's VMT and associated air pollutant emissions. According to page 3-44 of the FEIR, the CalEEMod default travel distance of 11.35 miles per trip, on average, was used to estimate emissions from both passenger vehicle and truck trips.

The San Joaquin Valley Air Pollution District submitted written comments to the Draft Environmental Impact Report (DEIR), requiring justification for use of the CalEEMod default trip length for operational heavy-duty truck trips. The FEIR provided the following response (page 3-44):

> "Based on available information, the project applicants have identified three regionally located intermodal facilities as the most likely origins and destinations for much of their operations: an intermodal facility located at 1000 East Roth Road, Lathrop, California 95231, approximately 12.1 miles from the project site, an Amazon distribution center, located along East Paradise Road approximately 1 mile from the project site, and a UPS distribution center, located along West Shulte Road approximately 10.9 miles from the project site. Considering an even distribution between the three listed product origins and destinations, trucks traveling to and from the project site during operation would travel an average of 8 miles per trip. As the CalEEMod default results in an average truck travel distance of 11.35 miles, as shown in Appendix B of the Draft EIR, the proposed project's trucking activity was conservatively captured in the modeling contained in Appendix B of the Draft EIR and no revisions to the analysis are determined to be necessary in order to comply with CEQA."

The justification provided in the FEIR for using the CalEEMod default travel distance of 11.35 miles per trip for operational truck trips is inadequate and non-conservative. There is no information in the Project Description of the FEIR regarding the potential origin and destination of truck trips generated by the project. This is especially true of Phases 2 and 3 of the Project, for which there are not yet any development plans and therefore no basis for the applicants to even begin to make assumptions about the origins and destinations of diesel trucks. More importantly, there are no limitations preventing the project from delivering products to retailers or consumers in nearby cities instead of nearby distribution centers like Amazon and UPS. Truck trips to nearby major cities such as Manteca (12 miles), Stockton (18 miles), Livermore (25 miles), and Modesto (27 miles) would result in an average travel distance of about 20.5 miles per trip. Truck trips to Port of Stockton or Port of Oakland would result in a travel distance of about 19 miles and 55 miles, respectively. Therefore, the use of the CalEEMod default travel distance of 11.35 miles per trip to estimate air pollutant emissions from trucks was neither conservative nor a reasonable representation of the range of potential travel destinations that could be generated by the project.

In addition, the FEIR air quality analysis did not provide adequate justification for assuming passenger vehicles would travel 11.35 miles per trip. The average travel distance of 11.35 miles was calculated by assuming 59 percent of the passenger vehicle trips would be for commuting 14.7 miles to work and 41 percent of the passenger vehicle trips would be for traveling 6.6 miles for other work-related trips (e.g., deliveries). The FEIR air quality analysis provides no explanation or justification for these assumptions. Based on the proposed use of the warehouses, it is likely that 100 percent of the passenger vehicle trips will be worker commute trips at an average distance of 14.7 miles (instead of the 11.35 miles) and all other work-related trips would be generated by the warehouse trucks.

As discussed above, the FEIR did not provide substantial evidence to justify the total VMT and associated air pollutant emissions that would be generated by truck and passenger vehicle trips and omitted any analysis of trip origins and destinations other than to nearby intermodal facilities. As a result, the FEIR significantly underestimates the mobile air pollutant emissions that would be generated by the project.

Unsubstantiated Analysis of NOx Mitigation Measures

The FEIR air quality analysis concluded that the project would have a significant and unavoidable impact for criteria air pollutant emissions and identified nine mitigation measures (MM), including MM AIR-1a through MM AIR-1i, to mitigate the impacts.

MM AIR-1d requires all trucks to meet the California Air Resources Board's (CARB's) Low-NOx Standard and the FEIR states on page 3.3-41 that implementation of MM AIR-1d "would represent an approximately 90 percent reduction in NOx emissions from the current heavy-duty truck NOx standard…" Further, the mitigated mobile operational emissions were presented in Appendix B of the FEIR, with the assumption that implementation of MM AIR-1d would reduce the project's unmitigated mobile NOx emissions from trucks by 90 percent. However, it is important to recognize that the current heavy-duty truck NOx standard was phased in between 2007 and 2010, and the fleetwide average emissions from heavy-duty trucks have substantially improved since 2010.

The assumption that MM AIR-1d would result in a 90 percent reduction in NOx emissions would only be true if all of the heavy-duty trucks in the unmitigated scenario for the project were built in 2010. However, according to EMFAC2021, during the opening year of the project (2025) about 97 percent of the heavy-duty trucks in San Joaquin County are expected to have an engine year model of 2011 or later. Furthermore, the fleetwide average NOx emission rate in 2025 from all heavy-duty trucks in San Joaquin County is expected to be 1.65 grams per mile, which would be about 75 percent lower than the NOx emission rate of 6.47 grams per mile from an aging fleet of 2010 heavy-duty trucks. In other words, the project's unmitigated NOx emissions from heavy-duty trucks are already expected to be about 75 percent lower than the current heavy-duty truck NOx standard that was established in 2010. Therefore, the FEIR suggestion that implementation of MM AIR-1d could reduce the project's unmitigated emissions from trucks by 90 percent is significantly overestimated and highly misleading.

Inadequate NOx Mitigation Measures

In addition, MM AIR-1d states that "Prior to the issuance of the certificate of occupancy …, the relevant applicant for the subject individual development proposal shall provide the City with reasonable documentation demonstrating the use of a clean truck fleet that meets the California Air Resources Board's adopted 2013 Optional Low-NOx Standard of 0.02 gram of nitrogen oxide (NOx) per brake horsepower hour for all heavy-duty trucks during operation of the proposed project, to the maximum extent feasible…" Under CEQA, a project must evaluate all feasible mitigation measures to reduce the adverse effects of a significant and unavoidable impact to the maximum extent. If using heavy-duty trucks that meet the Low-NOx Standard is not immediately feasible, this mitigation measure does not provide further requirements or options to reduce NOx emissions.

The MM should be amended to require the use of heavy-duty trucks equipped with 2014 or later model engine years when using trucks that meet the Low-NOx Standard is not immediately feasible. Heavy-duty trucks with 2014 or later model engine years are readily available and used, and would

help to reduce criteria air pollutant emissions if it is not immediately feasible to use trucks that meet the Low-NOx Standard.

Moreover, significant NOx emissions will continue for the life of the project, and the FEIR must adopt mitigation requiring the phasing in of zero-emission electric trucks as they become increasingly available to further reduce criteria air pollutant emissions to the maximum extent feasible.

Finally, the EIR fails to identify any mitigation to reduce emissions from light- or medium-duty trucks.

Incomplete Evaluation of Health Risks

The air quality analysis presented in the FEIR evaluated the potential health risks associated with exposure to toxic air contaminants during both the construction and operation phases of the project. We have identified several concerns associated with the exposure scenarios and effectiveness of proposed mitigation measure.

Firstly, the FEIR only calculated health risks associated with operation of Phase 1 of the project and stated that health risks associated with Phases 2 and 3 could not be estimated due to "a lack in operational information …, such as freight product origin, local truck circulation, or other details necessary to perform a site-specific health risk assessment" (page 3.3-49). However, health risks could readily be estimated for Phase 2 and Phase 3 using the information provided in the transportation section of the FEIR, such as truck site access and truck trips during project operation. Also, by only evaluating health risks to sensitive receptors near Phase 1 on the north side of the project site, the FEIR failed to evaluate potential health risks to other sensitive receptors near Phases 2 and 3 on the south side of the project site along Grant Line Road, which include residences and Banta Elementary School. It is reasonable to assume that the health risks may be greater on the south side of the project site because the predominant wind direction flows to the southeast toward the above-mentioned sensitive receptors.

Secondly, the FEIR presented separate health risk assessments for project construction and operation. As shown in Table 2-5 of the Project Description, construction of Phases 1 through 3 would occur sequentially and operation of Phases 1 and 2 would overlap with construction of the later phases. To comprehensively assess the health risks to nearby sensitive receptors, the health risk assessment should combine emissions from both the construction and operation phases that overlap as shown in Table 2-5 of the FEIR. The combined health risks from construction and operation would be substantially higher than the individual health risks that were presented separately for construction and operation in the FEIR.

Finally, to reduce the health risks associated with DPM emissions from trucks, the FEIR includes MM AIR-1e which prohibits the operational truck fleet to access Grant Line Road east of the project site, where many sensitive receptors are located. As discussed above, the FEIR failed to evaluate health

risks to sensitive receptors on the south side of the project site along Grant Line Road from operation of Phases 2 and 3. Therefore, the effectiveness of MM AIR-1e cannot be assessed.

In summary, the FEIR's evaluation of health risks is incomplete and non-conservative. To accurately assess the health risks associated with the project, the issues mentioned above need to be addressed.

GREENHOUSE GAS EMISSIONS CONCERNS

Carbon Neutrality

Based on the California Supreme Court findings for Center for Biological Diversity v. Department of Fish & Wildlife (2015) (62 Cal.4th 204), commonly referred to as the "Newhall Ranch ruling", a project's GHG emissions should be evaluated based on its effect on California's efforts to meet the State's long-term climate goals. As the Supreme Court held in that case, a project that would be consistent with meeting those goals can be found to have a less-than-significant impact on climate change under CEQA. If a project would contribute its "fair share" of what will be required to achieve those long-term climate goals, then a reviewing agency can find that the impact will not be significant because the project will help to solve the problem of global climate change (62 Cal.4th 220–223).

In accordance with Executive Order B-55-18, California is committed to achieving carbon neutrality by 2045. The primary sources of GHG emissions from the project would be from building energy use and transportation. Therefore, aside from the transportation measures discussed above, the FEIR should have evaluated if the project can be designed to ensure it will achieve carbon neutrality by 2045, while also ensuring that sufficient reductions for the State to meet SB 32's 2030 target. With respect to building energy use, the project should replace natural gas appliances with electric power appliances which will support California's transition away from fossil fuel–based energy sources. The project should also install photovoltaic infrastructure beyond the minimum requirements of California Green Building Standards Code to reduce the project's GHG emissions and align the project with California's 2030 goal and long-term climate goal of carbon neutrality by 2045.

CONCLUSIONS

Based on our review of the FEIR, there is substantial evidence that the project has not properly evaluated or mitigated environmental impacts related to air quality and GHG emissions. Therefore, Baseline recommends that the City address the environmental concerns and analytical flaws described above in a recirculated EIR.

Sincerely,

Patrick Sutton,
Principal Environmental Engineer

Yilin Tian, PhD
Environmental Engineer

Attachment

Attachment

Staff Resumes

Patrick Sutton, P.E.

Principal Environmental Engineer

Areas of Expertise

Air Quality, GHGs, Noise, Hazardous Materials, Geology, and Hydrology

Education

M.S., Civil and Environmental Engineering, University of California – Davis

B.S., Environmental Science, Dickinson College

Registration

Professional Engineer No. 13609 (RI)

Years of Experience

19 Years

Patrick Sutton is an environmental engineer who specializes in the assessment of hazardous materials released into the environment. Mr. Sutton prepares technical reports in support of environmental review, such as Phase I/II Environmental Site Investigations, Air Quality Reports, Greenhouse Gas (GHG) Reduction Plans, and Health Risk Assessments. He has prepared numerous CEQA/NEPA evaluations for air quality, GHGs, geology, hazardous materials, and water quality related to residential, commercial, and industrial projects, as well as large infrastructure developments. His proficiency in a wide range of modeling software (AERMOD, CalEEMod, RCEM, CT-EMFAC) as well as relational databases, GIS, and graphics design allows him to thoroughly and efficiently assess and mitigate environmental concerns.

For mixed-use development projects, Mr. Sutton has prepared health risk assessments for sensitive receptors exposed to toxic air contaminants based on air dispersion modeling. He has also prepared GHG Reduction Plans to demonstrate how projects can comply with State and/or local GHG reduction goals. For large highway infrastructure improvement projects, Mr. Sutton has prepared air quality and hazardous materials technical reports in accordance with Caltrans requirements. Air quality assessments include the evaluation of criteria air pollutants, mobile source air toxics, and GHG emissions to support environmental review of the project under CEQA/NEPA and to determine conformity with the State Implementation Plan. Hazardous materials investigations include sampling and statistically analysis of aerially-deposited lead adjacent to highway corridors.

Project Experience

Oakland Downtown Specific Plan EIR. Prepared a program- and project-level Air Quality and GHG Emissions analysis. Developed a mitigation measure with performance standards to ensure GHG emissions from future projects comply with the Citywide 2030 GHG reduction target.

I-680 Express Lanes from SR 84 to Alcosta Boulevard Project. Prepared Initial Site Assessment and Preliminary Site Investigation to evaluate contaminants of potential concern in soil and groundwater. Prepared Air Quality Report to determine the project's conformity to federal air quality regulations and to support environmental review of the project under CEQA and NEPA.

Altamont Corridor Expressway (ACE/Forward) Project EIR/EIS. Prepared a program- and project-level Hazardous Materials analysis for over 120 miles of railroad corridor from San Jose to Merced. Hazardous materials concerns, such as release sites, petroleum pipelines, agricultural pesticides, and nearby school sites were evaluated in GIS.

Stonegate Residential Subdivision EIR. Prepared a project-level Hydrology and Water Quality analysis for a residential development located within the 100-year floodplain. The proposed project included modifications to existing levees and flood channels.

BART Silicon Valley Extension Project. Prepared Initial Site Assessment and Hazardous Materials EIS/EIR section for extending 6 miles of proposed BART service through the Cities of San Jose and Santa Clara.

Yilin Tian, Ph.D.

Environmental Engineer

Areas of Expertise

Air Quality, GHGs, Noise, Energy, and Environmental Compliance

Education

Ph.D./M.S., Environmental Science and Engineering, Clarkson University

B.S., Environmental Science, Beijing University of Technology

Registrations/Certifications

40-hour HAZWOPER training

Engineer-In-Training, No. 167986

Years of Experience

11 Years

Yilin Tian is an environmental engineer who specializes in the analysis of air quality and human exposure to toxic air contaminants. For CEQA environmental review, Yilin assists in the analysis of air quality, greenhouse gas (GHG), noise and vibration, and energy impacts. She is also familiar with state/local environmental regulations and guidelines related to CEQA review. Yilin has worked on variety of land uses development projects, including large mixed-use infill, wetland restoration, levee improvement, and highway expansion projects. She is experienced with preparing health risk assessments for sensitive receptors exposed to toxic air contaminants during construction and operation. Yilin is proficient with air pollution models (e.g., CalEEMod and AERMOD), noise models (e.g., FHWA TNM and SoundPLAN), geospatial data analysis, and database management.

Besides CEQA studies, Yilin has worked with the Bay Area Air Management District (BAAQMD) to improve existing emissions estimation techniques and update emission inventories related to wood-burning devises and ammonia emissions in the Bay Area. Her strong background in statistics and air pollutants emissions allows her to process and analyze data properly and efficiently.

Yilin has assisted the City of Berkeley and the San Francisco Public Utilities Commission (SFPUC) with environmental compliance and mitigation monitoring, including reviewing submittals and performing environmental field inspections. Beyond that, Yilin has experience with Phase I Environmental Site Assessments, air monitoring, noise monitoring, and the state's Underground Storage Tank Cleanup Fund application.

Project Experience

Belvedere Seismic Upgrade Project EIR – Prepared Air Quality, GHG Emissions, and Noise and Vibration analysis for the installation of sheet piling along specific roadway segments in an area of existing levees in Belvedere.

2136-54 San Pablo Project IS/MND – Prepared Air Quality, GHG Emissions, and Noise and Vibration analysis for the development of a new, six-story mixed-use building in Berkeley.

Saratoga Housing Element Update EIR – Prepared noise and vibration analysis for the Saratoga General Plan Housing Element Update.

I-80/Ashby Avenue Interchange Improvement Project. Prepared Air Quality Report to determine the project's conformity to federal air quality regulations and to support environmental review of the project under CEQA and NEPA.

Residential Wood Combustion for San Francisco Bay Area. Updated the methodology and datasets used by the BAAQMD to quantify residential wood combustion emissions within the San Francisco Bay Area Air Basin.

Environmental Compliance Monitoring for the City of Berkeley – Reviewed noise reduction plans submitted by the developers against the requirements of the MMRP and standard conditions of approval.

Exhibit C

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of the date on which the last signatures have been affixed hereto ("Effective Date"), by and between, Center for Community Action and Environmental Justice, Center for Biological Diversity, Coalition for Clean Air, Sierra Club, and San Bernardino Valley Audubon Society (collectively, "Petitioner Parties"), and Highland Fairview Properties, HF Properties, Sunnymead Properties, Theodore Properties Partners, 13451 Theodore, LLC, and HL Property Partners (collectively, "Highland Fairview"), and each of them, which are referred to cumulatively as the "Parties" or singularly as a "Party."

RECITALS

WHEREAS, Highland Fairview is the applicant for a master-planned development project encompassing the development of up to 40.6 million square feet of building area and all necessary infrastructure to support large-scale logistics operations ("World Logistics Center Project") located on approximately 2,610 acres of largely vacant land south of State Route 60 and north of the San Jacinto Wildlife Area in the Rancho Belago area of the City of Moreno Valley ("Property");

WHEREAS, in August 2015, the City of Moreno Valley ("City"), through its City Council, approved the World Logistics Center Project and certified a final environmental impact report ("FEIR") pursuant to the California Environmental Quality Act ("CEQA");

WHEREAS, the City's August 2015 approval of the World Logistics Center Project consisted of (a) a Specific Plan to govern the World Logistics Center Project's development ("Specific Plan"); (b) an amendment to the City's General Plan ("General Plan Amendment"); (c) an amendment to the Property's zoning ("Zone Change"); (d) a tentative parcel map to subdivide a 1,539-acre portion of the Property; (e) an annexation request; (f) off-site improvements; and (g) a development agreement to vest the underlying approved land use entitlements ("Development Agreement");

WHEREAS, on September 23, 2015, the Petitioner Parties commenced litigation in the Riverside County Superior Court, captioned *Center for Community Action and Environmental Justice, et al.* v. *City of Moreno Valley, et al.* (Case No. RIC1511327), challenging the City's approval of the World Logistics Center Project ("FEIR Litigation");

WHEREAS, in November 2015, the City Council directly adopted three initiatives for the World Logistics Center Project: (a) the Land Use and Zoning Entitlements Initiative to repeal and replace the City's approval of the Specific Plan, General Plan Amendment, and Zone Change with a substantially similar set of entitlements; (b) the World Logistics Center Land Benefit Initiative to repeal and replace the City's annexation request; and (c) the Development Agreement Initiative to approve a Development Agreement substantially similar to that previously adopted by the City (collectively, "Initiatives");

WHEREAS, on February 22, 2016, the Petitioner Parties commenced litigation in the Riverside County Superior Court, captioned *Center for Community Action and Environmental Justice, et al.* v. *City of Moreno Valley, et al.* (Case No. RIC1602094), challenging the City's adoption of the Initiatives ("Initiatives Litigation");

WHEREAS, in February 2018, in the FEIR Litigation, the Riverside County Superior Court ordered the City to set aside its certification of the FEIR and approvals of the World Logistics Center Project to make changes to the FEIR's analysis of energy, biological, noise, agricultural resources, and cumulative impacts;

WHEREAS, in the FEIR Litigation, Petitioner Parties appealed the Riverside County Superior Court's decision upholding the FEIR's GHG analysis and Highland Fairview cross-appealed the Superior Court's finding that the FEIR violated CEQA in five respects;

WHEREAS, in August 2018, in the Initiatives Litigation, the Court of Appeal directed the Riverside County Superior Court to issue a writ of mandate ordering the City to set aside the Development Agreement Initiative and vacate its approval of the Development Agreement;

WHEREAS, in a revised final EIR, the City addressed the matters that the Riverside County Superior Court ordered be changed in its February 2018 ruling in the FEIR Litigation and also analyzed new information pertaining to potential air quality, greenhouse gas emissions, and energy impacts ("Revised Final EIR");

WHEREAS, on June 16, 2020, the City Council (a) approved Resolution No. 2020-47, certifying the Revised Final EIR for the World Logistics Center Project and denying the appeal of the City Planning Commission's certification of the Revised Final EIR; (b) approved Resolution No. 2020-48, approving Tentative Parcel Map No. 36457 for Finance and Conveyance Purposes Only ("Parcel Map") and denying the appeal of the City Planning Commission's approval of the Parcel Map, and (c) introduced Ordinance No. 967, approving a new Development Agreement;

WHEREAS, on July 7, 2020, the City Council conducted a second reading of and adopted Ordinance No. 967, approving the new Development Agreement;

WHEREAS, on July 17, 2020, the Petitioner Parties commenced litigation in the Riverside County Superior Court, captioned *Center for Community Action, et al. v. City of Moreno Valley, et al.* (Case No. RIC2002697), challenging the City's adoption of Resolution Nos. 2020-47 and 2020-48, certification of the Revised Final EIR, and adoption of Ordinance No. 967 ("RFEIR Litigation");

WHEREAS, on July 16, 2020, related litigation was commenced in the Riverside County Superior Court, captioned *Golden State Environmental Justice Alliance, et al. v. City of Moreno Valley, et al.* (Case No. RIC2002675) ("Golden State Litigation"); and on or about March 8, 2021, petitioner Golden State Environmental Justice Alliance filed a request to dismiss with prejudice the Golden State Litigation;

WHEREAS, on or about July 17, 2020, further related litigation was commenced in the Riverside County Superior Court, captioned *Paulek, et al. v. City of Moreno Valley. Et al.* (Case No. RIC2002672) ("Paulek Litigation");

WHEREAS, on or about November 9, 2020, the Riverside County Superior Court consolidated the FEIR Litigation with the RFEIR Litigation, Golden State Litigation, and Paulek Litigation;

WHEREAS, in November 24, 2020, the Court of Appeal dismissed the appeal and cross-appeal in the FEIR Litigation as moot and issued a remittitur on January 26, 2021; and

WHEREAS, the purpose of this Agreement is to settle all disputes between the Petitioner Parties and Highland Fairview arising out of or related to the World Logistics Center Project, including without limitation, the FEIR Litigation and the RFEIR Litigation.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises and undertakings set forth herein and other consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties agree as set forth below.

1. The Parties' Obligations.

a. Highland Fairview's Obligations.

i. Highland Fairview shall take all actions required of it in this Section 1(a) provided that the Petitioner Parties have met the obligations set forth in Section 1(b) below and upon the earlier of:

1. the commencement of grading for the World Logistics Center Project; or

2. (a) the full and final resolution of the Paulek Litigation and the FEIR Litigation in the City's and Highland Fairview's favor or (b) in the event Highland Fairview has not prevailed in the Paulek Litigation and/or FEIR Litigation, the City reapproves the World Logistics Center Project and all applicable statutes of limitation have passed with no litigation filed or, if such future litigation ("Future Litigation") is filed, that such Future Litigation is resolved in the City's and Highland Fairview's favor and is no longer pending in any court.

ii. *Greenhouse Gas Emissions and Air Quality*. Highland Fairview shall ensure that all actions required in Attachment A hereto are carried out.

iii. *Biological Resources*. Highland Fairview shall ensure that all actions required in Attachment B hereto are carried out.

iv. *Community Benefits.* Highland Fairview shall ensure that all actions required in Attachment C hereto are carried out.

v. *Attorneys' Fees.* Within seven (7) days after the conditions set forth in Section 1(b)(i) are satisfied, Highland Fairview shall pay the Petitioner Parties' attorneys' fees and costs from the RFEIR Litigation, including reasonable attorneys' fees accrued in connection with negotiating this Agreement, in the amount of $595,000 by ACH deposit, wire transfer, or a check. Petitioners will provide deposit information to Highland Fairview.

vi. *Compliance Reporting*. Each year for a period of fifteen (15) years, commencing on the first anniversary of the Effective Date of this Agreement, and every five (5) years thereafter until the World Logistics Center Project is fully constructed or Highland Fairview's obligations under this Agreement are fully satisfied, whichever condition is satisfied first, Highland Fairview shall provide to the Petitioner Parties a detailed report describing how Highland Fairview has complied with Sections 1(a)(ii)-(iv) above ("Annual Compliance Report"). For a period of thirty (30) days from receipt of the Annual Compliance Report, the Petitioner Parties may request clarification or reasonable additional information from Highland Fairview to verify Highland Fairview's compliance. Highland Fairview shall provide such additional requested information that is within its possession, custody, or control within thirty (30) days after receipt of such request. Any disputes over compliance with the Sections 1(a)(ii)-(iv) above shall be resolved pursuant to Section 2 below.

vii. *Technological and Methodological Progress*. The Parties recognize that technologies and methodologies are likely to progress over time and, due to that, it may be that the technological and methodological specificity in this Agreement could become obsolete or outdated in the future. In that event, Highland Fairview may implement such newer technologies or methodologies provided that such technologies or methodologies achieve at least as much environmental protection and do not result in new or greater significant environmental impacts than the technologies or methodologies specified in this Agreement. At least 90 days prior to implementing any alternative technology or methodology, Highland Fairview shall meet and confer with Petitioner Parties concerning the implementation of such alternative technology or methodology. Any dispute regarding whether the proposed alternative technology or methodology meets the standards in this Section 1(a)(vii) shall be resolved by arbitration pursuant to the procedures in Section 2 of this Agreement.

viii. Nothing in this Agreement shall prevent Highland Fairview and/or World Logistics Center Project tenants from using the obligations under this Agreement also to satisfy any obligation imposed by laws or regulations, whether they be enacted before or after the Effective Date.

b. <u>Petitioner Parties' Obligations</u>.

i. *Pending Litigation.* With respect to the RFEIR Litigation and the FEIR Litigation, the Petitioner Parties shall, within seven (7) days after the Effective Date, take all actions necessary to dismiss with prejudice all Petitioner Parties' claims in the RFEIR Litigation and the FEIR Litigation and through their respective counsel shall take all actions required to ensure compliance with this Section 1(b)(i).

ii. *Non-Opposition*. Provided that Highland Fairview is in compliance with this Agreement, as enforced pursuant to Section 2 below, the Petitioner Parties shall not Oppose the World Logistics Center Project, as detailed below.

1. <u>Previously Issued Approvals</u>. Petitioner Parties shall not Oppose any Approvals issued on or before the Effective Date by any Governmental Authority that are or may be necessary, useful, or convenient for the completion of any portion or aspect of the World Logistics Center Project ("Previously Issued Approvals"). "Approval" or

"Approvals" shall mean in this Agreement any permits, approvals, entitlements, voter initiatives, development agreements, legislative actions, and/or allowances of any sort whatsoever, including any and all environmental clearances, together with any mitigation measures or the implementation thereof. "Governmental Authority" shall mean in this Agreement any federal, state, regional, local, or other governmental entity, body, branch, bureau, official, special district, department, court, or other tribunal, or any other governmental or quasi-governmental authority, including the electorate, exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory, or land use authority or power over the World Logistics Center Project.

2. Future Implementation Approvals.

a. Petitioner Parties shall not Oppose any Approvals applied for, sought, or issued after the Effective Date by any Governmental Authority that is or may be necessary, useful, or convenient for the completion of any portion or aspect of the World Logistics Center Project ("Future Implementation Approvals"); provided, however, that such Future Implementation Approvals do not: (a) amend the Specific Plan; (b) amend the Initiatives; or (c) eliminate, reduce, or amend a mitigation measure in the Final Revised EIR in a manner that increases environmental impacts. Notwithstanding the foregoing, Petitioner Parties are free to take any action permitted under Section 1(b)(ii)(4) of this Agreement.

b. The Petitioner Parties also understand and acknowledge that the World Logistics Center Project is being challenged in the Paulek Litigation and the FEIR Litigation. Should the World Logistics Center Project be required to be reconsidered, the Petitioner Parties shall not Oppose approval of the World Logistics Center Project, including without limitation its CEQA document with any provisions or mitigation measures then needed provided they do not contradict, interfere with, or reduce any of Highland Fairview's commitments in this Agreement.

3. Meaning of "Opposition." "Opposition," "Oppose," or "Opposing" means (a) opposing, challenging, or seeking to hinder, whether by litigation, public opposition at any proceeding before a government agency, public testimony, comments, or petition to government authorities, a Previously Issued Approval or Future Implementation Approval, or (b) providing funding for others to file or maintain litigation opposing, challenging, or seeking to hinder a Previously Issued Approval or Future Implementation Approval. A Petitioner Party shall be deemed to be Opposing a Previously Issued Approval or a Future Implementation Approval if its board of directors, officers, or staff, or as to the Sierra Club, in addition to the above-listed persons, the Sierra Club's San Gorgonio Chapter's Board of Directors, officers, staff, group representatives, delegates, and any individual expressly representing or directed to represent the Sierra Club's interests, Oppose such Previously Issued Approval or Future Implementation Approval. The Sierra Club's San Gorgonio Chapter shall advise its staff and volunteer leaders that the Sierra Club has resolved its dispute with Highland Fairview and of the Sierra Club's obligations under this Agreement, particularly non-Opposition set forth above. In the event that a member or members of the Sierra Club Oppose(s) a Previously Issued Approval or Future Implementation Approval, the Sierra Club agrees to disavow publicly said Opposition, via letter or other appropriate means, upon reasonable request by Highland Fairview, in any proceedings involving the Previously Issued Approval or Future

Implementation Approval before the City of Moreno Valley or any other agency or court having jurisdiction over the World Logistics Center Project. Such statement shall provide that the member or members do not represent the Sierra Club's position concerning the World Logistics Center Project. Opposition, Oppose, or Opposing does not include any action permitted under Section 1(b)(ii)(4) of this Agreement.

4. Governmental Actions of General Applicability. Petitioner Parties are not prohibited from commenting on, supporting, and/or Opposing proposed actions by any Governmental Authority that is generally applicable and not directly related to the development of the World Logistics Center Project, the Previously Issued Approvals, or Future Implementation Approvals, even though such proposed agency actions may have an impact on the World Logistics Center Project, the Previously Issued Project Approvals, and/or Future Implementation Approvals due to the general applicability of such proposed actions by any Governmental Authority. Examples of governmental actions of general applicability that Petitioner Parties are free to comment on, support and/or Oppose include, but are not limited to rules promulgated by local air district related to emissions; regulations promulgated by California agencies related to emissions; approvals for regional transportation plans; approvals of urban water management plans; listing decisions for threatened and endangered species; and the regulation of industrial equipment.

c. Mutual Releases of Claims.

i. Except as otherwise provided in this Agreement, the Petitioner Parties each release Highland Fairview, its affiliates, subsidiaries, parent entities, and each of their respective employees, officers, members, staff, agents, attorneys, and/or representatives, and each of them (collectively, the "Highland Fairview Released Parties"), from any and all claims, lawsuits, administrative and judicial proceedings, appeals, demands, challenges, liabilities, damages, fees, costs, and causes of action, at law or in equity, known or unknown, in any jurisdiction and before any court, agency, or tribunal (collectively and severally, "Claims") that the Petitioner Parties ever had, have, or may have against the Highland Fairview Released Parties, or any of them, arising in any way from or related in any way to the World Logistics Center Project, including without limitation, the claims brought by, or that could have been brought by Petitioner Parties in the RFEIR Litigation and the FEIR Litigation.

ii. Highland Fairview releases the Petitioner Parties, their affiliates, subsidiaries, parent entities, and each of their respective employees, officers, members, staff, agents, attorneys, and/or representatives, and each of them (collectively, the "Petitioner Released Parties") from any and all Claims that Highland Fairview ever had, have, or may have against the Petitioner Released Parties, or any of them, arising in any way from or related in any way to the World Logistics Center Project, including without limitation, the RFEIR Litigation and the FEIR Litigation.

iii. Nothing in this Section shall be interpreted as releasing any Party's right to enforce this Agreement in full.

2. Enforcement.

a. *Meet and Confer*. In the event of any dispute between the Parties related to this Agreement or the World Logistics Center Project, the Parties shall, before taking any other action concerning that dispute, provide written notice of the dispute to the other Party and meet and confer in person in a good-faith effort to resolve the dispute within thirty (30) days of the notice, unless otherwise agreed. Any Party that is alleged to be in breach of this Agreement shall have thirty (30) days from that in-person meeting to cure, unless otherwise agreed. Notwithstanding the foregoing, if the dispute is deemed to be a time-urgent matter by Highland Fairview or at least two of the five Petitioner Parties, these time periods may be disregarded and the Parties may seek immediate review by an arbitrator within twenty-four (24) hours' notice to the allegedly breaching Party pursuant to JAMS's Comprehensive Arbitration Rules and Procedures, including Rule 2(c), as those Rules exist on the Effective Date. If the allegedly breaching Party cures or begins a good faith effort to cure the alleged breach, any such proceeding previously commenced pursuant to the alleged time-urgent matter shall be dismissed.

b. *Nonbinding Mediation.* In the event any such dispute is not resolved pursuant to Section 2(a), then at any Party's request the Parties may participate in non-binding mediation of any dispute related to this Agreement or the World Logistics Center Project. This obligation shall take place in a timeframe that is reasonable under the circumstances. Any such mediation is to be completed in one day and not to exceed a total of eight (8) hours, unless extended by mutual consent. If nonbinding mediation is used pursuant to this section, Highland Fairview shall pay for the costs of mediation. The mediator will be selected by mutual agreement.

c. *Binding Arbitration*. In the event any such dispute is not resolved pursuant to Section 2(a) or Section 2(b), then within fifteen (15) days after the conclusion of the meet and confer or non-binding mediation, at Highland Fairview's request or the request of no fewer than two of Petitioner Parties the Parties shall participate in final, binding, and non-reviewable arbitration of any dispute related to this Agreement or the World Logistics Center Project, pursuant to the provisions below.

i. The dispute brought under Section 2(c) shall be determined by arbitration before three arbitrators, each of whom shall be a retired jurist. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules as those Rules exist on the Effective Date, including Rules 16.1 and 16.2. The determination may be entered in any court having jurisdiction solely for the purposes of enforcing the determination.

ii. Within ten (10) days after notice under Section 2(c) is provided, Highland Fairview shall select one person to act as arbitrator and the Petitioner Parties shall select another. The two so selected shall select a third arbitrator within fifteen (15) days of the commencement of arbitration. If the arbitrators selected by the Parties are unable or fail to agree upon the third arbitrator within the allotted time, the third arbitrator shall be appointed by JAMS in accordance with its rules. All arbitrators shall serve as neutral, independent, and impartial arbitrators. Highland Fairview and the Petitioner Parties shall communicate their choices of a

Party-appointed arbitrator only to the JAMS Case Manager in charge of the filing. Neither is to inform any of the arbitrators as to which of the Parties may have appointed them.

iii. Any relief for an alleged breach of this Agreement shall be limited to any specific performance or injunctive relief necessary to ensure compliance with the provision of this Agreement that the complaining Party alleges another Party has breached. Such relief shall not be broader than necessary to ensure compliance with the provision of this Agreement that has been determined to have been breached.

iv. Highland Fairview shall be responsible for paying any fees and costs JAMS requires for JAMS to perform its arbitration services called for under this Section 2(c) unless the arbitrators determine that Petitioner Parties' commencement of arbitration was frivolous, unreasonable, or without foundation. If and only if the arbitrators determine that Petitioner Parties' commencement of arbitration was frivolous, unreasonable, or without foundation, then the Petitioner Parties who commenced that arbitration shall pay Highland Fairview one-half of JAMS's total fees and costs, such that each side will have paid one-half of JAMS's total fees and costs. Highland Fairview shall also not seek any security in connection with any Interim Measures that may be awarded under Rule 24 of JAMS's Comprehensive Arbitration Rules and Procedures.

v. Unless and only to the extent that an Arbitrator awards an Interim Measure, or other injunctive relief available under Rule 24 of JAMS's Comprehensive Arbitration Rules and Procedures pursuant to Section 2(c)(iii) of this Agreement, under no circumstances shall the pendency of arbitration delay or prevent Highland Fairview from obtaining any Future Implementation Approvals or developing the Property and operating the World Logistics Center Project in accordance with any Previously Issued Approvals and any Future Implementation Approvals.

3. Agreement's Termination. All obligations under this Agreement shall terminate if the Property ceases operations as a logistics facility. In the event that a portion of the Property ceases operations as a logistics facility or is never developed as a logistics facility, then this Agreement shall terminate as to that non-logistics facility portion of the Property but shall remain in full force and effect as to the portion of the Property that is operating as a logistics facility.

4. Attorneys' Fees and Costs. Except as expressly provided elsewhere in this Agreement, the Parties shall bear their own attorneys' fees and costs in connection with the enforcement of this Agreement.

5. Naming and Branding. Highland Fairview shall have the right, in its sole and absolute discretion, to name any of the public benefits or funds created pursuant to Sections 1(a)(ii), (iii), and (iv) of this Agreement. Petitioner Parties shall not be in breach of this Agreement should they choose not to use the names selected by Highland Fairview when referring to the public benefits or funds provided in Sections 1(a)(ii), (iii), and (iv) of this Agreement.

6. No Admission of Liability. This Agreement is a compromise of disputed claims and the fact that the Parties hereto have determined to compromise such disputed claims by entering into this Agreement is not to be construed as an admission of liability or otherwise on the part of the Parties hereto.

7. Successors and Assigns. This Agreement is binding upon and inures to the benefit of each of the Parties and their respective representatives, heirs, devisees, successors and assigns.

a. Highland Fairview may, in its sole discretion, assign any or all of its rights, benefits, and obligations under this Settlement Agreement to any successor(s) in interest or to any purchaser, tenant, or end user of the World Logistics Center Project or any portion thereof. In the event of any such assignment(s), Highland Fairview shall ensure by written instrument that the assignee(s) shall be contractually obligated to comply with all of Highland Fairview's obligations under this Agreement for the Agreement's full term unless Highland Fairview expressly retains one or more such obligations itself. Such written instrument shall detail the specific rights, benefits, and obligations Highland Fairview is assigning and the specific rights, benefits, and obligations Highland Fairview is retaining for itself, if any, and that the assignee has accepted such assignment for the Agreement's full term or unless and until such assignee assigns such rights, benefits, and obligations pursuant to the terms of this Agreement to a subsequent assignee. Highland Fairview and any subsequent assignee upon assignment by it shall provide written notice to Petitioner Parties of any such assignment, reasonable evidence of the assignee's financial ability to fulfill the obligations assigned to it, and the assignee's acceptance by providing a copy of the fully executed written assignment instrument. No assignment, by Highland Fairview or by any subsequent assignee, shall be effective until such notice is provided. Upon delivery of such notice, Highland Fairview or the subsequent assignee shall be deemed released by Petitioner Parties from the obligations so assigned. Petitioner Parties may enforce any assigned obligations against the assignee(s) pursuant to Section 2 of this Agreement. Absent Petitioner Parties' written consent, which consent shall not be unreasonably withheld, no more than ten assignees at any given time shall hold any such assigned rights, benefits, and obligations under this Agreement.

b. Upon the sale of the Property or any portion of the Property, Highland Fairview shall provide a complete copy of this Agreement to the purchaser as an attachment or exhibit to any purchase and sale agreement and shall provide proof of having done so to Petitioner Parties. Any purchase and sale agreement conveying the Property, or any portion of the Property also must include the purchaser's express acknowledgment of this Agreement.

c. Petitioner Parties shall not assign any or all of their rights, benefits, and obligations under this Agreement without prior written consent from Highland Fairview, which as to any assignment of rights and benefits only shall not be unreasonably withheld.

8. Entire Agreement. This Agreement: (a) constitutes the entire agreement between the Parties concerning the subject matter hereof, (b) supersedes any previous oral or written agreements concerning the subject matter hereof, and (c) shall not be modified except by a writing executed by the Party(ies) to be bound thereby.

9. Attachments. All attachments to this Agreement are incorporated herein by this reference.

10. Notices. All notices shall be in writing and shall be addressed to the affected Parties at the addresses set forth below. Notices shall be: (a) hand delivered to the addresses set forth below, in which case they shall be deemed delivered on the date of delivery, as evidenced by the written report of the courier service; (b) sent by certified mail, return receipt requested, in which case they shall be deemed delivered five (5) business days after deposit in the United States mail; or (c) transmitted by email in which case they shall be deemed delivered on the date of transmission if sent before 5:00 pm or on the first business day after transmission if sent at 5:00 pm or later or if sent on a Saturday, Sunday, or California court holiday, provided the Party transmitting notice by email does not receive a delivery status notification indicating that delivery of the email communication failed. Any Party may change its address, its email, or the name and address of its attorneys by giving notice in compliance with this Agreement. Notice of such a change shall be effective only upon receipt. Notice given on behalf of a Party by any attorney purporting to represent a Party shall constitute notice by such Party if the attorney is, in fact, authorized to represent such Party. The addresses and email addresses of the Parties are:

Parties	**Electronic and Mailing Address**
For Petitioner Parties: Center for Community Action and Environmental Justice, Center for Biological Diversity, Coalition for Clean Air, Sierra Club, and San Bernardino Valley Audubon Society.	Adriano Martinez Fernando Gaytan Earthjustice 707 Wilshire Blvd., Suite 4300 Los Angeles, California 90017 amartinez@earthjustice.org fgaytan@earthjustice.org Omonigho Oiyemhonlan Earthjustice 50 California Street, Suite 500 San Francisco, California 94111 ooiyemhonlan@earthjustice.org
For Petitioner Party: Sierra Club	Kevin P. Bundy Shute, Mihaly & Weinberger, LLP 396 Hayes Street San Francisco, California 94102 bundy@smwlaw.com With a copy to: Aaron Isherwood [Coordinating Attorney] Sierra Club 2101 Webster Street, Suite 1300 Oakland, California 94612 aaron.isherwood@sierraclub.org

For Petitioner Party: Center for Biological Diversity	Aruna Prabhala Center for Biological Diversity 1212 Broadway, Suite 800 Oakland, California 94612 aprabhala@biologicaldiversity.org
For the Highland Fairview: Highland Fairview, HF Properties, Sunnymead Properties, 13451 Theodore LLC, Theodore Properties Partners, HL Property Partners, and ROES 21-40, inclusive.	James L. Arnone Benjamin J. Hanelin Latham & Watkins LLP 355 S. Grand Avenue, Suite 100 Los Angeles, California 90071 james.arnone@lw.com benjamin.hanelin@lw.com With a copy to: Iddo Benzeevi 14225 Corporate Way Moreno Valley, California 92553 iddo@highlandfairview.com

11. Force Majeure. No Party shall be responsible or liable for any failure or delay in the performance of its obligations pursuant to this Agreement arising out of or caused by, directly or indirectly, forces beyond the Party's reasonable control, including, without limitation, fire, explosion, floods, acts of war or terrorism, national emergencies, pandemics, strikes, riots, and changes in laws or regulations.

12. Severability. In the event that any provision of the Agreement shall be held invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provisions hereof unless any of the stated purposes of the Agreement would be defeated.

13. Incorporation of Recitals. The recitals contained herein are hereby incorporated by reference and are material and binding upon the Parties hereto.

14. Construction and Choice of Law. The terms of this Agreement are the product of arms-length negotiations between the Parties, through their respective counsel of choice, and no provision shall be construed against the drafter thereof. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any Party may enforce the terms of this Agreement pursuant to Section 2.

15. Counterparts. This Agreement may be executed in counterparts, by either an original signature or signature transmitted by facsimile or electronic transmission or other similar process, each of which shall be an original, but all of which taken together shall constitute one and the same instrument; provided, however, that such counterparts shall have been delivered to

the Parties (in person, by messenger, by overnight courier, by registered or certified mail, or by facsimile or electronic transmission).

16. Authority. Each signatory to this Agreement represents and warrants that he or she is authorized to sign this Agreement on behalf of the Party for which he or she is signing, and thereby to bind that Party fully to the terms of this Agreement.

[SIGNATURES ON NEXT PAGE]

AGREED TO AND ACCEPTED AS OF THE EFFECTIVE DATE:

Petitioner Parties:

CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL JUSTICE

By: _____
Name: Ana Gonzalez
Title: ~~Finance and Administration~~ Director
Date: 4/23/2021

CENTER FOR BIOLOGICAL DIVERSITY

By: _____
Name: _____
Title: _____
Date: _____

COALITION FOR CLEAN AIR

By: _____
Name: _____
Title: _____
Date: _____

SIERRA CLUB

By: _____
Name: _____
Title: _____
Date: _____

SAN BERNARDINO VALLEY AUDUBON SOCIETY

By: _____
Name: _____
Title: _____
Date: _____

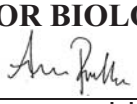
AGREED TO AND ACCEPTED AS OF THE EFFECTIVE DATE:

Petitioner Parties:

CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL JUSTICE

By: _____
Name: _____
Title: _____
Date: _____

CENTER FOR BIOLOGICAL DIVERSITY

By: 
Name: Aruna Prabhala
Title: Senior Atty & UW Program Dir.
Date: 4/28/2021

COALITION FOR CLEAN AIR

By: _____
Name: _____
Title: _____
Date: _____

SIERRA CLUB

By: _____
Name: _____
Title: _____
Date: _____

SAN BERNARDINO VALLEY AUDUBON SOCIETY

By: _____
Name: _____
Title: _____
Date: _____

AGREED TO AND ACCEPTED AS OF THE EFFECTIVE DATE:

Petitioner Parties:

CENTER FOR COMMUNITY ACTION AND ENVIRONMENT

By: _____
Name: _____
Title: _____
Date: _____

CENTER FOR BIOLOGICAL DIVERSITY

By: _____
Name: _____
Title: _____
Date: _____

COALITION FOR CLEAN AIR

By: Joseph K. Lyou
Name: Joseph K. Lyou, Ph.D.
Title: President & CEO
Date: April 28, 2021

SIERRA CLUB

By: _____
Name: _____
Title: _____
Date: _____

SAN BERNARDINO VALLEY AUDUBON SOCIETY

By: _____
Name: _____
Title: _____
Date: _____

AGREED TO AND ACCEPTED AS OF THE EFFECTIVE DATE:

Petitioner Parties:

CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL JUSTICE

By: _____
Name: _____
Title: _____
Date: _____

CENTER FOR BIOLOGICAL DIVERSITY

By: _____
Name: _____
Title: _____
Date: _____

COALITION FOR CLEAN AIR

By: _____
Name: _____
Title: _____
Date: _____

SIERRA CLUB

By: Mary Ann Ruiz
Name: Mary Ann Ruiz
Title: Sierra Club San Gorgonio Chapter Chair
Date: April 28, 2021

SAN BERNARDINO VALLEY AUDUBON SOCIETY

By: _____
Name: _____
Title: _____
Date: _____

AGREED TO AND ACCEPTED AS OF THE EFFECTIVE DATE:

Petitioner Parties:

CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL JUSTICE

By: _____
Name: _____
Title: _____
Date: _____

CENTER FOR BIOLOGICAL DIVERSITY

By: _____
Name: _____
Title: _____
Date: _____

COALITION FOR CLEAN AIR

By: _____
Name: _____
Title: _____
Date: _____

SIERRA CLUB

By: _____
Name: _____
Title: _____
Date: _____

SAN BERNARDINO VALLEY AUDUBON SOCIETY

By: Bradley C Singer
Name: Bradley C Singer
Title: President
Date: 04/28/2021

Highland Fairview:

HIGHLAND FAIRVIEW PROPERTIES

By: _____
Name: Iddo Benzeevi
Title: President & CEO
Date: April 29, 2021

HF PROPERTIES

By: _____
Name: Iddo Benzeevi
Title: President & CEO
Date: April 29, 2021

SUNNYMEAD PROPERTIES

By: _____
Name: Iddo Benzeevi
Title: President & CEO
Date: April 29, 2021

THEODORE PROPERTIES PARTNERS

By: _____
Name: Iddo Benzeevi
Title: President & CEO
Date: April 29, 2021

13451 THEODORE, LLC

By: _____
Name: Iddo Benzeevi
Title: President & CEO
Date: April 29, 2021

HL PROPERTY PARTNERS

By: _____
Name: Iddo Benzeevi
Title: President & CEO
Date: April 29, 2021

Approved as to form and content:

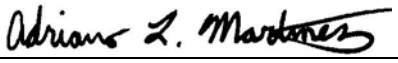
_____
Adriano Martinez
Counsel for Center for Community Action and Environmental Justice, Center for Biological Diversity, Coalition for Clean Air, Sierra Club, and San Bernardino Valley Audubon Society

_____
James L. Arnone
Counsel for Highland Fairview

HL PROPERTY PARTNERS

By: _____
Name: _____
Title: _____
Date: _____

Approved as to form and content:



Adriano Martinez
Counsel for Center for Community Action and Environmental Justice, Center for Biological Diversity, Coalition for Clean Air, Sierra Club, and San Bernardino Valley Audubon Society

_____

James L. Arnone
Counsel for Highland Fairview

Attachment A

Greenhouse Gas Emissions and Air Quality

1) ***Operational GHG and Criteria Pollutant Emissions Reduction Measures***

a) **Electric Truck and Car Grant Programs.**

i) **Heavy Duty Truck Grants.** WLC will provide funding for 500 grants for the purchase of Class 8 heavy duty electric trucks. The grants shall be provided pursuant to the attached table at Attachment A, Exhibit 1. The program shall prioritize applicants who will use the trucks in Moreno Valley and along the Highway 60 corridor, and will give special priority for drayage trucks that will be used in Moreno Valley and along the Highway 60 corridor. The grants will be phased proportionately with buildout of the first 35 million square feet of the project.

These heavy duty grants will include the following two conditions: (1) a prohibition on the resale of the electric truck to an entity that will operate trucks outside of California; and (2) 85% of the mileage must occur in the SCAQMD region and be enforced using a geo-fencing electronic system on each truck.

ii) **Medium Duty Truck Grants.** WLC will provide up to 60 grants for the purchase of Class 4 through Class 7 medium duty trucks. The grants shall be provided pursuant to the attached table at Attachment A, Exhibit 2. The program will prioritize (i) applicants who will use the trucks in Moreno Valley and along the Highway 60 corridor and (ii) Class 6 and 7 trucks. Only if there is no demand for the Class 6 and 7 truck classes shall grants be provided to Class 4 and 5 trucks with priority provided to Class 5 trucks over Class 4 trucks. The grants will be phased proportionately with buildout of the first 20 million square feet of the project.

These medium duty grants will include the following two conditions: (1) a prohibition on the resale of the electric truck to an entity that will operate trucks outside of California; and (2) 85% of the mileage must occur in the SCAQMD region and be enforced using a geo-fencing electronic system on each truck.

iii) **Local Delivery Truck Grants.** WLC will provide up to 120 grants for WLC tenants to purchase light-duty delivery vehicles (generally referred to Class 1, 2, and 3 trucks) for use for deliveries in Moreno Valley and the immediately proximate area. The grants shall be provided pursuant to the attached table at Attachment A, Exhibit 3. The program will prioritize (i) tenant applicants whose buildings are located closest to residential areas and (ii) the highest class of Class 1, 2, and 3 trucks and vehicles for which there is demand. The grants will be phased proportionately with buildout of the first 20 million square feet of the project.

These local delivery grants will include a condition that 50% of the mileage must occur in Moreno Valley and the Highway 60 corridor and be enforced using a geo-fencing electronic system on each truck.

iv) **Local Community Passenger Vehicle & Zero Emission Transportation Grants.** WLC shall (1) fund a $1,100,000 community clean vehicle grant program that will

provide up to 1,000 $1,000 electric vehicle car grants to Moreno Valley residents and/or (2) fund other programs to advance zero emission transportation. Car grants for Moreno Valley residents shall be prioritized to households earning not more than 150% of the Area Median Income, as calculated by the U.S. Department of Housing and Urban Development. The grants will be phased proportionately with buildout of the first 20 million square feet of development of the project.

v) **Grant Programs Administration and Education.**

(1) The electric truck and electric car grant programs shall be administered by one or more mutually agreeable third party(ies).

(2) WLC shall fund the electric truck and electric car grant programs' reasonable administration costs separately from and in addition to the costs of the grants.

(3) The electric truck and electric car grant programs shall be phased proportionately with the project buildout terms identified in section 1(a), and funded upon or before the issuance of building construction permits for each warehouse building. If a building triggers a fraction of a grant, the grant number will be rounded up to the higher number.

(4) For all of the electric truck and electric car grant programs, the Parties shall meet and confer regarding any mutually agreeable opportunity to seek more deployment of zero emission trucks through the augmentation of these grant funds with other funding sources. The Parties may also meet and confer to address conditions of grants that may inhibit applicants from using the programs, including but not limited to resale requirements and geofencing in sections 1(a)(i), 1(a)(ii), and 1(a)(iii) above.

(5) At five year intervals, parties will meet and confer to assess whether grants are being used within the particular classes identified in sections 1(a)(i), 1(a)(ii), and 1(a)(iii). The Parties may agree to shift grants to other classes of vehicles that may have demand. In the event that the number of qualified applications are insufficient to exhaust the number of truck grants made available within five years of the project's full buildout, then all remaining grant funds earmarked for a particular truck class may be redistributed to truck classes for which demand remains. In the event grant funds remain after this reallocation, then all unused funds shall be paid to a mutually agreeable third party for zero-emissions heavy-duty truck projects to benefit the residents of Moreno Valley and the communities along the Highway 60 corridor.

vi) **Electric Vehicle Advocacy Fund.** Upon the commencement of grading within the Specific Plan area, WLC shall pay $300,000 to a mutually agreeable third party entity selected by Petitioners to provide outreach, education, and training on zero-emissions vehicles and maintenance, with a focus on educating and training Moreno Valley residents about the electric truck and car programs provided for under this agreement.

b) **Maximize Onsite Solar.**

i) At a minimum, WLC shall do the following.

(1) WLC shall install the maximum amount of on-site rooftop solar generation permitted under the existing Moreno Valley Utility ordinance and other applicable law.

(2) If the existing Moreno Valley Utility ordinance is amended to allow additional onsite rooftop solar generation, and if that additional generation is approved by the Moreno Valley Utility and Southern California Edison and is allowed by other applicable law, then WLC shall install additional on-site rooftop solar generation at a cost of at least $1,650 per 10,000 square feet of warehouse floor area.

c) **Solar Advocacy Fund.** Upon the commencement of grading within the Specific Plan area, WLC shall provide $300,000 to a third-party, non-profit advocacy group or foundation that Petitioners shall select to advocate for a regional approach to encourage solar power generation and protect desert resources and greenfields.

d) **Lower Carbon Hydrogen Available Onsite.** If available under commercially reasonable terms, WLC will make available to tenants hydrogen fuel with a carbon intensity (CI) score of 50 or less. Hydrogen fuel will be made available upon the issuance of certificates of occupancy for 15 million square feet of logistics warehousing, or earlier, provided there is sufficient demand at that time to allow for a break-even price point or higher after the return of capital costs and ongoing operational expenses for the initial 5 years of operation, with a commercially reasonable income thereafter.

e) **Onsite EV chargers**.

i) WLC will provide 1,000 Level 1 chargers in WLC parking lots, phased proportionately with project buildout, and will ensure that they function properly for at least 15 years from their dates of installation.

ii) WLC will provide 80 Level 2 chargers in WLC parking lots with two ports per charger (for a total of at least 160 ports), phased proportionately with project buildout, and will ensure that they function properly for at least 15 years from their dates of installation.

iii) WLC shall install signage at each EV parking space stating that the parking space is for EVs only and improperly parked vehicles will be towed.

2) ***Operational Air Quality (TACs)***

a) **Electrification/No Diesel/Alternative Fuels**

i) At least 90% of all forklifts must be powered by electricity, hydrogen, or non-fossil zero-emission fuels. No forklift may be powered by diesel fuels.

ii) 90% of all handheld landscaping equipment (e.g., leaf blowers, hedge trimmers, weed whackers, etc.) shall be electric or meet most current CARB standard within five years of the standard's implementation, to be enforced by including this requirement in all service contracts.

iii) Hot water heaters for office and bathrooms shall be powered either through solar cells mounted on the roofs of the buildings or solar-generated electricity.

iv) Only electric appliances shall be used in building office areas (e.g., electric stoves).

v) Diesel powered generators will be prohibited unless necessary due to emergency situations or constrained supply.

vi) All "yard goats," yard trucks, and hostlers will be powered by electricity or a non-diesel alternative.

b) **Auxiliary Power Unit (APU).**

i) All truck idling shall be limited to no more than 5 minutes.

ii) Each warehouse building shall provide an on-site air-conditioned lounge with a vending machine(s), a seating area, restrooms, workstations, shower facilities, and a television. The lounge shall be regularly maintained, cleaned, and stocked.

iii) WLC shall provide at least one APU plug-in for every 35 dock doors at multiple locations within the Specific Plan area where trucks park and signage shall be provided in English and Spanish identifying where such APU plug-ins are located.

c) **Warehouse Construction**.

i) WLC shall construct all warehouse buildings to achieve at least LEED Silver Certification for core and shell. If the WLC seeks to advertise a building as having LEED Silver Certification, it shall apply for certification. If certification is granted, notice shall be provided to Petitioners.

ii) Warehouse roof areas not covered by solar panels shall be constructed with materials with an initial installation Solar Reflective Index Value of not less than 39.

d) **Cold Storage.** All transport refrigeration units (TRUs) shall have electric plug-ins and electrical hookups shall be provided at all TRU loading docks. WLC shall notify petitioners in writing before filing any applications for cold storage in warehouses.

3) ***Construction Emissions/Dust***

a) All construction equipment shall meet or be cleaner than Tier 4 standards, except if the construction contractor certifies that it is not feasible to use exclusively Tier 4 equipment due to limited availability. In all events, at least 80% of construction equipment shall meet or be cleaner than Tier 4 standards for the life of the project's construction.

b) In the event that diesel-powered construction equipment becomes available (1) with improved emission control devices that reduce particulate matter emissions, including fine particulate matter, and reduces NOx emissions, (2) at commercially reasonable prices, and (3) in sufficient quantities to be reasonably available, then WLC shall use such construction equipment.

c) No diesel-powered portable generators shall be used, unless necessary due to emergency situations or constrained supply.

d) No idling longer than five minutes shall be permitted.

4) ***Worker Education / Enforcement of Requirements***

a) See section 8(i) in Attachment C to this Agreement.

Attachment A, Exhibit 1
Class 8, Heavy Duty Truck Grant Program

Truck Model Year	Grant ($) per Truck
2024	24,391
2025	23,523
2026	22,823
2027	22,228
2028	21,687
2029	21,198
2030 and later	20,709

Notes and Source: All assumptions are based on CARB data developed in the Advanced Clean Trucks rulemaking. Class 8 trucks are defined by Federal Highway Administration as trucks with Gross Vehicle Weight Rating (GVWR) of more than 33,000 lbs. The grants specified in this table equal the down payments projected to be required to purchase a Class 8 heavy duty electric truck for each specified truck model year, using the CARB Total Cost of Ownership Calculator available at: https://ww2.arb.ca.gov/sites/default/files/2019-05/190508tcocalc_2.xlsx. Consistent with industry practice, the down payment represents 10% of the amount due at the truck purchase, which includes the truck purchase price, the taxes and the registration (but not the fuel and maintenance).

EV Heavy Duty Truck Grant

LATHAM & WATKINS LLP
WORLD LOGISTICS CENTER

Helping Truckers Transition to EV by Eliminating Up-front Cash Needed

Biggest Barrier to EV Truck Conversion?

- **Where does the buyer get the money for the down payment**

Solution: Zero Cash Down for Zero Emissions Grant Program

- WLC will provide Grant to cover the projected down payment on new HD EV truck based on CARB data
- Grant program will continue throughout the construction period

Class 8 Model Year	Purchase Price[1] (capital cost, registration, taxes)		Upfront Costs (capital cost, registration, taxes)				Benefits to Purchaser	
	Diesel (CARB)	Electric (CARB)	Diesel Down Payment[2]	EV Down Payment (CARB)[2]	WLC EV Truck Grant[3]	EV Down Payment (net of grant)	Day 1 Cash Savings to Switch to Electric[4]	Year 1 Fuel & Maintenance Savings vs Diesel[5]
MY 2024	$172,220	$243,913	($17,222)	($24,391)	$24,391	$0	$17,222	$5,850

1. Cost data for diesel and electric trucks estimated using the CARB TCO Calculator, available at: https://ww2.arb.ca.gov/sites/default/files/2019-05/190508tcocalc_2.xlsx. All assumptions are based on CARB data developed in the Advanced Clean Trucks rulemaking. The (lower) Tesla Semi price projections represent a less conservative scenario and accordingly the Tesla data was not used to set Grant levels.
2. Consistent with industry practice, the down payment represents 10% of the purchase price, tax and registration (but not fuel and maintenance).
3. The CARB price projections represent a conservative scenario and accordingly CARB data has been used to set Grant levels.
4. Incremental cost of EV Truck assumes no additional incentives or subsidies, which is highly conservative given the many existing EV subsidy programs. Note that no incentives are available for diesel trucks.
5. Annual maintenance and fuels costs (and savings) based on CARB data. This does not include revenues from the sale of LCFS credits.

Attachment A, Exhibit 2
Medium Duty Truck Grant Program

Truck Model Year	Grant ($) per Truck (Class 4-5)	Grant ($) per Truck (Class 6-7)
2024	8,466	13,040
2025	8,274	12,728
2026	8,118	12,476
2027	7,983	12,261
2028	7,859	12,065
2029	7,746	11,887
2030 and later	7,632	11,710

Notes and Source: All assumptions are based on CARB data developed in the Advanced Clean Trucks rulemaking. Federal Highway Administration (FHA) defines Class 4, Class 5, Class 6 and Class 7 trucks as trucks with GVWRs as follows: (i) Class 4 between 14,001 lbs and 16,000 lbs; (ii) Class 5 between 16,001 lbs and 19,500 lbs; (iii) Class 6 between 19,501 lbs and 26,000 lbs; (iv) and, Class 7 between 26,001 lbs and 33,000 lbs. FHA classifies Class 4, Class 5 and Class 6 trucks as Medium Duty and classifies Class 7 trucks as Heavy Duty. In terms of emission standards, the U.S. Environmental Protection Agency (EPA) classifies Class 4-5 trucks as Light Heavy Duty and Class 6-7 trucks as Medium Heavy Duty. The grants specified in this table equal the down payments projected to be required to purchase either a Class 4-5 or Class 6-7 electric truck for each specified truck model year, using the CARB Total Cost of Ownership Calculator available at: https://ww2.arb.ca.gov/sites/default/files/2019-05/190508tcocalc_2.xlsx. Consistent with industry practice, the down payment represents 10% of the amount due at the truck purchase, which includes the truck purchase price, the taxes and the registration (but not the fuel and maintenance).

Attachment A, Exhibit 3
Local Delivery Truck Grant Program

Truck Model Year	Grant ($) per Truck (Class 2B-3)
2024	8,949
2025	8,762
2026	8,607
2027	8,467
2028	8,336
2029	8,213
2030 and later	8,090

Notes and Source: All assumptions are based on CARB data developed in the Advanced Clean Trucks rulemaking. The EPA classifies Class 2B trucks as trucks with GVWR between 8,500 lbs and 10,000 lbs and Class 3 trucks as trucks with GVWRs between 10,001 lbs and 14,000 lbs. The grants specified in this table equal the down payments projected to be required to purchase a Class 2B-3 electric truck for each specified truck model year, using the CARB Total Cost of Ownership Calculator available at: https://ww2.arb.ca.gov/sites/default/files/2019-05/190508tcocalc_2.xlsx. Consistent with industry practice, the down payment represents 10% of the amount due at the truck purchase, which includes the truck purchase price, the taxes and the registration (but not the fuel and maintenance).

Attachment B

Biological Resources

1) ***Lighting Program***. Reduce light and glare to maximum extent practicable. Implement a campus-wide lighting program in compliance with International Dark Sky Association standards with at least the following measures (except where doing so would violate safety requirements or federal, state, City or county governmental regulations; provided, however, that if doing so would violate such requirements or regulations, then WLC shall consult with Petitioner Parties and, should Petitioner Parties so decide, WLC and Petitioner Parties shall cooperate to attempt to persuade the decision maker to allow the lighting program described below).

   a) Light color of all exterior lighting, including street lights, shall be 2,700 Kelvin.

   b) Limit the heights of all freestanding and wall-mounted lights to 20 feet within 1,500 feet of the San Jacinto Wildlife Area ("SJWA").

   c) Dimmers to 25% output after sundown when no motion detected for ten minutes, subject to City approval, which approval WLC shall request.

   d) Motion sensors on all interior lighting shall be installed consistent with applicable Title 24 regulations.

   e) Require darker colored paint (Pantone 7501C) on all exterior building walls within 1,000 feet of the SJWA property line and visible from the SJWA to reduce glare.

   f) Plant trees within setback area to reduce glare to SJWA.

   g) Install full cut-off luminaries on buildings and poles.

   i) Installation of automatic blinds on office windows visible from the SJWA within 1,500 feet of the SJWA edge that automatically close within 20 minutes after sunset and open within 20 minutes of sunrise.

   h) Truck head lights shall be turned off within five minutes of truck parking.

i) All construction lighting shall be shielded and directed away from the project's property lines.

2) SJWA Setback Area & Additional SJWA Protections

a) Truck yards shall be no closer than 350 feet from the southern boundary with SJWA, as depicted by the yellow line in the attached graphic. No buildings, truck courts, loading areas, parking, truck circulation areas, or truck or trailer storage, shall be permitted within the 350-foot setback area. Only landscaping, drainage facilities, and underground utilities shall be permitted. Emergency access and maintenance access shall also be permitted.

b) Warehouse buildings shall be no closer than 450 feet from the southern boundary with SJWA, as depicted by the red line in the attached graphic. *See* Attachment B, Exhibit 1 – Setback.

c) The SJWA setback area shall be subject to an open space deed restriction that limits uses within the 350-foot setback area to only landscaping, drainage facilities, underground utilities, emergency access, and maintenance access.

d) No lighting shall be located in the 350-foot setback.

e) No wall or fence shall be installed along the project's property line with the SJWA, unless required by California Department of Fish and Wildlife or other governmental authority.

f) All portions of truck yards visible from the SJWA, including those truck yards adjacent to the SDG&E Moreno Compressor Station, shall be shielded by a wall or walls at least 14 feet high, if the City so permits under the Specific Plan, which permission WLC shall in good faith seek. In no event shall such walls be lower than 12 feet high.

g) WLC shall plant landscaping and design detention basins in the SJWA special edge treatment area so as to soften the southern appearance of truck yard screen walls by planting at least 50% of all trees at 24" box in size. Detention basins within the SJWA special edge treatment shall be designed and built no larger than necessary to handle the Specific Plan area's estimated storm water flow.

h) Landscaping within the SJWA special edge treatment area shall be substantially consistent with conceptual design set forth in the Specific Plan at pages 4-25 and 4-26.

i) Plant only low-biogenic and native vegetation in SJWA special edge treatment area.

j) At least 50% of trees within the 350-foot setback area shall be evergreen trees.

k) At least 50% of trees within the 350-foot setback area shall be native to Southern California.

l) No ornamental grasses shall be installed in the Specific Plan area. Only grasses, shrubs, or sub-shrubs listed in section 5.4.4 of the Specific Plan, which are all native grasses, shall be planted within the Specific Plan area.

m) Invasive, non-native grasses, shrubs, and sub-shrubs shall be removed from the Specific Plan area's developed portions as part of the WLC's regular landscaping services.

n) All leases shall inform tenants within 1,000 feet of the SJWA edge that the project is adjacent to the SJWA, which permits hunting.

o) Permanent signage in English and Spanish shall be installed within 450 feet of the SJWA stating that such area is within 450 feet of an area that permits hunting.

3) ***SJWA Conservation Fund***—Upon the issuance of a building permit for a warehouse building south of Alessandro Blvd., WLC shall fund a $4 million account for (i) land acquisition efforts to augment the SJWA, (ii) SJWA conservation efforts, (iii) wildlife corridor crossings on Gilman Springs Road, (iv) facilitating native plantings, (v) plant management, (vi) other conservation efforts, or (vii) administration of such funds. The funds shall be managed by a third-party, non-profit entity or foundation chosen by Petitioner Parties.

4) ***SDG&E Moreno Compressor Station Shielding.***

a) ***Landscaping.*** Prior to the issuance of a certificate of occupancy for a warehouse building south of Alessandro Blvd. and north of the SDG&E Moreno Compressor Station, landscaping that substantially blocks vehicle lights shall be installed and maintained around the project's western, northern, and eastern property line abutting the SDG&E Moreno Compressor Station.

b) ***Fencing.*** Prior to the issuance of a certificate of occupancy for a warehouse building south of Alessandro Blvd., ten foot tall fencing with metal mesh installed below and above ground level to prevent animals from moving between the SDG&E Compressor Station and SJWA shall be installed and maintained around the western, northern, and eastern property line abutting the SDG&E Moreno Compressor Station.

5) ***Davis Road***—WLC shall support efforts to keep Davis Road closed north of the SJWA, as shown on the attached map, including the placement of a gate near Alessandro Blvd. No access from the north via Davis Road for the property located at 16200 Davis Road shall be requested. *See* Attachment B, Exhibit 2 – Horse Ranch Exhibit.

6) ***WLC Open Space Area (Planning Area 30).***

a) WLC shall not build any buildings within Planning Area 30. WLC shall provide notice of any property transfer or proposed activity within Planning Area 30 within 30 days of such transfer or formal proposed activity.

b) Prior to the issuance of a certificate of occupancy for any warehouse building adjacent to Planning Area 30, a wall at least 14 feet high, if the City so permits, which approval

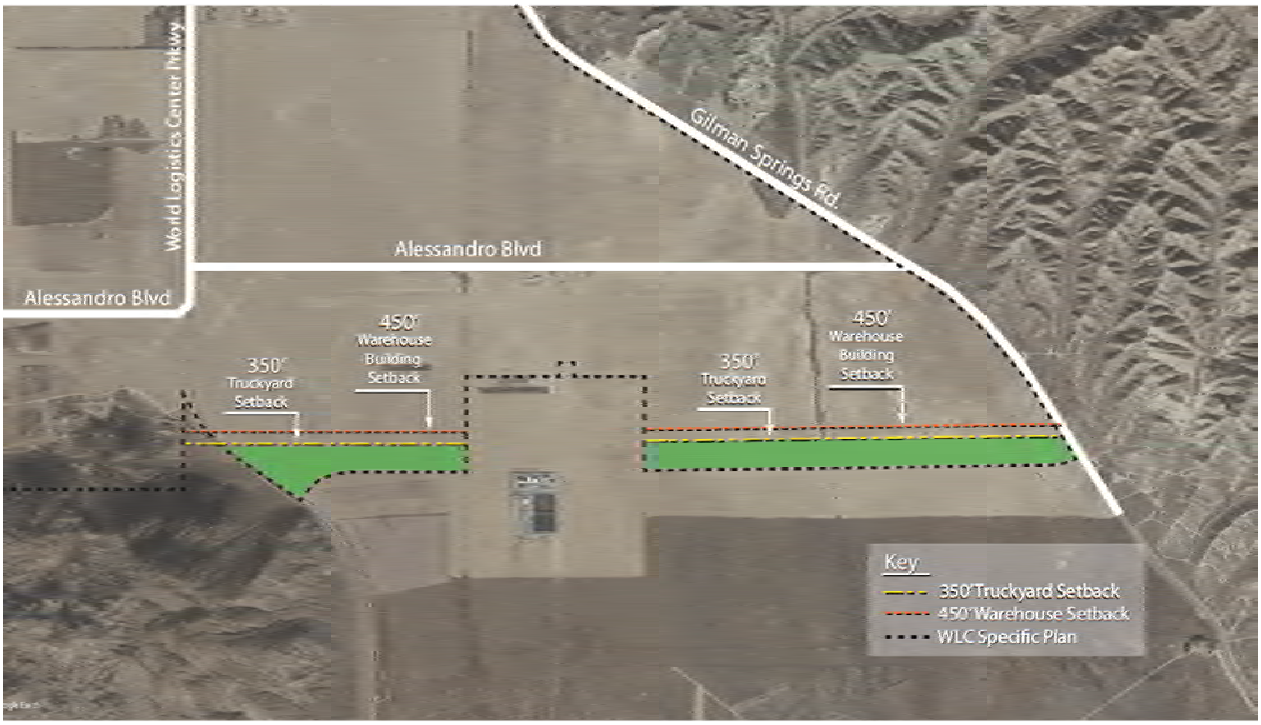
WLC shall in good faith request, shall be constructed along the warehouse building's southern edge. In no event shall such wall be lower than 12 feet high.

7) SJWA Boundary & Setbacks.

a) For purposes of this Agreement, SJWA boundary shall mean SJWA's boundaries as they exist as of the Effective Date of the Agreement.

b) All setback obligations from the SJWA shall be as shown on the following attachment. *See* Attachment B, Exhibit 1 – Setback.

Attachment B, Exhibit 1 – Setback



March 2021
N.T.S.
N

Setback to SJWA

Attachment B, Exhibit 2 – Horse Ranch Exhibit

Attachment C

Community Benefits

1) ***Berms/Screening Before Warehouse Construction***

   a) The berms to be installed along Redlands Blvd. and Merwin St. shall be completed before the construction of any warehouses within 1,000 feet of Redlands Blvd. or Merwin St.

   b) Either the berm to be installed along Bay St. or a temporary barrier sufficient to substantially screen warehouse construction activities shall be completed before the construction of any warehouses within 1,000 feet of Bay St.

2) ***Setbacks From residentially zoned property***. Buildings shall be setback at least 290 feet measured from the nearest existing City residential zoning boundary (which is currently the centerline of Redlands Blvd., Bay Ave., and Merwin St.). Notwithstanding the foregoing, buildings of no more than 45 feet in height, as measured pursuant to the Specific Plan, shall be setback at least 250 feet from the nearest existing City residential zoning boundary.

3) ***Visual Protections/Berms/Landscaping***

   a) **Landscaping/Screening**

      i) Merwin St. Berm: WLC will install a berm and landscaped area on the east side of Merwin St. similar to that to be installed on Redlands Blvd. to screen future buildings and development as viewed from Merwin St.

      ii) Enhancements to Berm: The property's Western Edge, as defined by the Specific Plan and as shown in Specific Plan Exhibit 4-1, when viewed from the western side of Redlands Boulevard and Merwin Street and the southern side of Bay Avenue, shall be developed to screen future buildings with walls, berms, and/or landscaping as follows.

         (1) For a minimum of 25% of the linear length of the berms, the entirety of the buildings and roof mounted equipment behind the berms shall be substantially screened by walls, berms, and/or landscaping at maturity at all times of the year. "Substantially screened" means that while there might be some view of the buildings looking through the foliage, the buildings will be mostly obscured from view.

         (2) For a minimum of 25% of the linear length of the berms, all but the top five feet of the buildings and roof mounted equipment behind the berms shall be substantially screened by walls, berms, and/or landscaping at maturity at all times of the year.

         (3) For the remaining 50% or less of the linear length of the berms, all but the top fifteen feet of the buildings and roof mounted equipment behind the berms shall be substantially screened by walls, berms, and/or landscaping at maturity at all times of the year.

(4) In the event the above levels of screening on the Western Edge are not achieved within 15 years of landscaping's installation, WLC shall do supplemental planting to meet the above levels of screening.

iii) Larger Trees than the Specific Plan Requires: WLC will plant larger trees within the Specific Plan's Western Edge, as follows: 50% of all trees to be 24" box.

iv) Evergreen Trees:

(1) Western Edge. Evergreen trees shall constitute 85% of all 24" box trees planted within the Specific Plan's Western Edge.

(2) Specific Plan Campus. Evergreen trees shall constitute 50% of all trees planted within the WLC. For purposes of defining evergreen trees, deciduous trees that behave like evergreen trees in the Southern California climate shall be considered evergreen trees.

v) Varied Appearance: Landscaping on the Western Edge shall avoid a linear appearance through implementation of the following measures:

(1) Trees shall be planted at varied depths from the World Logistic Center's property line so that they do not create a uniform and linear appearance and create a layering effect as viewed from adjacent streets so as to maximize screening of World Logistic Center buildings;

(2) Consistent with layering effect, larger evergreen trees shall be concentrated towards the top of the berms to maximize screening;

(3) To the extent practicable, berm contours shall vary and accent elements, such as boulders, shall be placed on berm slopes facing adjacent streets to create visual interest; and

(4) Trees within the Western Edge shall be maintained in their natural form and shape with minimal pruning.

vi) Dead trees shall be promptly removed and replaced with similar type trees.

vii) Use of palm trees shall be limited to accent areas only.

viii) Plant trees in the parking areas that are capable of achieving 50% shading within ten years.

ix) Use concrete for parking lots with concrete having a solar reflective index of no less than 30.

4) ***Architectural Design***

a) Screen all rooftop equipment: (i) visible from any existing residential homes within 1,000 feet of the property's Western Edge; or (ii) within 1,000 feet of the San Jacinto Wildlife Area ("SJWA"). Rooftop equipment shall be screened using the building's parapet wall or other architectural element that appears to be or is an integral part of the building.

b) No portion of any building that is closer than 600 feet to the centerline of Redlands Blvd., Bay Ave., or Merwin St. shall exceed 60 feet in height (portions that are farther away may exceed 60 feet in height).

c) For warehouse buildings abutting the Western Edge that are not substantially screened, the rooflines shall be designed to avoid long linear flat walls through the incorporation of architectural features like breaks, wall offsets, height variations, and/or accent features.

5) ***Homeowner or Resident Reimbursements***

a) Air Filtration System Reimbursement Program.

i) WLC shall pay 90% of the costs of purchasing and installing non-portable air filtration systems ("Air Filtration System Reimbursement Program"), including any necessitated HVAC modification, which cost shall not exceed $25,000 per home, as follows.

(1) The home is an eligible home as shown on the attached map. *See* Attachment C, Exhibit 1 – Filter Overview Map.

(2) The homeowner or resident requests payment within five years of the commencement of grading or commencement of construction of a warehouse building within 2,000 feet of such homes.

(3) In the event a property owner or resident has a household income less than 80% of the Area Median Income as determined by the Department of Housing and Urban Development, WLC shall pay 100% of the cost of the air filtration system up to $25,000.

ii) The project shall mail notice via registered or certified mail of the Air Filtration System Reimbursement Program to Petitioners and to residents and property owners of record of the qualified homes prior to the issuance of the project's first grading or building permit within 2,000 feet of the homes and annually thereafter for four years. The notice shall identify the exact date when the five year period starts and ends. Proof of mailing shall be provided to Petitioners. The project's website shall also include notice of the Air Filtration System Reimbursement Program during the program's five-year term, including identifying which homes have started the five year window and when it ends.

iii) The homeowner or resident may select and contract with a contractor or installer of the homeowner's or resident's choice.

b) Noise Insulation Reimbursement Program.

i) WLC shall pay 90% of the costs of purchasing and installing noise insulation measures ("Noise Insulation Reimbursement Program"), which cost shall not exceed $10,000 per home, as follows.

(1) The home is an eligible home as shown on the attached map. *See* Attachment C, Exhibit 2 – Sound Proofing Overview Map.

(2) The homeowner or resident requests payment under the Noise Insulation Reimbursement Program within five years of the commencement of grading or commencement of construction of a warehouse building within 2,000 feet of such homes.

ii) The project shall mail via registered or certified mail notice of the Noise Insulation Reimbursement Program to Petitioners and to residents and property owners of record of the qualified homes at least 60 days before the issuance of the project's first grading or building permit within 2,000 feet of the homes and annually thereafter for four years. The project's website shall also include notice of the Noise Insulation Reimbursement Program during the program's five-year term, including identifying which homes have started the five year window and when it ends.

iii) The homeowner or resident may select and contract with a contractor or installer of the homeowner's or resident's choice.

iv) In the event a property owner or resident has a household income less than 80% of the Area Median Income as determined by the Department of Housing and Urban Development, WLC shall pay 100% of the cost of the noise insulation measures up to $10,000.

c) Exterior Pressure Washing Reimbursement.

i) Due to possible dust during grading, WLC shall reimburse each homeowner for exterior pressure washings of the first two rows of homes on the west side of Redlands Blvd., south side of Bay Ave., and west side of Merwin St. up to $500 per house.

d) Additional Homeowner Outreach. Petitioners are free to engage in their own homeowner notification, outreach and efforts to maximize awareness and success of the air filtration, noise insulation, and power washing programs, either directly or through a contractor or third party nonprofit. WLC shall provide funds of up to $120,000 to a designated nonprofit or foundation selected by Petitioners upon the issuance of the Project's first grading or building permit for work within 2,000 feet of any home identified in sections 5(a)(i)(1) and 5(b)(i)(1). WLC will annually notify Petitioners of how many and which homes have used this program. Petitioners may also request this information, and the

WLC shall provide it within 30 days. WLC shall also notify Petitioners of any rejected requests under the air filtration, noise mitigation, and/or pressure washing program for any home with a rationale for the rejection within 30 days of such rejection. Any unused funds from this $120,000 may be directed to other philanthropic activities to benefit the City of Moreno Valley if any funds remain after the expiration of the reimbursement programs.

6) ***Noise***

a) **Project Operations**

i) All portions of truck yards that are visible from Redlands Blvd., Merwin St., Bay Avenue and the SJWA shall be shielded by walls at least 14 feet high, if the City so permits. WLC shall apply for an administrative variance pursuant to Specific Plan section 11.3.3.1, if necessary, and make a good-faith effort to seek permission to install these 14-foot high walls. In no event shall such walls be lower than 12 feet high.

ii) All portions of truck circulation drive aisles that are visible from any existing home within 1,000 feet of the Specific Plan's Western Edge shall be shielded by walls at least 14 feet high, if the City so permits. WLC shall apply for an administrative variance pursuant to Specific Plan section 11.3.3.1, if necessary, and make a good-faith effort to seek permission to install such 14-foot high walls. In no event shall such walls be lower than 12 feet high.

iii) No exterior mechanical building equipment generating noise levels above 50 dBA CNEL measured at the property line of each of the homes located West of Redlands Blvd., south of Bay Ave., and west of Merwin St. shall be installed, absent the written consent of such affected homeowner.

iv) Buildings located between E Street and Redlands Blvd. or 500 feet east of Merwin St. shall not have loading docks or parking areas facing residential home frontage on Redlands Blvd. or Merwin St., as shown on attached map in red. *See* Attachment C, Exhibit 3 – Map for No Docks Facing Existing Homes.

v) Prohibit outdoor loading activities within 1,000 feet of any existing home between 9:00 p.m. to 6:00 a.m. if noise levels exceed 50 dBA CNEL measured at the property line of each such home located West of Redlands Blvd., south of Bay Ave., and west of Merwin St., absent the written consent of such affected homeowner or resident.

vi) No outdoor speakers that exceed 45 dBA Leq measured at the property line of any existing home between 7:00 p.m. and 7:00 a.m. within 1,500 feet of any residential property fronting Redlands Blvd., Merwin St., and Bay Ave. except in the event of an emergency, absent the written consent of such affected homeowner.

b) **Project Construction**

i) No nighttime grading or outside construction between 6:00 p.m. and 7:00 a.m. shall be conducted within 1,000 feet of any existing home west of Redlands Blvd., south of Bay Ave., and west of Merwin St., except if necessary for concrete pours.

ii) Notice shall be provided to residents within 750 feet of the Western Edge at least one week prior to construction between 6:00 p.m. and 7:00 a.m.

7) ***Lighting***

a) The heights of all outdoor freestanding and wall-mounted lights shall not exceed 20 feet within 1,000 feet of the centerline of Redlands Blvd., Bay Ave., and Merwin St., except where doing so would violate safety requirements or federal, state, City or county governmental regulations.

b) All outdoor freestanding and wall-mounted lights within 1,000 feet of the centerline of Redlands Blvd., Bay Ave., and Merwin St. shall dim to 50% output after sundown when no motion detected for ten minutes.

8) ***Operational Trucking/Employee Trips***

a) **Provide On-Site Truck Parking (to discourage parking in neighborhoods)**

i) Dedicate 7-10 acres east of Theodore St. and north of Alessandro Blvd. for fueling and trucker personal services, such as food service, showers, resting, truck washes, repair facility, etc. ("Truck Service Area").

ii) Auxiliary power unit ("APU") plug-ins shall be provided at each designated Class 8 truck parking spot in the Truck Service Area.

iii) Provide conduit and prewiring in the Truck Service Area to accommodate potential heavy duty truck charging facilities.

iv) Ongoing private security shall be provided within the Truck Service Area.

v) WLC shall in good faith advocate for the City to permit overnight parking within the WLC for trucks servicing WLC tenants.

vi) Provide sufficient on-site truck parking within parking lots and/or public rights-of-way to enable all trucks reasonably expected to visit WLC to park on-site (as determined by a qualified transportation engineer).

vii) Install permanent signs in English and Spanish to inform truck drivers of the on-site amenities, including the Truck Service Area.

viii) Maps of designated City truck routes shall be made available within truck amenity facilities and the Truck Service Area.

ix) All limitations regarding trucking activities shall be provided to tenants upon lease commencement and leases shall require tenants to inform employees and third-party truckers of these limitations through a WLC-maintained website containing these limitations.

b) **Off-Street Community Truck Parking Planning & Advocacy Fund**

i) WLC shall, upon the commencement of construction of the first warehouse building, pay $150,000 to a mutually agreeable non-profit entity or foundation to fund efforts (1) to advocate for and support the development of off-street parking for Class 8 trucks in or adjacent to Moreno Valley and not within the WLC, and (2) to advocate for the City's adoption of a $1,000 street parking fine for illegal truck parking on residential streets and in residential neighborhoods.

(1) In the event the City does not adopt a $1,000 fine for illegal truck parking on residential streets then, when 5 million square feet of warehouse buildings between WLC Parkway and Redlands Blvd. have received their certificates of occupancy, WLC shall provide nighttime private patrol (10:00 p.m. to 6:00 a.m.) for 7 years to patrol residential streets within one-half mile of the project to report any overnight/illegal truck parking to authorities. If 18 or fewer WLC related infractions are identified after any three-year period, the patrol may be discontinued.

c) **Prohibiting Trucks on Cactus Avenue**

i) Trucks shall not be permitted to use Cactus Ave. as a truck route between WLC and Perris Blvd. If the City approves the installation of physical measures to prevent trucks from using Cactus Avenue (e.g., signage, speed humps, etc.), WLC shall fund up to $200,000 to implement such measures.

(1) Unused funds, which are funds not expended within five years of certificates of occupancy having been issued for 5 million square feet of warehouse uses approved under the Specific Plan, shall be provided to a mutually agreeable non-profit entity dedicated to supporting the SJWA and/or the community of Moreno Valley.

ii) Prohibit WLC trucks from using Cactus Ave. in tenant leases.

d) **Prohibiting Trucks on Redlands Blvd. South of Eucalyptus**

i) Prohibit WLC truck use of Redlands Blvd. south of the roundabout at Eucalyptus Ave. in tenant leases.

ii) If the City approves permanent signage prohibiting trucks from using Redlands Blvd., then WLC shall fund up to $50,000 to install such signage.

(1) Unused funds, which are funds not expended within five years of certificates of occupancy having been issued for 5 million square feet of warehouse uses

approved under the Specific Plan, shall be provided to a mutually agreeable non-profit entity dedicated to supporting the SJWA and/or the community of Moreno Valley.

e) **Alessandro Blvd. Closure**

i) Upon the completion of the extension of Cactus Ave., Alessandro Blvd. east of Merwin St. shall be closed to vehicular traffic (other than emergency vehicles).

f) **Truck Turning Prohibitions (to avoid turning in prohibited directions)**

i) To discourage trucks from turning the wrong direction when entering or leaving the WLC, design and install physical measures the City and Fire Department approves (e.g., curbs that force turns in only one direction, bumps/textures that rattle vehicles traversing them, etc.).

ii) Install signage clearly stating which directions trucks must turn at all streets exiting the Specific Plan area.

g) **No Truck Parking Signage**

i) If the City approves a "no truck parking" signage program within one mile of the WLC, fund implementation of that program up to $200,000.

(1) Unused funds, which are funds not expended within five years of certificates of occupancy having been issued for 5 million square feet of warehouse uses approved under the Specific Plan, shall be provided to a mutually agreeable non-profit entity dedicated to supporting the SJWA and/or the community of Moreno Valley.

h) **Prohibit Off-Site Employee Parking**

i) Provide free on-site employee parking.

ii) To discourage employee parking within neighborhoods, prohibit employee "walk-ins" onto WLC campus at the start and end of shifts, unless the employee lives within walking distance of WLC.

iii) Prohibit off-site employee parking in tenant leases.

i) **Worker Education / Enforcement of Trucking and Parking Requirements**

i) Upon the issuance of the certificate of occupancy for the first warehouse building, WLC shall implement an ongoing program to educate truckers, tenants, and construction workers of all of the rules and requirements expected of them, including the applicable GHG/air quality measures listed in Sections 2 and 3 of Attachment A to the Agreement and the other requirements listed in this Attachment C to the Agreement. The education program shall be in English and Spanish and shall include

prominently posted signage throughout the project site, including a requirement in tenant leases obligating tenants to inform employees, temporary workers, contractors, and third-party truckers of the rules by posting the rules in lounges provided at their warehouses. WLC shall also maintain a website with a trucker and construction worker information page specifying the rules. The educational information with the rules developed under this program shall be provided to all tenants in paper form (e.g., a pamphlet) on request and at least annually for inclusion in lounges.

ii) WLC shall install permanent reflective signage in English and Spanish no less than every 25 feet along the interior of truck yard screening walls facing loading docks stating limits on engine idling, vehicle lights, and APUs.

j) **Employee Trip Reduction Measures**

i) WLC shall implement the following measures to reduce Specific Plan employee trips.

(1) Provide on-site meal areas.

(2) Provide up to 1,000 eBike subsidies in the amount of $500 to WLC employees who commit to bike to work at least twice per week on average. The subsidies will be phased proportionately with buildout of the first 15 million square feet of the project.

(3) Provide on-line transit incentive "virtual kiosk" giving free transit assistance to WLC employees (e.g., ridesharing/carpooling connections, assistance determining best bus routes, sales of bus passes, etc.).

(4) Develop and implement program to ensure knowledge of trip reduction measures by project employees.

(5) Provide 40% subsidies for bus passes for tenants' employees who commit to bus to work at least twice per week on average.

(6) Require tenants to have trip reduction plans to achieve 1.3 average vehicle ridership as a factor of total number of employees (in tenant leases).

(7) Require tenants to have a Transportation Management Association to encourage carpooling (in tenant leases).

(8) Provide bike lockers for 5% or more of building users within 50 yards of employee building entrances.

(9) Provide short-term bike racks near employee building entrances.

(10) Provide preferential parking for carpools and vanpools equal to 5% of total parking spaces.

(11) Provide designated parking spaces for motorcycles.

(12) Fund a zero emission shuttle that circulates within the Specific Plan area and has pickup and drop-offs at the closest off-site bus stop no later than the issuance of a certificate of occupancy for 15 million square feet of warehouse buildings.

9) ***Multi-Use Trail***

a) Pursuant to Specific Plan section 3.4.2, WLC shall construct a multiuse trail along the Western Edge that connects to the existing trail segment on the west side of Redlands Blvd. via a crosswalk at Cottonwood Avenue and Redlands Boulevard, the trail segment on Eucalyptus Ave., and the existing trail on Cactus Ave. *See* Attachment C, Exhibit 4 – WLC Specific Plan Trail Map.

b) Completion of the multiuse trail along the northern portion of Eucalyptus Avenue between Theodore Street and Redlands Boulevard shall be completed no later than the completion of the southern half of Eucalyptus Avenue between Theodore Street and Redlands Boulevard.

c) Pursuant to Specific Plan section 3.4.3, Class II bikeways shall be provided along all roadways within the project.

10) ***Graffiti & Trash Abatement***

a) Graffiti shall be removed within one week of identification or notification.

b) Trash removal within and along all WLC edge areas shall occur at least every other week or within three business day of receipt of notification by community ombudsman.

11) ***Construction Vehicles/Trucking***

a) Prohibit construction trucks from using Redlands Blvd., other than for infrastructure construction or necessary detours

b) Provide lunch vendor services on-site for construction workers.

12) ***Community Outreach and Transparency***

a) WLC shall implement the following community measures.

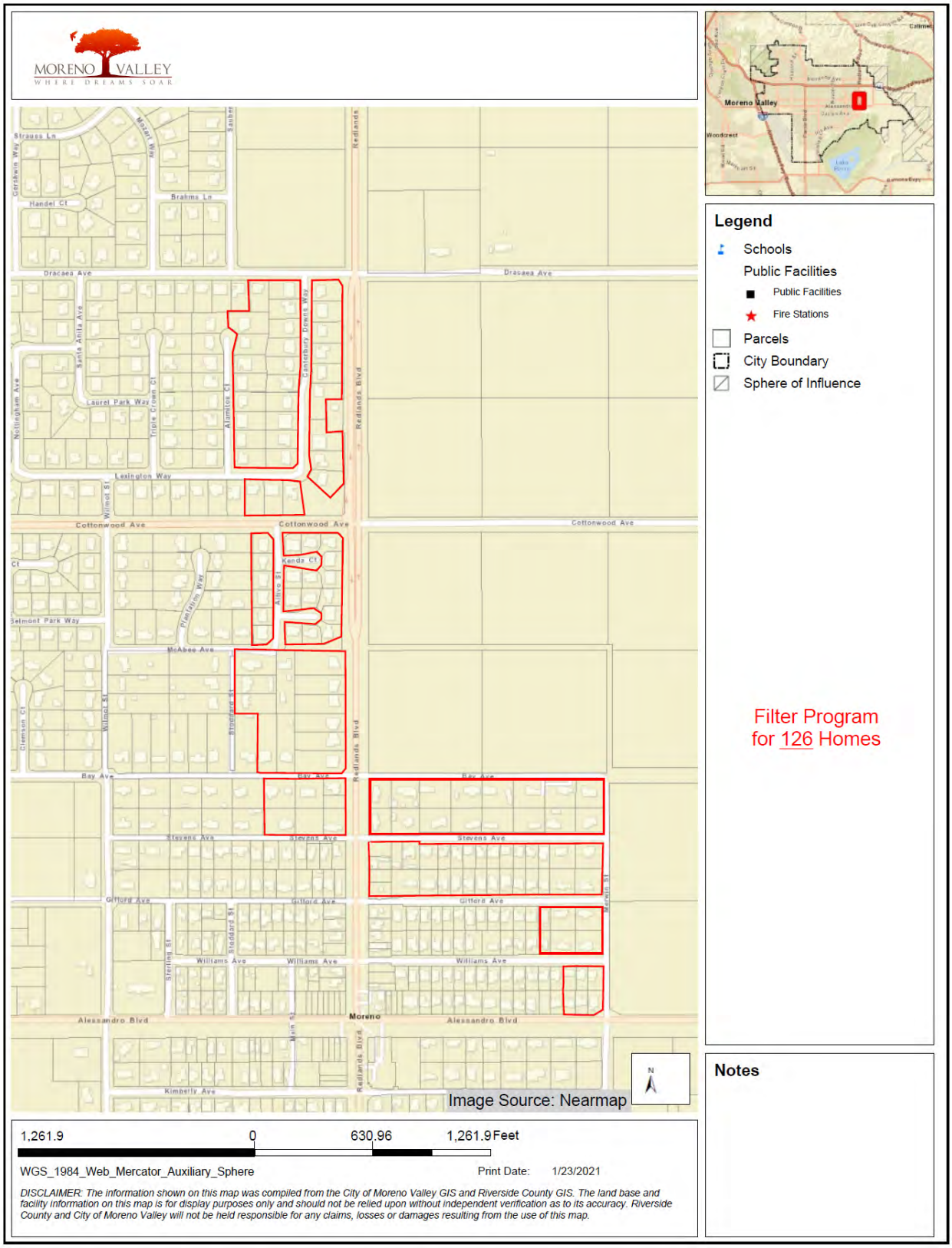
i) Provide a designated ombudsman and 24-hour hotline to address neighbor concerns prior to the commencement of construction and such hotline shall be maintained for 10 years beyond the Specific Plan's full buildout. A live operator shall staff the hotline 24 hours per day. The hotline number shall be mailed to all properties within 1,500 feet of project site no more than one month prior to the commencement of grading on the property.

ii) Permanent signs at the project's five main entrances, easily read from the street, shall be installed and shall provide the ombudsman hotline number and state that the

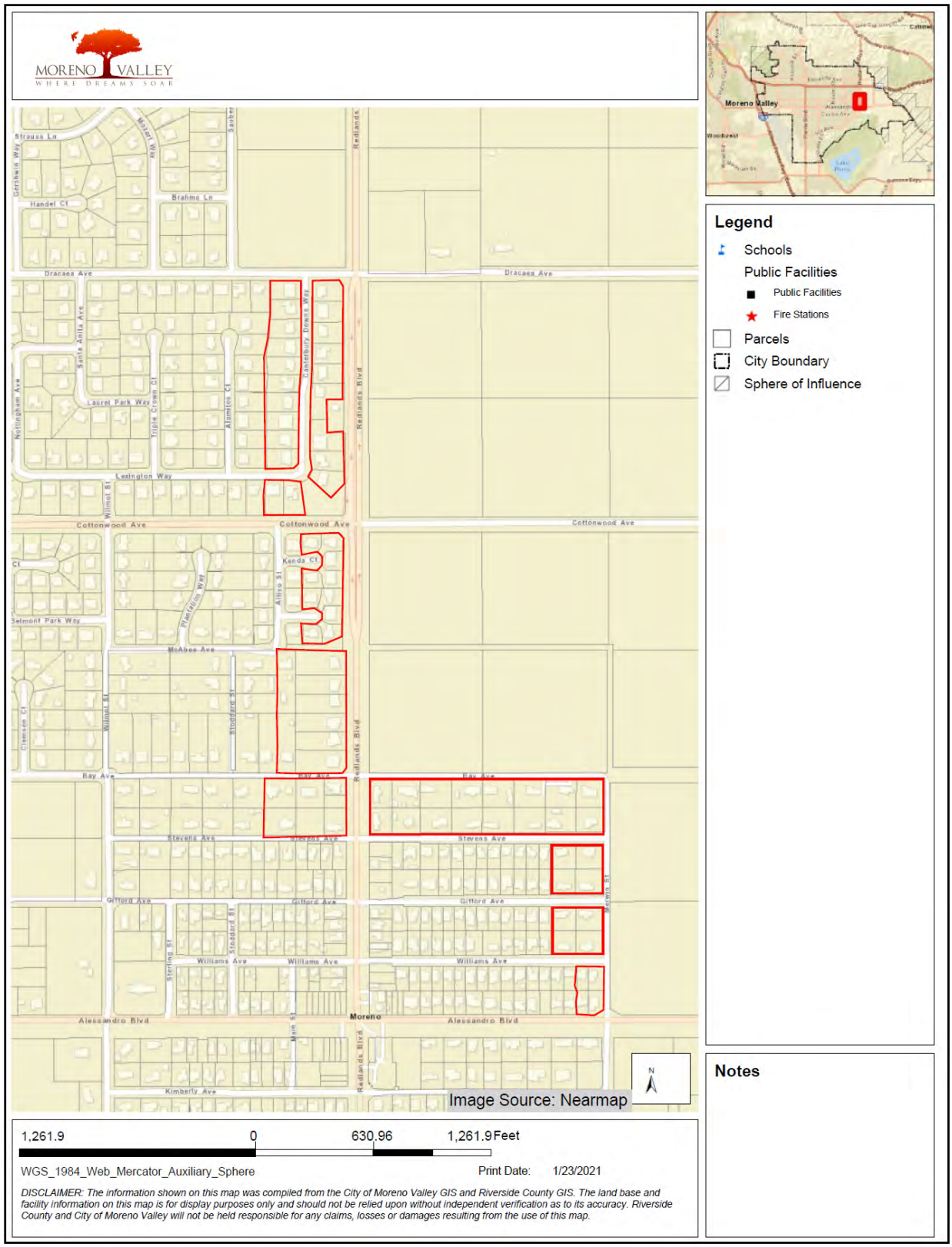
ombudsman may be contacted regarding graffiti, trash, illegal truck parking, or other operational disturbances.

iii) Give notice of any discretionary permit applications for development to any groups or individuals who so request and to residents and property owners within 1,000 feet of the parcel for which work is proposed. Petitioners shall be notified when any project development application is formally submitted to the City and a copy of the proposal and plans shall be provided digitally.

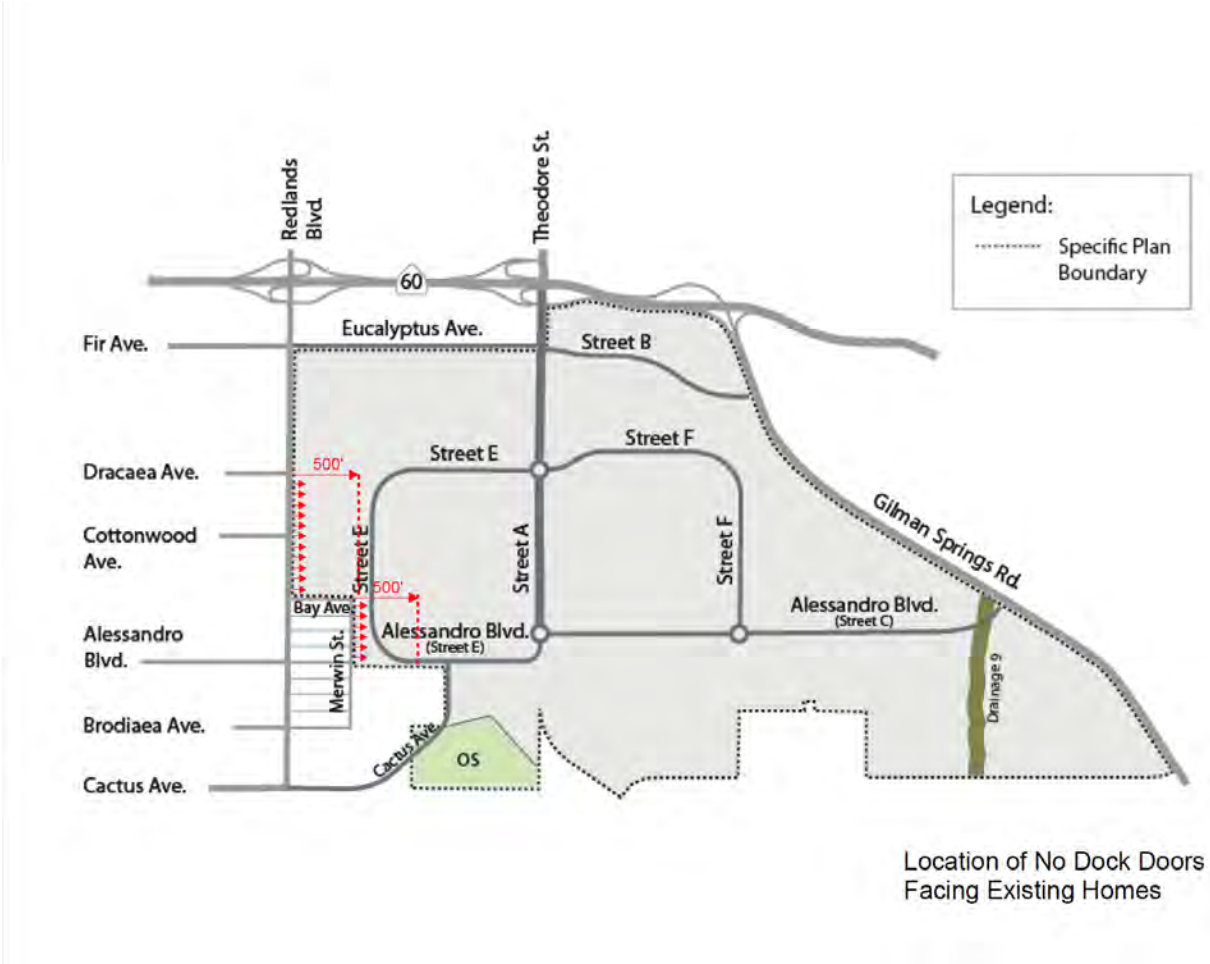
Attachment C, Exhibit 1 – Filter Overview Map



Attachment C, Exhibit 2 – Sound Proofing Overview Map



Attachment C, Exhibit 3 – Map for No Docks Facing Existing Homes



Attachment C, Exhibit 4 – WLC Specific Plan Trail Map

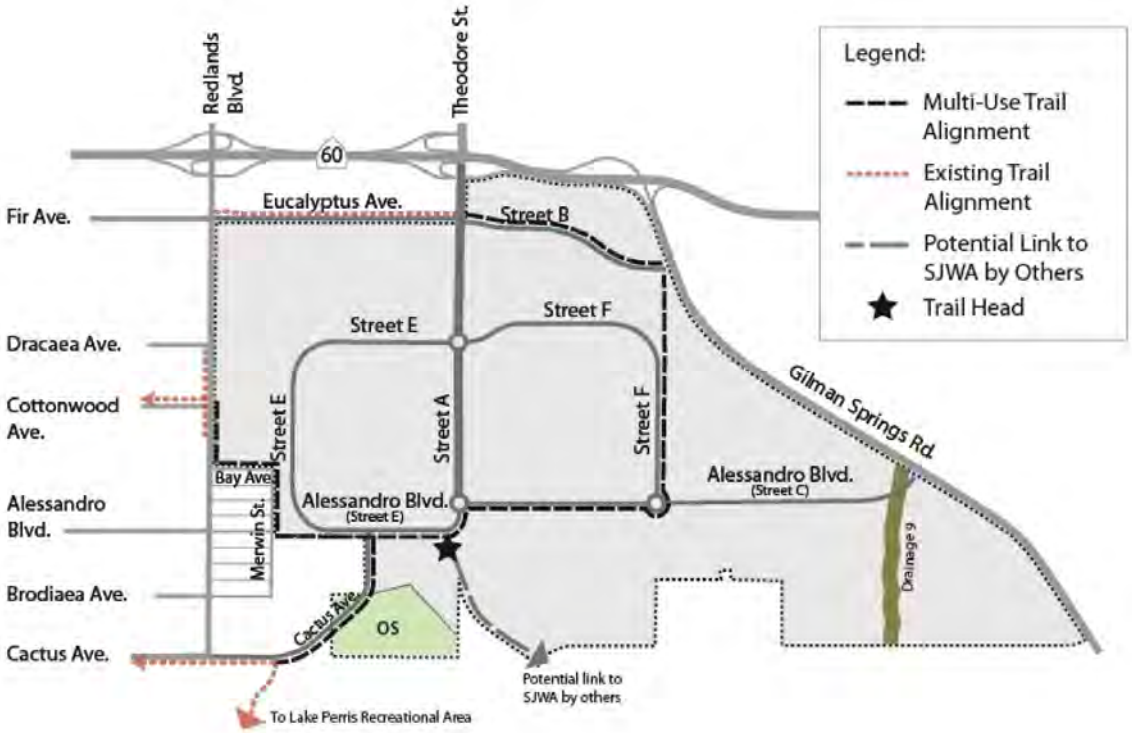


Exhibit D

CONDITIONS OF APPROVAL FOR CENTERPOINT PROPERTIES (Applicant/Owner): COUNTY FILE #'s CDDP18-03007 and CDMS19-00009,

Project Approval:

1. Development is APPROVED as generally described in the application materials received by the Department of Conservation and Development/Community Development Division (CDD) on August 28, 2018, (including Tentative Map submitted October 29, 2019), and subject to the conditions below.

Compliance Review:

2. At least 30 days prior to issuance of a building permit, the applicant shall provide a permit compliance report to CDD for review and approval. The report shall identify all conditions of approval that are administered by CDD. The report shall document the measures taken by the applicant to satisfy all relevant conditions. Copies of the permit conditions may be obtained from CDD. Unless otherwise indicated, the applicant will be required to demonstrate compliance with the conditions of this permit prior to requesting County issued permits.

   The permit compliance review is subject to staff time and materials charges, with an initial deposit of $1,000 which shall be paid at the time of submittal of the compliance report.

3. At least 30-days prior to occupancy, any proposed tenant shall submit a Property Use Verification (PUV) application to CDD staff in order to verify consistency with this permit. The PUV will be necessary to obtain any required business licenses from the County Tax Collector's Office.

General Provisions:

4. Any deviation from or expansion beyond the limits of this permit approved under this application may require the filing of a request for modification of the Development Plan Permit.

5. A publicly visible sign shall be posted on the property with the telephone number and person to contact regarding construction-related complaints. This person shall respond and take corrective action within 24 hours. The CDD phone number to call in complaints shall also be visible to ensure compliance with applicable regulations.

6. Applicant shall make best efforts to hire employees, workers, and subcontractor components for jobs from the Richmond/North Richmond community.

7. At least 30 days prior to submittal of a building permit for signage, a detailed sign program shall be submitted for the review and approval of CDD.

8. The applicant shall pay the Contra Costa County, Department of Conservation and Development, Current Planning Division, a flat not-to-exceed amount of $125,000 as its fair share contribution towards the cost of a General Plan/Zoning Ordinance update for the North Richmond area.

Aesthetics:

9. At least 30 days prior to applying for a building permit, the applicant shall submit for review and approval by the Contra Costa County Department of Conservation and Development staff a Final Lighting Plan. Light standards shall be low-lying and exterior lights on the buildings shall be deflected so that lights shine onto the applicant's property. **(Mitigation Measure (MM) AES – 1)**

Air Quality:

10. The project applicant shall ensure, at minimum, the use of equipment that meets the United States Environmental Protection Agency's (EPA) Tier 4 Interim emissions standards for off-road diesel-powered construction equipment with more than 50 horsepower for all site preparation, grading, and building construction activities, unless it can be demonstrated, to the Contra Costa County Department of Conservation and Development's satisfaction, that such equipment is not available. Any emission control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by Tier 4 Interim emissions standards for a similarly sized engine, as defined by the California Air Resources Board (ARB) regulations.

    Prior to the issuance of building or grading permits, the project applicant shall ensure that all construction (e.g., demolition and grading) plans clearly show the requirement for EPA Tier 4 Interim emissions standards for construction equipment over 50 horsepower for the specific activities stated above.

    During construction, the project applicant shall ensure that a list of all operating equipment in use on the construction site is maintained on-site for verification by the Contra Costa County Department of Conservation and Development. The construction equipment list shall state the makes, models, Equipment Identification Numbers, and number of construction equipment on-site. Equipment shall be properly serviced and maintained in accordance with the

manufacturer's recommendations. Construction contractors shall also ensure that all nonessential idling of construction equipment is restricted to 5 minutes or less in compliance with Section 2449 of the California Code of Regulations, Title 13, Article 4.8, Chapter 9. **(MM AIR-2a)**

11. The project's construction contractor shall comply with the following Bay Area Air Quality Management District (BAAQMD) Best Management Practices (BMPs) for reducing construction emissions of PM_{10} and $PM_{2.5}$:

    - Water all active construction areas at least twice daily, or as often as needed to control dust emissions. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour (mph). Reclaimed water should be used whenever possible.
    - To control dust, pave, apply water twice daily or as often as necessary, or apply (nontoxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.
    - Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
    - Sweep daily with water sweepers (using reclaimed water if possible) or as often as needed, all paved access roads, parking areas, and staging areas at the construction site to control dust.
    - Sweep public streets daily (with water sweepers using reclaimed water if possible) or as often as needed in the vicinity of the project site to keep streets free of visible soil material.
    - Hydroseed or apply nontoxic soil stabilizers to inactive construction areas.
    - Enclose, cover, water twice daily, or apply nontoxic soil binders to exposed stockpiles (e.g., dirt, sand, etc.).
    - Limit vehicle traffic speeds on unpaved roads to 15 mph.
    - Replant vegetation in disturbed areas as quickly as possible.
    - Install sandbags or other erosion control measures to prevent silt runoff from public roadways. **(MM AIR-2b)**

12. Prior to issuance of the certificate of occupancy, Contra Costa County shall require future tenants proposing operations that have potential to emit nuisance odors to prepare an odor management plan that identifies project design features, measures, and control technologies to ensure compliance with Bay Area Air Quality Management District (BAAQMD) Regulation 7, Odorous Substances, which requires abatement of any nuisance generating an odor complaint. Facilities that have the potential to generate nuisance odors include, but are not limited to:

    - Composting, green waste, or recycling facilities
    - Fiberglass manufacturing facilities
    - Painting/coating operations
    - Large-capacity coffee roasters
    - Laboratory operations
    - Food-processing facilities

    The odor management plan for the proposed facility shall be submitted to the County prior to the issuance of the certificate of occupancy. During operation of the proposed facility, the County shall conduct periodic evaluation of on-site odors per the schedule and reporting requirements outlined in the odor management plan. **(MM AIR-4)**

Zero Emission Vehicle Requirements:

13. The following mitigation measures shall be implemented during all on-going business operations and shall be included as part of contractual lease agreement language to ensure the tenants/lessees are informed of all on-going operational responsibilities.

    a. The property owner/tenant/lessee shall ensure that all heavy-duty trucks (Class 7 and 8) domiciled on the project site are model year 2014 or later from start of operations, and shall expedite a transition to zero-emission vehicles, with the fleet fully zero-emission by December 31, 2025 or when commercially available for the intended application, whichever date is later.

        "Domiciled at the project site shall mean the vehicle is either (i) parked or kept overnight at the project site more than 70% of the calendar year or (ii) dedicated to the project site (defined as more than 70% of the truck routes (during the calendar year) that start at the project site even if parked or kept elsewhere).

Zero-emission heavy-duty trucks which require service can be temporarily replaced with model year 2014 or later trucks. Replacement trucks shall be used for only the minimum time required for servicing fleet trucks.

b. The property owner/tenant/lessee shall utilize a "clean fleet" of vehicles/delivery vans/trucks (Class 2 through 6) as part of business operations as follows: For any vehicle (Class 2 through 6) domiciled at the project site, the following "clean fleet" requirements apply: (i) 33% of the fleet will be zero emission vehicles at start of operations, (ii) 65% of the fleet will be zero emission vehicles by December 31, 2023, (iii) 80% of the fleet will be zero emission vehicles by December 31, 2025, and (iv) 100% of the fleet will be zero emission vehicles by December 31, 2027.

   "Domiciled at the project site" shall mean the vehicle is either (i) parked or kept overnight at the project site more than 70% of the calendar year or (ii) dedicated to the project site (defined as more than 70% of the truck routes (during the calendar year) that start at the project site even if parked or kept elsewhere).

   Zero-emission vehicles which require service can be temporarily replaced with alternate vehicles. Replacement vehicles shall be used for only the minimum time required for servicing fleet vehicles.

   The property owner/tenant/lessee shall not be responsible to meet "clean fleet" requirements for vehicles used by common carriers operating under their own authority that provide delivery services to or from the project site.

c. The property owner/tenant/lessee shall make all reasonable efforts to procure the zero emission vehicles/trucks required to meet the "clean fleet" requirements in (a) and (b) above. In the event that there is a disruption in the manufacturing of zero emission vehicles/trucks or that sufficient vehicles/trucks are not commercially available for the intended application, the "clean fleet requirements" may be adjusted as minimally as possible by the CDD to accommodate the manufacturing disruption or unavailability of commercially available vehicles/trucks. The property owner/tenant/lessee shall provide all necessary documentation describing efforts made to meet clean fleet requirements as part of any adjustment request. The CDD staff may seek the recommendation of the California Air Resources Board in determining whether there has been a manufacturing disruption or insufficient vehicles/trucks commercially available for the intended application.

d. The property owner/tenant/lessee shall ensure all on-site equipment and vehicles (e.g., yard hostlers, yard equipment, forklifts, yard trucks and tractors, and pallet jacks) used within the project site are zero-emission from start of operations.

e. The property owner/tenant/lessee shall use the cleanest technologies available and provide the necessary infrastructure to support zero-emission vehicles and equipment that will be operating on-site.

f. At least 30 days prior to applying for building permits, the property owner/tenant/lessee shall submit plans for review and approval of CDD staff, which include the necessary infrastructure for future use of zero emission vehicles, including both heavy-duty and delivery trucks (e.g., installation of conduit specifically designated for truck charging equipment in the future).

g. Idling is strictly prohibited on the subject property and adjacent streets in the Richmond/San Pablo area. The property owner/tenant/lessee shall inform all truck drivers associated with the business of this prohibition.

h. Applicant/tenant/lessee shall periodically sweep the property to remove road dust, tire wear, brake dust and other contaminants in parking lots.

i. Applicant/tenant/lessee shall not use diesel back-up generators on the property unless absolutely necessary. If absolutely necessary, at the time of initial operation, generators shall have Best Available Control Technology (BACT) that meets CARB's Tier 4 emission standards or meets the most stringent in-use standard, whichever has the least emissions. In the event rental back-up generators are required during an emergency, the units shall be located at the project site for only the minimum time required. Applicant/tenant/lessee shall make every effort to utilize emergency back-up generators that meet CARB's Tier 4 emission standards or have the least emissions.

j. The property owner/tenant/lessee shall monitor and ensure compliance with all current air quality regulations for on-road trucks including CARB's Heavy-Duty (Tractor-trailer) Greenhouse Gas Regulation, Periodic Smoke Inspection Program, and the Statewide Truck and Bus Regulation.

k. The operation of Transportation Refrigeration Units (TRUs) is prohibited on the subject site. Any proposed use of TRUs at the subject location will require submittal of a Development Plan modification application.

l. The property owner shall add this Condition of Approval, Air Quality 15, a through l, as part of contractual lease agreement language to ensure the tenant/lessee is informed of all on-going operational responsibilities.

14. Within 30-days of occupancy, applicant/tenant shall demonstrate to the satisfaction of CDD staff, that the required zero emission vehicle requirements are being met.

Solar Power Generation:

15. At least 30-days prior to applying for a building permit, the applicant shall submit evidence to the CDD staff for review and approval, demonstrating that the subject building(s) have been designed to be solar ready by meeting or exceeding the current California Building Code (e.g., structurally able to support solar panels on roofs, appropriately sized electrical panels and conduit, etc.).

16. The project sponsor shall include with the building permit application, sufficient solar panels to provide power for the operation's base power use at the start of operations and as power use demand increases. Project sponsor shall include analysis of (a) projected power requirements at the start of operations and as power demand increases corresponding to the implementation of the "clean fleet" requirements, and (b) generating capacity of the solar installation.

    CDD shall verify the size and scope of the solar project based upon the analysis of the projected power requirements and generating capacity as well as the available solar panel installation space.

    In the event sufficient space is not available on the subject lot to accommodate the needed number of solar panels to produce the operation's base or anticipated power use, the applicant shall demonstrate how all available space has been maximized (e.g., roof, parking areas, etc.). Areas which provide truck movement may be excluded from these calculations unless otherwise deemed acceptable by the supplied reports.

    In the event utility provider review/approval delays do not allow installation/operation of the CDD approved solar panels at the time of final building inspection (occupancy), the project sponsor shall provide documentation to the CDD for review and approval, demonstrating how all reasonable and normal efforts have been made to procure the necessary permits and install the solar panels.

17. Prior to issuance of the initial building permit, the applicant shall pay the Contra Costa County, Department of Conservation and Development, Current Planning Division, a flat not-to-exceed amount of $500,000 as its fair share contribution

towards the cost of planning and/or constructing a Solar Project for the benefit of the North Richmond area. The Solar Project must benefit North Richmond residents as mitigation for the construction of a warehouse project with its associated emissions and truck traffic. The County will work with the District One Supervisor and the North Richmond Community to define and develop the Solar Project.

Biological Resources:

Nesting Bird Surveys

18. Construction work shall take place outside of the February 15 to September 15 bird nesting seasonal window to the maximum extent practicable. If construction is to be conducted during the nesting season, the project applicant is responsible for ensuring that the project does not result in any violation of the Migratory Bird Treaty Act (MBTA) or Fish and Game Code. A qualified Biologist shall conduct focused pre-construction nesting bird surveys throughout the project area no more than 5 days prior to the initiation of on-site project-related activities. Surveys shall be conducted in all potential habitat located at, and adjacent to, project work sites and in staging and storage areas. The minimum survey radii surrounding the work area will be the following: (1) 250 feet for passerines; and (2) 1,000 feet for raptors such as *Buteo spp*. In the event that there is a lapse in construction activities for 7 days or more, a qualified Biologist shall conduct additional focused pre-construction nesting bird surveys in areas of potential habitat again before project activities can be reinitiated. If an active nest is found, the qualified Biologist may consult with the California Department of Fish and Wildlife (CDFW) if needed regarding appropriate action to comply with the Fish and Game Code.

    - **Active Nest Buffers**. Active nest sites and protective buffer zones will be designated as "ecologically sensitive areas" where no project-related activities or personnel may enter (while occupied or in use for the season in the case of multi clutch bearing species) during the course of nesting bird season with the establishment of a fence barrier or flagging surrounding the nest site. The qualified Biologist shall determine the necessary buffer, in consultation with CDFW if needed, to protect nesting birds based on existing site conditions, such as construction activity, topography, and line of sight, and shall increase buffers as needed to provide sufficient protection of nesting birds and their natural behaviors.

    - **Active Nests**. A qualified Biologist will observe any identified active nests prior to the start of any project-related activities to establish a behavioral

baseline of the adults and any nestlings. Once project activities commence, all active nests shall be continuously monitored by a qualified Biologist to detect any signs of disturbance and behavioral changes as a result of the project. In addition to direct impacts, such as nest destruction, nesting birds might be affected by noise, vibration, odors and movement of workers or equipment. If signs of disturbance and behavioral changes are observed, the qualified Biologist shall halt project activities causing that change until the nestlings have fledged, and the nest is determined to be inactive. **(MM BIO-1a)**

19. General Minimization Measures
    - **Harassment of Animals**. No project personnel or motorized equipment shall harass, herd, or drive any wildlife. Harass is defined as an intentional act that disrupts an animal's normal behavior patterns, including but is not limited to, breeding, feeding, or sheltering. Project personnel and equipment shall not cause displacement of wildlife into roadways or open areas lacking cover from predators.
    - **Allow Wildlife to Leave Unharmed**. Project staff shall allow any wildlife encountered during the course of project activities to leave the project area unharmed.
    - **Temporary Flagging, Fencing, and Barriers**. The permittee shall remove all temporary flagging, fencing, and/or barriers from the project area upon completion of project activities.
    - **Open Pipes Restriction**. All pipes, culverts, signposts, poles, or similar structures that are staged, stored, or installed at the project area for one or more overnight periods shall be thoroughly inspected for wildlife prior to use in project activities.
    - **Open Trenches**. Wildlife escape ramps shall be installed, constructed of wood, or installed as an earthen slope in each open trench, hole, or pit that is capable of allowing large (e.g., deer, coyote) and/or small (e.g., frogs, snakes) wildlife to escape on their own volition. Open trenches, pits, or holes shall be inspected for wildlife prior to the initiation of project activities each day. If wildlife is discovered, it shall be allowed to leave on its own volition, or if necessary, moved by biological staff if applicable. Special-status species shall not be handled without prior consultation from CDFW.

- **Signpost Restriction**. Signposts installed permanently throughout the course of the project shall have the top capped and/or the top three post holes covered or filled with screws or bolts to prevent the entrapment of wildlife.

- **Fencing Restriction**. All fencing installed temporarily or permanently throughout the course of the project, shall not be constructed of materials deleterious to wildlife (e.g., sharp edges exposed at the top or bottom of chain-link fencing, braided wire where birds may become entangled, etc.). No barbed wire, or equivalent, shall be allowed where it may result in harm to birds and other wildlife.

- **Restriction of Nighttime Construction and Artificial Lighting**. Except for construction activities that involve the pouring of concrete and require the use of nighttime lighting, all other project activities shall be terminated 30 minutes before sunset and shall not resume until 30 minutes after sunrise. The permittee shall use sunrise and sunset times established by the Federal Aviation Administration (FAA) found at: https://avcams.faa.gov/sunrise_sunset.php.

No permanent or unattended temporary outdoor lighting shall be used during the course of construction.

Cultural Resources and Tribal Cultural Resources:

20. Worker Training, Archaeological Monitoring, and Halt Construction Upon Encountering Historical or Archaeological Materials

Prior to the initiation of construction activities, an Archaeologist who meets the Secretary of the Interior's Professional Qualification Standards for archaeology shall provide Worker Environmental Awareness Program (WEAP) training to construction personnel with an overview of applicable laws, project mitigation measures, and procedures to be followed with regards to historical and/or archaeological resources that may be encountered over the course of the project. An Archaeologist should be present to monitor all ground-disturbance activities. In the event a potentially significant historical and/or archaeological resource is encountered during subsurface earthwork activities, all construction activities within a 100-foot radius of the find shall cease and workers should avoid altering the materials until an Archaeologist has evaluated the situation. The applicant for the proposed project (CenterPoint Properties) shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. Potentially significant cultural resources consist

of but are not limited to stone, bone, glass, ceramics, fossils, wood, or shell artifacts, or features including hearths, structural remains, or historic dumpsites. The Archaeologist shall make recommendations concerning appropriate measures that shall be implemented to protect the resource, including but not limited to excavation and evaluation of the finds in accordance with Section 15064.5 of the CEQA Guidelines. Any previously undiscovered resources found during construction within the project site shall be recorded on appropriate California Department of Parks and Recreation (DPR) 523 forms and shall be submitted to Contra Costa County Department of Conservation and Development, the Northwest Information Center (NWIC), and the California Office of Historic Preservation (OHP), as required. **(MM CUL-1)**

21. Stop Construction upon Encountering Human Remains

In the event of the accidental discovery or recognition of any human remains, CEQA Guidelines Section 15064.5, Health and Safety Code Section 7050.5, and Public Resources Code Sections 5097.94 and Section 5097.98 shall be followed. If during the course of project construction, there is accidental discovery or recognition of any human remains, the following steps shall be taken:

1. There shall be no further excavation or disturbance within 100 feet of the remains until the County Coroner is contacted to determine whether the remains are Native American and if an investigation of the cause of death is required. If the Coroner determines the remains to be Native American, the Coroner shall contact the Native American Heritage Commission (NAHC) within 24 hours, and the NAHC shall identify the person or persons it believes to be the Most Likely Descendant (MLD) of the deceased Native American. The MLD may make recommendations to the landowner or the person responsible for the excavation work within 48 hours, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98.

2. Where the following conditions occur, the landowner or his or her authorized representative shall work with the Coroner to rebury the Native American human remains and associated grave goods with appropriate dignity either in accordance with the recommendations of the MLD if available or on the project site or off-site where the reburial would not be subject to further subsurface disturbance:

    - The NAHC is unable to identify an MLD or the MLD failed to make a

recommendation within 48 hours after being notified by the NAHC.

- The descendant identified fails to make a recommendation.

- The landowner or his authorized representative rejects the recommendation of the descendant, and mediation by the NAHC fails to provide measures acceptable to the landowner. **(MM CUL-3)**

22. Native American Construction Monitoring

To minimize the potential for destruction of or damage to existing or previously undiscovered burials, archaeological and Tribal Cultural Resources (TCRs) and to identify any such resources at the earliest possible time during project-related earthmoving activities, the project applicant and its construction contractor(s) shall implement the following measures:

- Native American Monitors from culturally affiliated Native American Tribes shall be invited to monitor the vegetation grubbing, stripping, grading or other ground-disturbing activities in the project area to determine the presence or absence of any cultural resources. Native American representatives from cultural affiliated Native American Tribes shall act as a representative of their Tribal Government and shall be consulted before any cultural studies or ground-disturbing activities begin.

- Native American representatives and Native American Monitors have the authority to identify sites or objects of significance to Native Americans and to request that work be stopped, diverted, or slowed if such sites or objects are identified within the direct impact area. Only a Native American representative can recommend appropriate treatment of such sites or objects.

- If buried cultural resources, such as chipped or ground stone, historic debris, building foundations, or bone, are discovered during ground-disturbing activities, work shall stop in that area and within 100 feet of the find until an Archaeologist who meets the Secretary of the Interior' s qualification standards can assess the significance of the find and, if necessary, develop appropriate treatment measures in consultation with the County, the California Office of Historic Preservation (OHP), and other appropriate agencies. Appropriate treatment measures may include development of avoidance or protection methods, archaeological excavations to recover important information about the resource, research, or other actions determined during consultation. **(MM CUL-4a)**

23. Avoidance and Preservation in place of Tribal Cultural Resources

Should Tribal Cultural Resources (TCRs) be discovered during project construction, avoidance and preservation in place is the preferred manner of mitigating impacts to TCRs and shall be accomplished by several means, including:

- Planning construction to avoid TCRs, archaeological sites and/ or other resources; incorporating sites within parks, green-space, or other open space; covering archaeological sites; deeding a site to a permanent conservation easement; or other preservation and protection methods agreeable to consulting parties and regulatory authorities with jurisdiction over the activity. As noted in Mitigation Measure CUL-4a, appropriate treatment measures may include archaeological excavations to recover information about the resource. Recommendations for avoidance of cultural resources shall be reviewed by the CEQA Lead Agency representative (Contra Costa County), interested Native American Tribes and the appropriate agencies, in light of factors such as costs, logistics, feasibility, design, technology and social, cultural and environmental considerations, and the extent to which avoidance is consistent with project objectives. If feasible, avoidance and design alternatives may include realignment within the project area to avoid cultural resources, modification of the design to eliminate or reduce impacts to cultural resources or modification or realignment to avoid highly significant features within a cultural resource. Native American representatives from interested Native American Tribes shall be allowed to review and comment on these analyses and shall have the opportunity to meet with the CEQA Lead Agency (Contra Costa County) representative and its representatives who have technical expertise to identify and recommend feasible avoidance and design alternatives, so that appropriate and feasible avoidance and design alternatives can be identified.

- If the resource can be avoided, the construction contractor(s), with Native American Monitors from culturally affiliated Native American Tribes present, shall install protective fencing outside the site boundary, including a buffer area, before construction restarts. The construction contractor(s) shall maintain the protective fencing throughout construction to avoid the site during all remaining phases of construction. The area shall be demarcated as an "Environmentally Sensitive Area." Native American representatives from interested Native American Tribes and the CEQA Lead Agency (Contra Costa County) representative shall

also consult to develop measures for long-term management of the resource and routine operation and maintenance within culturally sensitive areas that retain resource integrity, including tribal cultural integrity, and including archaeological material, Traditional cultural properties and cultural landscapes, in accordance with State and federal guidance including National Register Bulletin 30 (Guidelines for Evaluating and Documenting Rural Historic Landscapes), Bulletin 36 (Guidelines for Evaluating and Registering Archaeological Properties), and Bulletin 38 (Guidelines for Evaluating and Documenting Traditional Cultural Properties); National Park Service Preservation Brief 36 (Protecting Cultural Landscapes: Planning, Treatment and Management of Historic Landscapes) and using the Advisory Council on Historic Preservation (ACHP) Native American Traditional Cultural Landscapes Action Plan for further guidance. Use of temporary and permanent form of protective fencing shall be determined in consultation with the Native American representatives from interested Native American Tribes. **(MM CUL-4b)**

Geology and Soils:

24. Prepare Grading and Construction Plans that Incorporate Geotechnical Investigation Recommendations

    Prior to issuance of the grading permits for the proposed project, development of the final grading, foundation, and construction plans shall incorporate the site-specific earthwork, foundation, floor slab, finished grades, underground utilities, and pavement design recommendations, as detailed in the Geotechnical Investigation prepared by Cornerstone Earth Group dated August 22, 2018. The applicant shall coordinate with the County Department of Conservation and Development and County Geologist to tailor the grading and foundation plans, as needed, to reduce risk related to known soil and geologic hazards. The final grading, foundation, and construction plans for the proposed project shall be reviewed by the County Department of Conservation and Development and County Geologist. Grading operations shall meet the requirements of the recommendations included in the Preliminary Geotechnical Investigation prepared by Cornerstone Earth Group. During construction, the County Department of Conservation and Development shall monitor construction of the proposed project to ensure the earthwork operations are properly performed. **(MM GEO-1a)**

25. Prepare Final Construction Report

    The Project Geotechnical Engineer shall prepare a final report that documents the field observations and testing services provided during construction as well as provide a professional opinion on the compliance of construction with the recommendations in the Geotechnical Investigation. The final report can be segmented into an as-graded report that is issued at the end of rough grading, but prior to the installation of the foundations, and a second letter commenting on the inspections made during installation of foundations/parking lot/drainage facilities. The County Department of Conservation and Development will place a hard hold on the final inspection, to ensure that the Geotechnical Engineer's grading-foundation inspection letter-report is provided prior to requesting the final building inspection for each building. **(MM GEO-1b)**

Greenhouse Gas Emissions:

26. Prior to the issuance of building permits, the project applicant/developer shall demonstrate (e.g., provide building plans) to the satisfaction of the Contra Costa County Department of Conservation and Development, that the proposed buildings are designed and will be built to, at minimum, meet the Tier 2 advanced energy efficiency requirements of the Nonresidential Voluntary Measures of the California Green Building Standards Code, Division A5.2, Energy Efficiency, as outlined under Section A5.203.1.2.2. **(MM GHG-1a)**

27. Prior to issuance of occupancy permits, the project applicant/developer shall demonstrate to the satisfaction of the Contra Costa County Department of Conservation and Development, that the proposed parking areas for passenger automobiles are designed and will be built to accommodate electric vehicle (EV) charging stations. At minimum, the parking shall be designed to accommodate a number of EV charging stations equal the Tier 2 Nonresidential Voluntary Measures of the California Green Building Standards Code, Section A5.106.5.3.2. **(MM GHG-1b)**

28. Prior to issuance of occupancy permits, the project applicant/developer shall demonstrate to the satisfaction of the Contra Costa County Department of Conservation and Development, that the proposed parking areas for passenger automobiles are designed and will be built to provide parking for low-emitting, fuel-efficient, and carpool/van vehicles. At minimum, the number of preferential parking spaces for passenger automobiles shall equal the Tier 2 Nonresidential Voluntary Measures of the California Green Building Standards Code, Section A5.106.5.1.2. **(MM GHG-1c)**

29. To reduce idling emissions from transport trucks, which places restrictions on idling, the project applicant/developer shall have signage placed at truck access gates, loading docks, and truck parking areas that clearly notes idling is strictly prohibited on the subject property. In coordination with Contra Costa County, the project applicant/developer shall also place similar signs in the adjacent streets in the Richmond/San Pablo area. At minimum, each sign placed outside the interior premises of the subject property shall note the idling prohibition on the adjacent streets and include telephone numbers of the building facilities manager and the California Air Resources Board (ARB) to report violations. All signage shall be made of weather-proof materials. All site and architectural plans submitted to the Contra Costa County Department of Conservation and Development shall note the locations of these signs. Prior to issuance of occupancy permits, the Contra Costa County Department of Conservation and Development shall verify compliance with these requirements herein. **(MM GHG-1d)**

30. All landscaping equipment (e.g., leaf blower) used for property management shall be electric-powered only. The property manager/facility owner shall provide documentation (e.g., purchase, rental, and/or services agreement) to the Contra Costa County Department of Conservation and Development to verify, to the County's satisfaction, that all landscaping equipment utilized will be electric-powered. **(MM GHG-1e)**

31. Prior to the issuance of grading and building permits for the proposed project, the project applicant shall provide Contra Costa County with documentation demonstrating that the rooftop photovoltaic system will satisfy 100 percent of operational electricity consumed by the project, including the electricity demand resulting from the electric vehicle (EV) fleet.

    If the rooftop photovoltaic system will not be able to supply the additional electricity demand resulting from the EV fleet charging requirements, the project applicant shall, prior to the issuance of the certificate of occupancy for the proposed project, provide Contra Costa County with documentation demonstrating that the additional electricity demand will be supplied with 100 percent carbon-free electricity sources. These sources may include, but are not limited to, Pacific Gas and Electric Company (PG&E) 100 Percent Solar Choice electricity service option or Marin Clean Energy's (MCE) Deep Green 100 percent renewable electricity service option. This documentation shall also demonstrate that 100 percent carbon-free electricity sources will be utilized for the first 30 years of operation.

To monitor and ensure that 100 percent of electricity demand generated by the proposed project is supplied with 100 percent carbon-free electricity sources, the project applicant shall maintain records of all electricity consumption and supply associated with the proposed project's operation for five years and make these records available to the County upon request. **(MM GHG-f)**

32. Prior to the issuance of the certificate of occupancy for the proposed project, the project applicant shall provide the County with documentation demonstrating the purchase of voluntary carbon credits pursuant to the following performance standards and requirements: the carbon offsets shall achieve real, permanent, quantifiable, verifiable, additional and enforceable reductions as set forth in California Health and Safety Code Section 38562(d)(1) and (d)(2) and 17 California Code of Regulations § 95802(a); and one carbon offset credit shall mean the past reduction or sequestration of one metric ton (MT) of carbon dioxide equivalent (CO2e) that is "not otherwise required" (CEQA Guidelines § 15126.4(c)(3)). Such credits shall be purchased through a verified greenhouse gas (GHG) emissions credit broker and (i) shall be registered with, and retired by an Offset Project Registry, as defined in 17 California Code of Regulations § 95802(a), approved by ARB, such as, but not limited to the Climate Action Reserve, American Carbon Registry, or Verra, and (ii) shall be subject to protocols that are ARB-approved as required in 17 California Code of Regulations § 95970 (a)(1)-(2). Such credits shall be in an amount sufficient to offset operational GHG emissions of no less than 3,688 MT CO2e per year starting in 2021, 3,384 MT CO2e per year starting in 2023, 530 MT CO2e per year starting in 2025, 371 MT CO2e per year starting in 2027, and 2,205 MT CO2e per year starting in 2045 for the first 30 years of project operations, based on current estimates of the project related GHG emissions. Alternatively, the project applicant may purchase the total amount estimated over the lifetime of the proposed project (30 years), which is estimated to be 35,112 MT CO2e. The purchase shall be verified as occurring prior to approval of occupancy permits. Copies of emission estimates and offset purchase contract(s) shall be provided to the County for review and approval prior to the issuance of the certificate of occupancy for the proposed project.

    Should the project applicant fail to meet the County's conditions of approval for the proposed project as described in Chapter 2, Project Description, of the Draft EIR, the project applicant shall recalculate the MT CO2e generated by project operation and purchase carbon credits equal to no less than the amount necessary to ensure that project emissions do not exceed 660 MT CO2e per year. If the project applicant fails to meet the County's conditions of approval, as described in Chapter 2, Project Description, of the Draft EIR, for the first year

of operation (2021), then the project applicant shall recalculate the proposed project's operational MT CO2e per year and purchase the necessary amount of carbon credits no later than December 31 in the following calendar year to ensure that the proposed project does not exceed 660 MT CO2e per year. If the project applicant fails to meet the County's conditions of approval, as described in Chapter 2, Project Description, of the Draft EIR, for the benchmark year of 2023, then the project applicant shall recalculate the proposed project's operational MT CO2e per year and purchase the necessary amount of carbon credits no later than December 31 in the following calendar year to ensure that the proposed project does not exceed 660 MT CO2e per year. If the project applicant fails to meet the County's conditions of approval, as described in Chapter 2, Project Description, of the Draft EIR, for the benchmark year of 2025, then the project applicant shall recalculate the proposed project's operational MT CO2e per year and purchase the necessary amount of carbon credits no later than December 31 in the following calendar year to ensure that the proposed project does not exceed 660 MT CO2e per year. If the project applicant fails to meet the County's conditions of approval, as described in Chapter 2, Project Description, of the Draft EIR, for the benchmark year of 2027, then the project applicant shall recalculate the proposed project's operational MT CO2e per year and purchase the necessary amount of carbon credits no later than December 31 in the following calendar year to ensure that the proposed project does not exceed 660 MT CO2e per year. All carbon credits purchased to offset project emissions shall meet the standards and requirements stated in this mitigation measure and documentation proving the purchase of carbon credits which meet these standards and requirements shall be provided to the County for review and approval. **(MM GHG-1g)**

33. Prior to issuance of the initial building permit, the applicant shall pay the Contra Costa County, Department of Conservation and Development, Current Planning Division, a flat not-to-exceed amount of $500,000 as its fair share contribution towards the cost of funding an air quality improvement related project(s) for the benefit of the North Richmond area. The project(s) must benefit sensitive receptors within the North Richmond area as mitigation for the construction of a warehouse project with its associated emissions and truck traffic. The County will work with the District One Supervisor and the North Richmond Community to fund the project(s).

Hazards and Hazardous Materials:

34. Prepare Soil Management Plan and Health and Safety Plan

Prior to issuance of grading permits, the applicant shall retain a licensed professional to prepare and submit a Soil Management Plan and Health and Safety Plan for review and approval by Contra Costa Environmental Health. These plans shall include the following:

- Site control procedures to control the flow of personnel, vehicles, and materials in and out of the project site.

- Measures to minimize dust generation, stormwater runoff, and tracking soil off-site.
- If excavation de-watering is required, protocols to evaluate water quality and discharge/disposal alternative should be described.

- Protocols for conducting earthwork activities in areas where impacts soil, soil vapor, and/or groundwater are present or suspected. Worker training requirements, health and safety measures, and soil handling procedures shall be described.

- Protocols to be implemented if buried tanks, structures, wells, debris, or unidentified areas of impacted soils are encountered during construction activities.

- Protocols to evaluate the quality of soil suspected of being contaminated so that appropriate mitigation, disposal or reuse alternatives, if necessary, can be determined.

- Procedures to evaluate and document the quality of any soil imported to the project site. Soil containing chemicals exceeding residential (unrestricted use) screening levels or typical background concentrating of metals should not be accepted.

- Methods to monitor excavations for the potential presence of volatile chemical vapors. **(MM HAZ-1)**

Hydrology and Water Quality:

35. Prepare Final Drainage Plan Prior to Grading

- In accordance with Division 914 of the Contra Costa County Ordinance Code, the project applicant shall collect and convey all stormwater entering and/or originating on this property, without diversion and within an adequate storm drainage facility, to a natural watercourse having definable bed and banks, or to an existing adequate public storm drainage system that conveys the stormwater to a natural watercourse. Any proposed diversions of the watershed shall be subject to hearing body approval. Prior to issuance of a grading permit, the applicant shall submit improvement plans for proposed drainage improvements, and a drainage report with hydrology and hydraulic calculations to the Engineering Services Division of the Public Works Department for review and approval that demonstrates the adequacy of the on-site drainage system and the downstream drainage system. The applicant shall verify the adequacy at any downstream drainage facility accepting stormwater from this project prior to discharging runoff. If the downstream system(s) is not adequate to handle the Existing Plus Project condition for the required design storm, improvements shall be constructed to make the system adequate. The applicant shall obtain access rights to make any necessary improvements to off-site facilities.

- In accordance with Division 1014 of the Contra Costa County Ordinance Code, the applicant shall comply with all rules, regulations, and procedures of the National Pollutant Discharge Elimination System (NPDES) for municipal, construction and industrial activities as promulgated by the California State Water Resources Control Board, or any of its Regional Water Quality Control Boards (San Francisco Bay—Region 2); and

- Submit a Final Stormwater Control Plan and a Stormwater Control Operation and Maintenance Plan (O&M Plan) to the Public Works Department, which shall be reviewed for compliance with the County's NPDES Permit and shall be deemed consistent with the County's Stormwater Management and Discharge Control Ordinance (Division 1014) prior to issuance of a building permit. Improvement Plans shall be reviewed to verify consistency with the Final Stormwater Control Plan and compliance with the Contra Costa Stormwater C.3 Guidebook of the County's NPDES Permit and the County's Stormwater Management and Discharge Control Ordinance (Division 1014) and be designed to discourage prolonged standing/ponding of water on-site. **(MM HYD-3)**

Noise:

36. Implement Noise Reduction Measures During Construction

    - The construction contractor shall ensure that grading activities shall be restricted to the hours between 7:30 a.m. and 5:30 p.m., Monday through Friday. **(MM NOI-1)**

Transportation:

37. Prior to issuance of the certificate of occupancy, the applicant shall retain a qualified transportation consultant to prepare a project-specific Transportation Demand Management (TDM) Program that could incorporate the following measures, where feasible. The TDM Program shall be reviewed and approved by the County, and the applicant shall implement all approved TDM measures.

    - Commute Trip Reduction Program
    - Ride-sharing Program
    - End of Trip Facilities
    - Last Mile Services
    - New Employee Commute Orientation
    - Preferential Parking Program
    - Employer-Sponsored Vanpool
    - Transportation Network Company (TNC) Partnership
    - Employer-Sponsored Shuttle to/from BART Station(s) or Other Transit Hub
    - Carpool and Vanpool Ride-Matching Services **(MM TRANS-1)**

38. Prior to issuance of the certificate of occupancy for the proposed project, the applicant shall install a median and bulb-outs on Fred Jackson Way along the project frontage, stop signs at the project driveways, and signage prohibiting vehicles from turning left out of the project driveways. **(MM TRANS-2a)**

39. Prior to issuance of the building permit, the applicant shall (1) pay the North Richmond Area of Benefit (AOB) fee and (2) commit to installing one of the following improvements on Fred Jackson Way, Market Avenue, or Chesley Avenue prior to project occupancy:

    - Bulb-outs
    - Elevated crosswalks
    - Speed tables
    - Chicanes **(MM TRANS-2b)**

40. Prior to the issuance of the certificate of occupancy, the applicant shall install curb ramps where required at all pedestrian walkways and pedestrian connections between the three buildings. The applicant shall install pedestrian crossings on all four approaches of Fred Jackson Way and Brookside Drive (including ADA-compliant pedestrian landing islands). The applicant shall install pedestrian crossings on all four approaches of Fred Jackson Way and Pittsburg Avenue (including ADA-compliant pedestrian landing islands). **(MM TRANS-4a)**

41. Prior to the issuance of the certificate of occupancy, the applicant shall install long-term bicycle parking consistent with County Code Section 82-16.412 and other bicycle amenities (showers, changing rooms, bike repair tools/station, etc.) in a convenient location. **(MM TRANS-4b)**

Landscaping:

42. Final Landscaping Plan: At least 30 days prior to CDD stamp-approval of plans for issuance of a building permit, a final landscape and irrigation plan shall be submitted to the CDD for review and approval. The landscaping plan shall conform to the State's Model Water Efficient Landscape Ordinance or the County's Ordinance, if one is adopted. Prior to requesting a final inspection, the approved landscaping shall be installed and evidence of the installation (e.g., photos) shall be provided for the review and approval of CDD.

43. Restitution for the removal of (7) code-protected tree:

    a. Planting and Irrigation Plan: Prior to issuance of a grading or building permit, whichever occurs first, the applicant shall submit a tree planting and irrigation plan prepared by a licensed arborist or landscape architect for the review and approval of the Department of Conservation and Development, Community Development Division (CDD). *See the North Richmond Design Guidelines for species and size requirements*.

    b. Required Security to Assure Completion of Plan Improvements: A security shall be provided to ensure that the approved planting and irrigation plan is implemented. Prior to issuance of a building permit, the applicant shall submit a security that is acceptable to the CDD.

44. The Final Landscaping Plan shall include sufficient plantings along the southern property boundary to establish a vegetative screening aimed at blocking dust and particulate matter from migrating southward unabated. The vegetative screening shall include fast growing, tall species (e.g., Italian and Leyland cypress) with a density that will accomplish the goal of capturing the maximum amount of dust and particulate matter feasible (e.g., two or three rows of trees

offset from one another and appropriately spaced).

45. Any proposed tree alteration, removal, or encroachment within a drip line of code-protected trees that are not identified with this permit approval will require submittal of a Tree Permit application for review and consideration by CDD.

46. The applicant shall comply with California Model Water Efficient Landscape Ordinance (Division 2, Title 23, California Code of Regulations, Chapter 2.7, Sections 490 through 495) and/or any applicable State mandated landscape/water related requirements applicable at the time of landscaping installation for the project. To the maximum extent feasible, the project proponent shall use drought tolerant vegetation for the development.

    Project sponsors should be aware that Section 31 of the East Bay Municipal Utility District's (EBMUD) Water Service Regulations requires that water service shall not be furnished for new or expanded service unless all the applicable water-efficiency measures described in the regulation are installed at the project sponsor's expense. Any questions regarding these requirements can be directed to EBMUD Water Service Planning at (510) 287-1365.

General Construction:

Construction Period Restrictions and Requirements

47. During construction, the following mitigation measures shall be implemented:

    - All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.

    - All haul trucks transporting soil, sand, or other loose material off-site shall be covered.

    - All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

    - All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).

    - All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.

- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California Airborne Toxics Control Measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.

- Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Bay Area Air Quality Management District (BAAQMD) phone number shall also be visible to ensure compliance with applicable regulations.

48. Implement the following Emission Reduction Measures into the final design of the project:

    - The project sponsor shall require their contractor and subcontractors to fit all internal combustion engines with mufflers which are in good condition.

    - A dust and litter control program shall be submitted for the review and approval of the Community Development Division staff. Any violation of the approved program or applicable ordinances shall require an immediate work stoppage. Construction work shall not be allowed to resume until, if necessary, an appropriate construction bond has been posted.

    - The applicant shall make a good-faith effort to avoid interference with existing neighborhood traffic flow.

    - Transporting of heavy equipment and trucks shall be limited to weekdays between the hours of 8:30 A.M. and 4:30 P.M. and prohibited on Federal and State Holidays.

    - The site shall be maintained in an orderly fashion. Following the cessation of construction activity, all construction debris shall be removed from the site.

    - All construction activities shall be limited to the hours of 7:00 A.M. to 6:00

P.M., Monday through Friday, and shall be prohibited on state and federal holidays on the calendar dates that these holidays are observed.

- Prohibit unnecessary idling of internal combustion engines.
- Locate stationary noise generating equipment as far from surrounding residential properties as possible.
- Saturday work may be permissible upon review and approval by CDD staff of a written request by the contractor/developer indicating the circumstances warranting such Saturday work and the nature of the work to be performed.

Debris Recovery:

49. At least 15 days prior to the issuance of a building permit the developer shall demonstrate compliance with the debris recovery program, which requires at least 50 percent of the jobsite debris generated by construction projects of 5,000 square feet or greater to be recycled, or otherwise diverted from landfill disposal.

50. Dumpsters or refuse areas shall be screened from view from any roadway.

51. The Development Plan application was subject to an initial deposit of $116,880.80 that was paid with the application submittal, plus time and material costs if the application review expenses exceed the initial deposit. Any additional fee due must be paid prior to issuance of a building permit, or 60 days of the effective date of this permit, whichever occurs first. The fees include costs through permit issuance and final file preparation. Pursuant to Contra Costa County Board of Supervisors Resolution Number 2013/340, where a fee payment is over 60 days past due, the application shall be charged interest at a rate of ten percent (10%) from the date of approval. The applicant may obtain current costs by contracting the project planner. A bill will be mailed to the applicant shortly after permit issuance in the event that additional fees are due.

PUBLIC WORKS CONDITIONS OF APPROVAL FOR PERMIT CDDP18-03007 and SUBDIVISION CDMS19-00009

Applicant shall comply with the requirements of Title 8, Title 9 and Title 10 of the Ordinance Code. Any exception(s) must be stipulated in these Conditions of Approval. Conditions of Approval are based on the site plan submitted to the Department of Conservation and Development on August 28, 2018 and Tentative Map received October 29, 2019.

UNLESS OTHERWISE SPECIFIED, COMPLY WITH THE FOLLOWING CONDITIONS OF APPROVAL PRIOR TO ISSUANCE OF A BUILDING PERMIT.

General Requirements:

52. Improvement plans prepared by a registered civil engineer shall be submitted to the Public Works Department, Engineering Services Division, along with review and inspection fees, and security for all improvements required by the Ordinance Code or the conditions of approval of this permit. Any necessary traffic signing and striping shall be included in the improvement plans for review by the Transportation Engineering Division of the Public Works Department.

53. The Parcel Map merging the underlying properties into three parcels shall be approved by the County Board of Supervisors and filed at the County Recorder's Office.

Roadway Improvements:

Fred Jackson Way

54. Applicant shall construct curb, 8-foot wide concrete sidewalk (exclusive of curb width if constructed monolithically) street lights, longitudinal and transverse drainage infrastructure, stormwater management facilities, signage, striping and pavement conforms to existing improvements. In general, the face of curb for these improvements shall be 32-feet east of the ultimate centerline of Fred Jackson Way.

55. The project is limited to a total of three driveways along the Fred Jackson Way frontage: a main driveway opposite the intersection at Pittsburg Avenue, one between Pittsburg Avenue and Brookside Drive, and one between Pittsburg Avenue and Da Villa Road. Driveways designated for truck access shall be 40-50 feet wide. All others shall be 26 feet wide. Exact location of these northern and southern driveways are subject to review and approval of Public Works.

56. Install curb bulb-outs at the intersection of Pittsburg Avenue, as well as "pork chop" medians and signage near the driveways left-turnout movements from the project site to direct traffic north along Fred Jackson Way or west along Pittsburg Avenue toward Richmond Parkway. **MM TRANS-2a, MM TRANS-2b**

57. Install traffic signals at the intersections of Fred Jackson Way with both Brookside Drive and Pittsburg Avenue. The traffic signal at the Brookside Drive intersection shall allow full turning movements at all approaches. The signal at Pittsburg Avenue will include a separate southbound to west bound right turn

lane, permitted left turns on the northbound and southbound approaches and split phases on the eastbound and westbound approaches. The applicant shall install pedestrian crossings on all four approaches of both signalized intersections, including ADA-compliant pedestrian landing islands as applicable. Construction costs for installation of these signals would be credited against the project's North Richmond AOB fee obligation. **MM TRANS-4**

58. The applicant shall submit a preliminary "sketch" plan to the Public Works Department for review showing all required improvements to the Fred Jackson Way frontage, signalized intersections and nearby offsite County roadway conforms. The sketch plan shall be to scale, show horizontal alignments, transitions, curb lines, and lane striping. It shall provide sight distance at the project driveways for a design speed of 40 miles per hour. Truck turning exhibits should also be included to show accessibility to/from project driveways and potential turning movement conflicts. The plan shall extend a minimum of 175 feet beyond the limits of the proposed work. Final alignment and driveway locations will be subject to Public Works approval based on compatibility with existing and proposed right of way dedications and improvements on adjacent and nearby properties.

Brookside Drive

59. Applicant shall construct curb, minimum 5-foot sidewalk (excluding width of curb), necessary longitudinal and transverse drainage, stormwater management facilities, street lighting, signage striping, pavement widening and transitions along the entire project frontage of Brookside Drive. Applicant shall construct face of curb 20 feet from the ultimate road centerline.

60. The project is limited to a total of three driveways along Brookside Drive frontage Driveways designated for truck access shall be 40-50 feet wide. All others shall be 26 feet wide. Exact location of these driveways are subject to review and approval of Public Works. Driveways shall incorporate signage and turn restrictions to discourage cut through traffic in residential neighborhoods.

61. The applicant shall submit a preliminary "sketch" plan to the Public Works Department for review showing all required improvements to the Brookside Drive frontage and nearby offsite conforms. Format of said "Plan" shall be as described above relative to Fred Jackson Way.

Off-Site Traffic Mitigation

62. In 2017, the North Richmond Area of Benefit (AOB) traffic mitigation fee program was updated to require new developments within North Richmond to

contribute towards traffic calming strategies to reduce cut-through truck traffic in the neighborhood. Pursuant to Mitigation Measure TRANS-2b, the applicant will be required to develop traffic calming measures for review and approval by the Public Works Department, execute an agreement and post security to construct the identified improvement(s) prior to filing the Parcel Map for the project. The cost of the off-site traffic calming improvements would be counted as work completed and would be provided credit towards the North Richmond AOB fee obligation. As noted above, the two signals required along Fred Jackson Way will be credited to this obligation.

Miscellaneous

63. Any cracked and displaced curb, gutter, and sidewalk within the project's limits of work shall be removed and replaced. Concrete shall be saw cut prior to removal. Existing lines and grade shall be maintained. New curb and gutter shall be doweled into existing improvements.

Access to Adjoining Property:

Proof of Access

64. Applicant shall furnish proof to the Public Works Department of the acquisition of all necessary rights of way, rights of entry, permits and/or easements for the construction of off-site, temporary or permanent, public and private road and drainage improvements.

65. Applicant shall furnish proof to the Public Works Department that legal access to the property is available from Fred Jackson Way and Brookside Drive.

Encroachment Permit

66. Applicant shall obtain an encroachment permit from the Application and Permit Center, if necessary, for construction of improvements within the right of way of Fred Jackson Way, Brookside Drive and Pittsburg Avenue.

Abutter's Rights:

67. Applicant shall restrict access along the Fred Jackson Way and Brookside Drive frontages of this property, with the exception of the access points shown on the applicant's site plan, as specifically approved under these conditions of approval. Owner shall relinquish abutter's rights of access along both frontages with the exception of the access points shown.

Road Dedications:

68. Property Owner shall convey to the County, by Offer of Dedication, a minimum of ten feet of right of way along the entire Brookside Drive frontage for the planned future half-width of 30 feet from the ultimate centerline. Additional right of way may be necessary to accommodate public utilities.

69. If the applicant opts to separate public street stormwater runoff from the on-site runoff by constructing dual stormwater management facilities, the infrastructure associated with runoff from the public right of way may necessitate additional right of way along Fred Jackson Way and/or Brookside Drive. Property Owner shall convey to the County, by Offer of Dedication, any additional right-of-way necessary for operation and maintenance of stormwater management facilities associated with treatment of runoff from the public right of way.

Access & Utility Easements:

70. Proposed Private Access and Utility Easements between the three subdivision parcels should be delineated on the Parcel Map to provide for internal circulation and access to common driveways and utilities.

Da Villa Road

71. Owner shall grant a (generally) 15-foot wide Access and Utility Easement ("PAUE") to the property currently identified as Assessors' Parcel No. 409-300-002 (541 Da Villa Road). Said easement shall lie contiguous to the south property line of the project site (coincident with the north line of the Da Villa Road) and extend from the grantee's property westerly to Fred Jackson Way. To eliminate angle points in the easement, additional easement area may be required to create a centerline alignment for what will effectively be a 40-foot wide Da Villa Road easement that conforms to County collector road standards.

72. Coincident with the above PAUE, owner shall dedicate a non-exclusive Access and Drainage Easement to the Contra Costa County Flood Control and Water Conservation District ("District") to supplement the District's existing access along Da Villa Road and encumber any portions of Line A of Drainage Area 19A to be constructed by this project.

Countywide Street Light Financing:

73. Applicant shall annex to the Community Facilities District (CFD) 2010-1 formed for Countywide Street Light Financing.

Landscaping:

74. If applicable, the applicant shall install and guarantee all SWCP landscaping and automatic irrigation facilities within the public-right-of-way, to be maintained by the County. The landscape facilities shall be maintained by the developer: a) for a minimum of 180 days after installation and b) until the plants have become established.

75. If applicable, the applicant shall submit four sets of landscape and automatic irrigation plans and cost estimates, prepared by a licensed landscape architect, for all SWCP landscaping and automatic irrigation facilities to be maintained by the County to the Public Works Department for review approval, prior to issuance of building permits. Applicant shall pay appropriate fees in accordance with County Ordinance. Landscaping shall meet the requirements of the Contra Costa County Public Works Department Landscaping Design, Construction and Maintenance standards and Guidelines for County Maintained Facilities.

76. All landscaping to be maintained by the property owner shall be submitted to the CDD for review and approval.

77. Applicant shall apply to the Public Works Department for annexation to the Community Facilities District (CFD) No. 2006-1 (North Richmond Area Maintenance Services) for the future maintenance of area wide medians and landscaping. The annexation of property into the CFD must be completed prior to occupancy and the applicant should be aware that the annexation process may take approximately 60 days.

Pedestrian Access:

78. Applicant shall design all public and private pedestrian facilities in accordance with Title 24 (Handicap Access) and the Americans with Disabilities Act. This shall include all sidewalks, paths, driveway depressions, and curb ramps.

79. Curb ramps and driveways shall be designed and constructed in accordance with current County standards. A detectable warning surface (e.g. truncated domes) shall be installed on all curb ramps. Adequate right-of-way shall be dedicated at the curb returns to accommodate the returns and curb ramps; accommodate a minimum 4-foot landing on top of any curb ramp proposed.

Parking:

80. "No Parking" signs shall be installed along Fred Jackson Way and Brookside Drive subject to the review of the Public Works Department and the review and approval of the Board of Supervisors.

Utilities/Undergrounding:

81. Applicant shall underground all new and existing utility distribution facilities, including those along the frontage of Fred Jackson Way and Brookside Drive, including the remnant of the overhead utilities on the north side of Brookside Drive east of Fred Jackson Way. The developer shall provide joint trench composite plans for the underground electrical, gas, telephone, cable television and communication conduits and cables including the size, location and details of all trenches, locations of building utility service stubs and meters and placements or arrangements of junction structures as a part of the Improvement Plan submittals for the project. The composite drawings and/or utility improvement plans shall be signed by a licensed civil engineer.

Drainage Improvements:

Collect and Convey

82. The applicant shall collect and convey all stormwater entering and/or originating on this property, without diversion and within an adequate storm drainage system, to *an adequate* natural watercourse having definable bed and banks, or to an existing adequate public storm drainage system which conveys the stormwater to *an adequate* natural watercourse, in accordance with Division 914 of the Ordinance Code.

    The nearest public drainage facilities are Lines A and B of Drainage Area 19A located along the west side of Fred Jackson Way that will convey stormwater run-off from the site to the Wildcat Creek and San Pablo Creek respectively. The Drainage Study included in the DEIR and supplemental documentation reviewed by Public Works indicates these lines have sufficient capacity to satisfy the Ordinance Code requirements. Staff concurs with this preliminary analysis, pending final assessment in conjunction with review of the final construction drawings and documents. **MM HYD-3**

Miscellaneous Drainage Requirements:

83. Applicant shall prevent storm drainage from draining across the sidewalk(s) and driveway(s) in a concentrated manner.

84. Private storm drain easements conforming to the width specified in Section 914-14.004 of the County Ordinance Code, shall be conveyed across any storm drain conveyance or management facilities that serve more than one parcel.

85. Applicant shall dedicate Public Storm Drain Easements over any portions of Lines A or B (DA 19A) that traverse the project site that are not otherwise

encumbered in the easement dedicated to the District for the widening of Da Villa Road as described above.

National Pollutant Discharge Elimination System (NPDES):

86. The applicant shall be required to comply with all rules, regulations, and procedures of the National Pollutant Discharge Elimination System (NPDES) for municipal, construction, and industrial activities as promulgated by the California State Water Resources Control Board, or any of its Regional Water Quality Control Boards (San Francisco Bay –Region II).

    Compliance shall include developing long-term best management practices (BMPs) for the reduction or elimination of storm water pollutants. The project design shall incorporate wherever feasible, the following long-term BMPs in accordance with the Contra Costa Clean Water Program for the site's storm water drainage:

    - Minimize the amount of directly connected impervious surface area.
    - Install approved full trash capture devices on all catch basins (excluding catch basins within bioretention basins) as reviewed and approved by Public Works Department. Trash capture devices shall meet the requirements of the County's NPDES permits.
    - Place advisory warnings on all catch basins and storm drains using current storm drain markers.
    - Construct concrete driveway weakened plane joints at angles to assist in directing run-off to landscaped/pervious areas prior to entering the street curb and gutter.
    - Filtering Inlets.
    - The applicant shall sweep the paved portion of the site at least once a year between September 1st and October 15th utilizing a vacuum type sweeper. Verification (invoices, etc.) of the sweeping shall be provided to the County Clean Water Program Administrative Assistant at 255 Glacier Drive, Martinez, CA 94553; (925)313-2238.
    - Trash bins shall be sealed to prevent leakage, OR, shall be located within a covered enclosure.
    - Other alternatives comparable to the above as approved by the Public Works Department. **MM HYD-1**

<u>Stormwater Management and Discharge Control Ordinance</u>:

87. The applicant shall submit a FINAL Storm Water Control Plan (SWCP) and a Stormwater Control Operation and Maintenance Plan (O+M Plan) to the Public Works Department, which shall be reviewed for compliance with the County's National Pollutant Discharge Elimination System (NPDES) Permit and shall be deemed consistent with the County's Stormwater Management and Discharge Control Ordinance (§1014) prior to issuance of certificate of occupancy. To the extent required by the NPDES Permit, the Final Stormwater Control Plan and the O+M Plan will be required to comply with NPDES Permit requirements that have recently become effective that may not be reflected in the preliminary SWCP and O+M Plan. All time and materials costs for review and preparation of the SWCP and the O+M Plan shall be borne by the applicant. **MM HYD-3**

    - Improvement Plans shall be reviewed to verify consistency with the final SWCP and compliance with Provision C.3 of the County's NPDES Permit and the County's Stormwater Management and Discharge Control Ordinance (§1014).

    - Stormwater management facilities shall be subject to inspection by Public Works Department staff; all time and materials costs for inspection of stormwater management facilities shall be borne by the applicant.

    - Prior to filing the Parcel Map the property owner(s) shall enter into a standard Stormwater Management Facility Operation and Maintenance Agreement with Contra Costa County, in which the property owner(s) shall accept responsibility for and related to operation and maintenance of the stormwater facilities, and grant access to relevant public agencies for inspection of stormwater management facilities.

    - Prior to filing the Parcel Map the property owner(s) shall annex the subject property into Community Facilities District (CFD) No. 2007-1 (Stormwater Management Facilities), which funds responsibilities of Contra Costa County under its NPDES Permit to oversee the ongoing operation and maintenance of stormwater facilities by property owners.

    - Any proposed water quality features that are designed to retain water for longer than 72 hours shall be subject to the review of the Contra Costa Mosquito & Vector Control District.

Area of Benefit Fee Ordinance:

88. The applicant shall comply with the requirements of the Bridge/Thoroughfare Fee Ordinance for the WCC Transit/Pedestrian, WCCTAC Bridge/Road, and North Richmond Areas of Benefit as adopted by the Board of Supervisors. These fees will be collected prior to issuance of building permits on this site.

89. Prior to constructing any public improvements, the applicant, shall contact Public Works Department to determine the extent of any eligible credits or reimbursements against the area of benefit fees.

Drainage Area Fee Ordinance:

90. The applicant shall comply with the drainage fee requirements for Drainage Area 19A as adopted by the Board of Supervisors prior to initiation of the use requested with this application.

91. Certain improvements required by the Conditions of Approval for this development or the County Subdivision Ordinance may be eligible for credit or reimbursement against the drainage area fee. The developer should contact the Public Works Department to determine the extent of any credit or reimbursement for which the developer may be eligible. Any credit or reimbursements shall be determined prior to issuance of a Building Permit or as approved by the Flood Control District.

ADVISORY NOTES

ADVISORY NOTES ARE NOT CONDITIONS OF APPROVAL; THEY ARE PROVIDED TO ALERT THE APPLICANT TO ADDITIONAL ORDINANCES, STATUTES, AND LEGAL REQUIREMENTS OF THE COUNTY AND OTHER PUBLIC AGENCIES THAT MAY BE APPLICABLE TO THIS PROJECT.

A. NOTICE OF OPPORTUNITY TO PROTEST FEES, ASSESSMENTS, DEDICATIONS, RESERVATIONS OR OTHER EXACTIONS PERTAINING TO THE APPROVAL OF THIS PERMIT.

   Pursuant to California Government Code Section 66000, et seq., the applicant has the opportunity to protest fees, dedications, reservations or exactions required as part of this project approval. To be valid, a protest must be in writing pursuant to Government Code Section 66020 and must be delivered to the Community Development Division within a 90-day period that begins on the date that this project is approved. If the 90th day falls on a day that the Community Development Division is closed, then the protest must be submitted by the end of the next business day.

B. The applicant may be required to comply with the requirements of the Bridge/Thoroughfare Fee Ordinance for the North Richmond, West Contra Costa

Transportation Advisory Committee (WCCTAC) Bridges/Roads, and WCCTAC Transit/Pedestrian Areas of Benefit Area of Benefit as adopted by the Board of Supervisors.

C. This project may be subject to the requirements of the Department of Fish and Wildlife. It is the applicant's responsibility to notify the California Department of Fish and Wildlife, Bay Delta Region (Region 3), 825 Cordelia Road, Suite 100, Fairfield, CA 94534 of any proposed construction within this development that may affect any fish and wildlife resources, per the Fish and Wildlife Code.

D. This project may be subject to the requirements of the Army Corps of Engineers. It is the applicant's responsibility to notify the appropriate district of the Corps of Engineers to determine if a permit is required, and if it can be obtained.

E. Prior to applying for a building permit, the applicant is strongly encouraged to contact the following agencies to determine if additional requirements and/or additional permits are required as part of the project:

- Contra Costa County Building Inspection Division
- Contra Costa County Grading Division
- Contra Costa County Environmental Health Division
- Contra Costa County Consolidated Fire Protection District
- East Bay Municipal Utility District
- West County Wastewater District
- LAFCO
- City of Richmond
- DTSC

Exhibit E

EXHIBIT 3 - MMRP

MITIGATION MONITORING/REPORTING PROGRAM

FOR THE

MARIPOSA INDUSTRIAL PARK

City of Stockton, CA

State Clearinghouse No: 2020120283
City of Stockton Project No. P20-0805

November 22, 2022

Prepared for:
CITY OF STOCKTON
345 N. El Dorado Street
Stockton, CA 95202
(209) 937-8266

1.0 INTRODUCTION

This document is the Mitigation Monitoring/Reporting Program (MMRP) for the Mariposa Industrial Park project, as required by CEQA Guidelines Section 15097. The primary source document for the MMRP is the *Environmental Impact Report for the Mariposa Industrial Park Project* (SCH# 2020120283) (the "EIR"). When referenced as such, the "EIR" for the project includes the Public Review Draft EIR (the DEIR) dated August 24, 2021 and the certified Revised Final EIR (the FEIR) dated November 15, 2022, as well as any documents that have been incorporated into the DEIR and FEIR by reference.

1.1 PURPOSE AND SCOPE OF THIS DOCUMENT

The California Environmental Quality Act (CEQA) requires that a Lead Agency prepare and certify an Environmental Impact Report (EIR) when a proposed project may involve significant environmental effects, as defined by CEQA. Prior to project approval, the Lead Agency must adopt an MMRP that lists all mitigation measures identified in the certified EIR and describes responsibility for their implementation and/or monitoring. The mitigation measures are listed together with implementation and monitoring responsibility in the table following.

CEQA also requires that the Lead Agency make written findings specific to each of the significant environmental effects or potentially significant environmental effects of the project as described in the EIR. The "CEQA Findings" for the Mariposa Industrial Park project, including a Statement of Overriding Considerations, are contained in a separate document to be adopted by the Stockton City Council.

The proposed project, a summary of the project's environmental review process, the environmental documentation prepared for the project, and mitigation measures that must be implemented in conjunction with the project are discussed below.

1.2 PROJECT DESCRIPTION

The proposed project involves annexation and pre-zoning of the project site and approval of plans for industrial development of approximately 203 acres of land located adjacent to and south of Mariposa Road. The project site, consisting of nine parcels, is in the San Joaquin County unincorporated area, adjacent to the southeastern limits of the City of Stockton. The site location is shown on the attached figures.

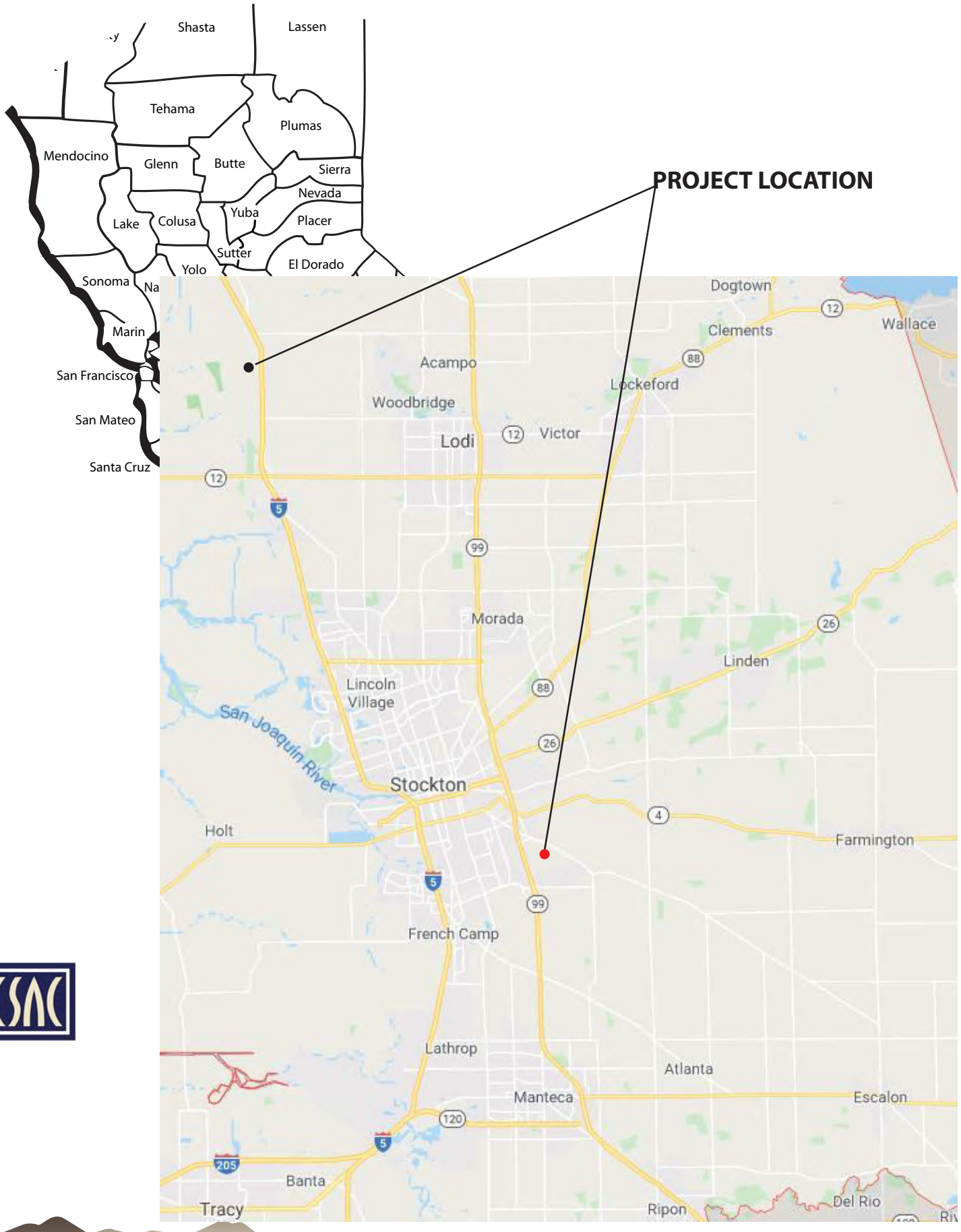
The project would involve the development of "high-cube" warehousing and storage buildings that are typically 200,000 square feet of floor area or greater. The conceptual site plan for the project site proposes seven buildings with a maximum height of 36 feet and floor area totaling 3.6 million square feet including ancillary office space. Project site

development would also include the construction of circulation and parking for light vehicles and trucks, utilities and landscaping. Access would be developed from Mariposa Road; improvements would include widening of Mariposa Road to accommodate turn pockets and acceleration/deceleration lanes.

1.3 ENVIRONMENTAL REVIEW OF THE PROJECT UNDER CEQA

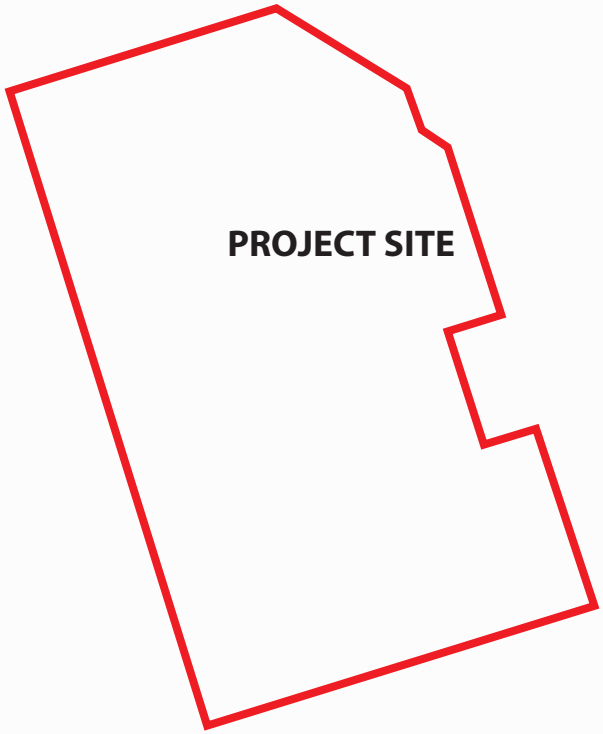
The project's environmental effects, mitigation measures needed to address these effects and alternatives to the project are discussed in detail the EIR prepared by the City of Stockton in accordance with the requirements of CEQA. EIR processing steps have included preparation and distribution of a Notice of Preparation, a scoping meeting, publication and distribution of a Draft EIR for public review, preparation of a Final EIR addressing comments received during the public review period for City Council certification, and preparation of a CEQA Findings document and this Mitigation Monitoring/Reporting Plan for adoption by the Stockton City Council. Additional detail regarding the CEQA processing of the project can be found in the Revised Final EIR, which is incorporated by reference below.

> Revised Final Environmental Impact Report for the Mariposa Industrial Park Project, Stockton, CA. November 15, 2022. Prepared for City of Stockton Department of Community Development, 345 N. El Dorado Street, Stockton, CA 95202. Prepared by BaseCamp Environmental, Inc., 802 West Lodi Avenue, Lodi, CA 95240. State Clearinghouse Number 2020120283.



BaseCamp Environmental

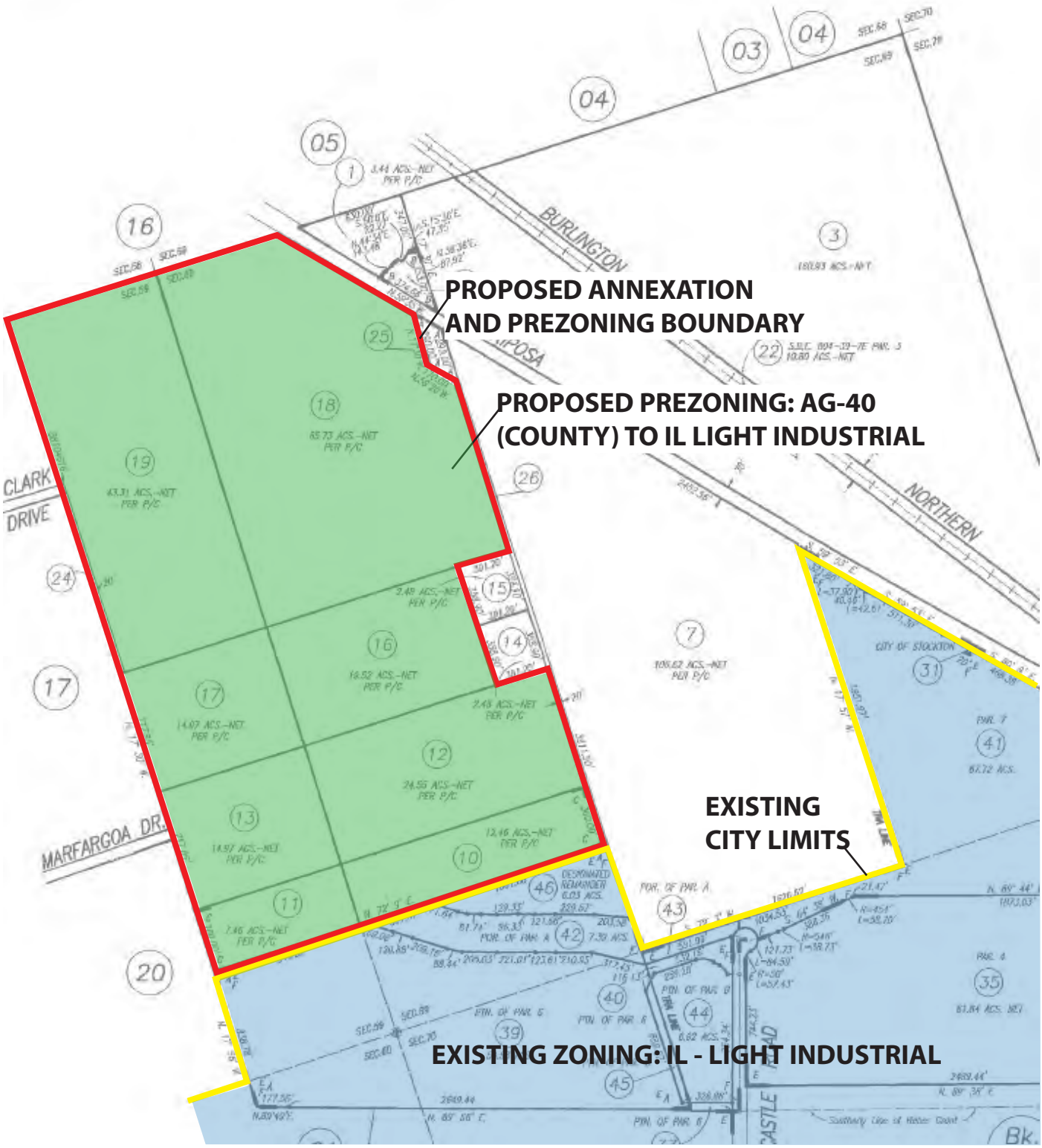
Figure 1
REGIONAL LOCATION MAP



SOURCE: SAN JOAQUIN COUNTY ASSESSOR PARCEL OFFICE.

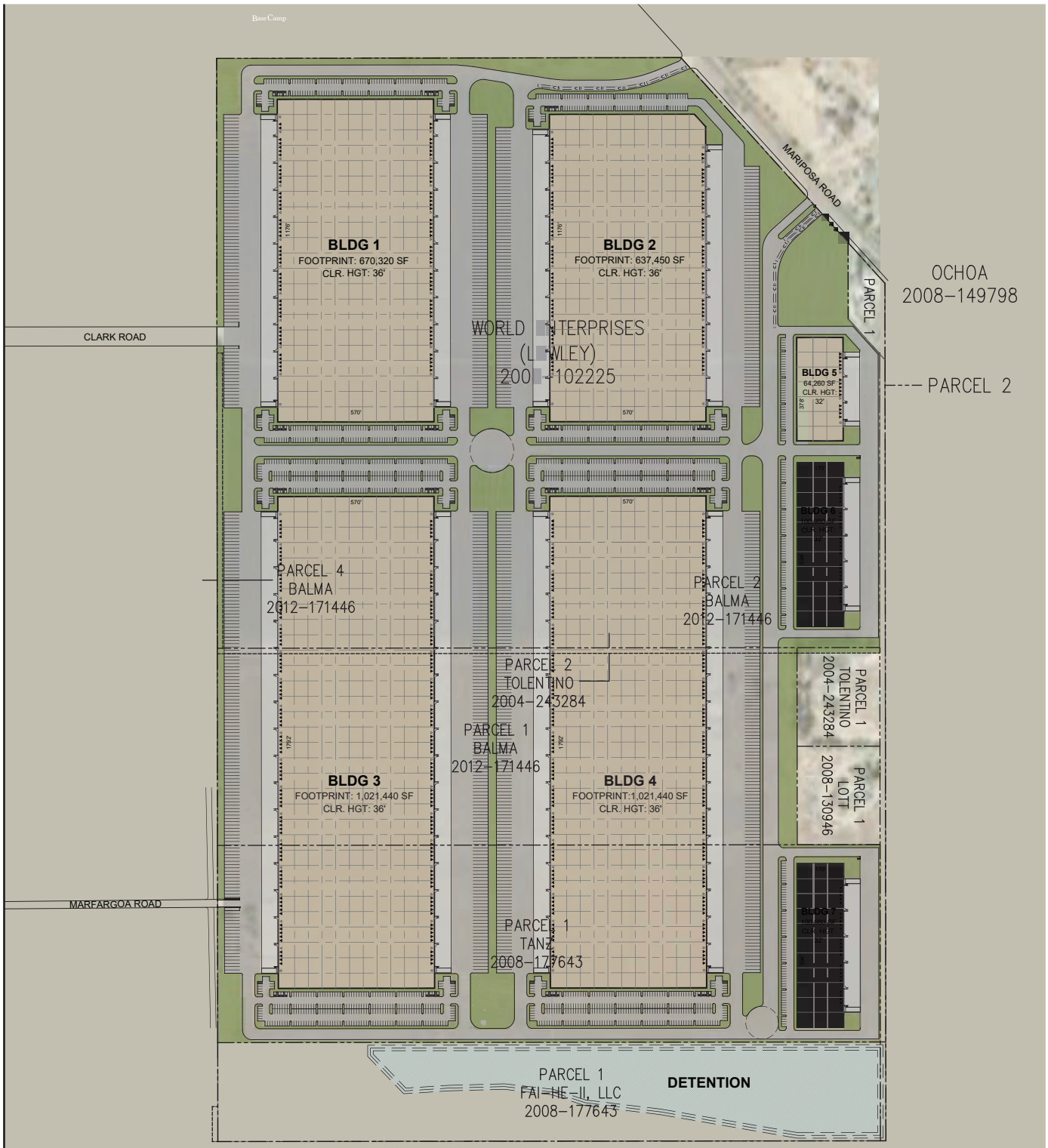
THE PROJECT INCLUDES PARCELS:
179-220-019, 018,017,016,015,014, 013, 012, 011, 010, 024, 046

Figure 2
ASSESSOR PARCEL MAP



BaseCamp Environmental

Figure 3
PROPOSED ANNEXATION AND PREZONING



SOURCE: Ware Malcomb

Figure 4
CONCEPTUAL SITE PLAN

2.0 MITIGATION MONITORING/REPORTING PROGRAM

CEQA requires more than just preparing environmental documents; it also requires the Lead Agency to change or place conditions on a project, or to adopt plans or ordinances for a broader class of projects, which would address the potentially significant or significant environmental effects of a project. To ensure that mitigation measures within the Lead Agency's purview are actually implemented, CEQA requires the adoption of a mitigation monitoring and/or reporting program (MMRP). Specifically, CEQA Guidelines Section 15091(d) requires that a public agency, when making findings for the significant impacts of a project,

> "shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures."

Mitigation measures that are not feasible, or are within the jurisdiction of other agencies, are addressed through the findings required by CEQA Guidelines Section 15091 and shown in the CEQA Findings document for the project.

The Revised FEIR for the Mariposa Industrial Park project sets forth a series of mitigation measures that are applicable to the project and will address the potentially significant effects of the project. The following table summarizes the potentially significant environmental effects that could result from approval of the Mariposa Industrial Park project as described in the EIR. The table identifies 1) each effect, 2) how each significant effect would be mitigated, 3) the responsibility for implementation of each mitigation measure, and 4) the responsibility for monitoring of each of the mitigation measures. The table follows the same sequence as the impact analysis in the EIR.

The mitigation measures shown in the table include those arising from the analysis and conclusions of the Draft EIR as well as additional mitigation measures resulting from public and agency comments on the Draft EIR, an initial version of the Final EIR dated February 28, 2022 and further discussion with the comment authors in the months leading up to this publication. The comments received on the EIR and the City's responses to those comments are discussed in Chapter 22.0 of the Revised Final EIR.

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
4.0 AESTHETICS		
Impact AES-3: Visual Character and Quality. This is a potentially significant impact.		
AES-1: New structures, landscaping, and site improvements shall conform with Section 5.02 of the City of Stockton Design Guidelines.	Applicant is responsible for incorporating these requirements into project plans and specifications.	CDD Building will be responsible to ensure that subject requirements are included in the approved plans and specifications.
Impact AES-4: Light and Glare. This is a potentially significant issue.		
AES-2: The approved site plan shall conform with the most recent version of the California Green Building Standards Code (California Code of Regulations, Title 24, Part 11) adopted by the City of Stockton at the time of site plan approval, including compliance with Section 5.106.8, which establishes mandatory requirements for outdoor lighting systems of nonresidential development that are designed to minimize the effects of light pollution. AES-3: The approved site plan shall comply with the applicable provisions of the Stockton Municipal Code pertaining to lighting, including Sections 16.36.060(B) and 16.32.070, which require exterior lighting to be shielded and directed away from adjoining properties and public rights-of-way. Compliance shall be documented in a photometric (lighting) plan or other documentation acceptable to the City.	Applicant is responsible for incorporating these requirements into project plans and specifications.	CDD Building will be responsible to ensure that subject requirements are included in the approved plans and specifications.

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
AES-4: Prior to final approval, the project shall be submitted to the SanJoaquin Council of Governments (SJCOG), acting in its capacity as the Airport Land Use Commission, for review of the compatibility of the project with Stockton Metropolitan Airport operations and conformance to the guidelines stipulated in the Airport Land Use Compatibility Plan for Stockton Metropolitan Airport.	CDD Planning staff is responsible for submitting project information to ALUC.	CDD Planning will be responsible for ensuring that ALUC review is completed, and any applicable requirements incorporated are into conditions of approval
5.0 AGRICULTURE		
Conversion of Farmland. This is a significant impact.		
AG-1: The project shall participate in and comply with the City's Agricultural Lands Mitigation Program, under which developers of the property shall contribute agricultural mitigation land or shall pay the Agricultural Land Mitigation Fee to the City.	Applicant is responsible for easement dedication or fee payment.	CDD Planning will be responsible for ensuring that agricultural program compliance is completed.
6.0 AIR QUALITY		
Air Quality Plans and Standards – Construction Emissions. This is a potentially significant issue.		
AIR-1: Prior to the issuance of the first building permit, the applicant/developer shall demonstrate compliance with the SJVAPCD Rule 9510 (Indirect Source Review) to reduce growth in both NOx and PM10 emissions, as required by SJVAPCD and City requirements.	Same as AIR-3	Same as AIR-3
AIR-2: The project shall comply with SJVAPCD Regulation VIII for the control of dust emissions during project construction. A project Dust Control Plan shall be	Applicant is responsible for submittal of technical	CDD Planning is responsible for review and acceptance of

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
submitted to the SJVAPCD as required by Regulation VIII. Enforcement of Regulation VIII is the direct responsibility of the SJVAPCD. City Building inspectors shall monitor conformance with approved plans and specifications.	assessment.	assessment
AIR-3: Architectural Coatings: Construction plans shall require that architectural and industrial maintenance coatings (e.g., paints) applied on the project site shall be consistent with a VOC content of <10 g/L. Developer or tenant is not expected to exercise control over materials painted offsite.	Applicant is responsible for submittal of technical assessment.	CDD Planning is responsible for review and acceptance of assessment
AIR-4 SJVAPCD Regulation VIII Compliance: Construction plans and specifications shall include a Dust Control Plan incorporating the applicable requirements of Regulation VIII, which shall be submitted to the SJVAPCD for review and approval prior to beginning construction in accordance with the requirements of Regulation VIII.	Applicant is responsible for compliance with AQ-2 and AQ-3	CDD Planning is responsible for ensuring compliance has been completed.
AIR-5: Construction Worker Trip Reduction: Project construction plans and specifications will require contractor to provide transit and ridesharing information for construction workers.	Applicant is responsible for required analysis	CDD Planning is responsible for review and acceptance of analysis
AIR-6: Construction Meal Destinations: Project construction plans and specifications will require the contractor to establish one or more locations for food or catering truck service to construction workers and to cooperate with food service providers to provide consistent food service.	Applicant is responsible for Rule 9510 compliance and submittal of documentation to the City.	CDD Planning is responsible for ensuring compliance has been completed.

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
AIR-7: To reduce impacts from construction-related diesel exhaust emissions, the Project should utilize the cleanest available off-road construction equipment, including the latest tier equipment (recommended by SJVAPCD).	Applicant is responsible for Regulation VIII compliance and submittal of documentation to the City.	CDD Planning is responsible for ensuring Regulation VIII compliance has been completed.
Air Quality Plans and Standards- Operational Emissions. This is a significant issue.		
	See AIR-3	See AIR-3
AIR-8: The project shall comply with the emission reduction requirements of SJVAPCD Rule 9510 for project operations.	Applicant is responsible for preparation and submittal of Dust Control Plan	SJVAPCD is responsible for review and approval of Dust Control Plan.
AIR-9: Prior to building occupancy, employers with 100 or more eligible employees shall submit an Employer Trip Reduction Implementation Plan (ETRIP) to the City for review and approval, as required by SJVAPCD Rule 9410. A copy of the ETRIP shall be provided to the SJVAPCD. Employers shall facilitate participation in the implementation of the ETRIP by providing information to its employees explaining methods for participation in the Plan and the purpose, requirements, and applicability of Rule 9410.	Applicant is responsible for preparation and submittal of ETRIP	CDD Planning is responsible for review and acceptance of ETRIP
AIR-10: The project shall comply with SJVAPCD Rule 4101, which prohibits emissions of visible air contaminants to the atmosphere and applies to any source operation that emits or may emit air contaminants.	Applicant and CDD Planning will responsible for VERA discussion and decision.	CDD Planning will be responsible for ensuring that VERA discussion occurred.

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
AIR-11: The project shall comply with SJVAPCD Rule 4601, which limits project has agreed to abide by more stringent VOC emissions requirements. emissions of volatile organic compounds from architectural coatings by specifying storage, clean up and labeling requirements.	Applicant is responsible for incorporating these requirements into project plans and specifications.	CDD Building will be responsible to ensure that subject requirements are included in plans and specifications.
AIR-12: The project shall comply with SJVAPCD Rule 4601, which limits emissions of volatile organic compounds from architectural coatings by specifying storage, clean up and labeling requirements. (The project has agreed to abide by more stringent VOC emissions requirements.	See Construction AIR-1	See Construction AIR-1
AIR-12: Solar Power: Owners, operators or tenants shall include with the building permit application, sufficient solar panels to provide power for the operation's base power use at the start of operations and as base power use demand increases. Project sponsor shall include analysis of (a) projected power requirements at the start of operations and as base power demand increases corresponding to the implementation of the "clean fleet" requirements, and (b) generating capacity of the solar installation.	Applicant is responsible for incorporating these requirements into project plans and specifications.	CDD Building will be responsible to ensure that subject requirements are included in plans and specifications.
AIR -12 (continued): CDD shall verify the size and scope of the solar project based upon the analysis of the projected power requirements and generating capacity as well as the available solar panel installation space. The photovoltaic system shall include a battery storage system to serve the facility in the event of a power outage to the extent required by the 2022 or later California Building Standards Code. AIR -12 (continued): In the event sufficient space is not available on the subject lot to accommodate the needed number of solar panels to produce the operation's base or anticipated power use, the applicant shall demonstrate how all available space has been maximized (e.g., roof, parking areas, etc.). Areas which provide truck movement may be excluded from these calculations unless otherwise deemed acceptable by the supplied reports.	Applicant is responsible for compliance and submittal of documentation	CDD Planning is responsible for review and acceptance of documentation

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
AIR -12 (continued): The developer or tenant, or qualified solar provider engaged by the developer or tenant shall timely order all equipment and shall install the system when the City has approved building permits and the necessary equipment has arrived. The developer or tenant shall commence operation of the system when it has received permission to operate from the utility. The photovoltaic system owner shall be responsible for maintaining the system(s) at not less than 80% of the rated power for 20 years. At the end of the 20-year period, the building owner shall install a new photovoltaic system meeting the capacity and operational requirements of this measure, or continue to maintain the existing system, for the life of the project.		
AIR -13: Emission Standards for Heavy-Duty Trucks: The following mitigation measures shall be implemented during all on-going business operations and shall be included as part of contractual lease agreement language to ensure the tenants/lessees are informed of all on-going operational responsibilities. The property owner/tenant/lessee shall ensure that all heavy-duty trucks (Class 7 and 8) domiciled on the project site are model year 2014 or later from start of operations and shall expedite a transition to zero-emission vehicles, with the fleet fully zero-emission by December 31, 2025 or whencommercially available for the intended application, whichever date is later. A zero-emission vehicle shall ordinarily be considered commercially available if the vehicle is capable of serving the intended purpose and is included in California's Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project, https://californiahvip.org/ or listed as available in the US on the Global Commercial Vehicle Drive to Zero inventory, https://globaldrivetozero.org/. The City shall be responsible for the final determination of commercial availability and may (but is not required to) consult with the California Air Resources Board before making such final determination. In order for the City to make a determination that such vehicles are commercially unavailable, the operator must submit documentation from a minimum of three (3) EV dealers identified on the californiahvip.org website demonstrating the inability to obtain the required EVs or equipment needed	Applicant or tenant is responsible for compliance and submittal of documentation	CDD Planning is responsible for review and acceptance of documentation

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
within 6 months "Domiciled at the project site shall mean the vehicle is either (i) parked or kept overnight at the project site more than 70% of the calendar year or (ii)dedicated to the project site (defined as more than 70% of the truck routes(during the calendar year) that start at the project site even if parked or kept elsewhere) Zero-emission heavy-duty trucks which require service can be temporarily replaced with model year 2014 or later trucks. Replacement trucks shall be used for only the minimum time required for servicing fleet trucks.		
AIR-14: Zero Emission Vehicles: The property owner/tenant/lessee shall utilize a "clean fleet" of vehicles/delivery vans/trucks (Class 2 through 6) as part of business operations as follows: For any vehicle (Class 2 through 6) domiciled at the project site, the following "clean fleet" requirements apply: (i) 33% of the fleet will be zero emission vehicles at start of operations, (ii) 65% of the fleet will be zero emission vehicles by December 31, 2023, (iii) 80% of the fleet will be zero emission vehicles by December 31, 2025, and (iv) 100% of thefleet will be zero emission vehicles by December 31, 2027. "Domiciled at the project site" shall mean the vehicle is either (i) parked or kept overnight at the project site more than 70% of the calendar year or (ii) dedicated to the project site (defined as more than 70% of the truck routes (during the calendar year) that start at the project site even if parked or kept elsewhere). Zero-emission vehicles which require service can be temporarily replaced with alternate vehicles. Replacement vehicles shall be used for only the minimum time required for servicing fleet vehicles. The property owner/tenant/lessee shall not be responsible to meet "clean fleet" requirements for vehicles used by common carriers operating under their own authority that provide delivery services to or from the project site.	Applicant or tenant is responsible for compliance and submittal of documentation	CDD Planning is responsible for review and acceptance of documentation

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
AIR-15: Demonstrate Compliance with Clean Fleet Requirements: The applicant, property owner, tenant, lessee, or other party operating the facility (the "Operator") shall utilize the zero emission vehicles/trucks required to meet the "clean fleet" requirements in AIR-13 (for Class 7 and 8 vehicles) and AIR-14 (for Class 2 through 6 vehicles) above. Within30-days of occupancy, the Operator shall demonstrate to the satisfaction of CDD staff, that the applicable clean fleet requirements are being met. AIR-15 (continued): In the event that vehicles/trucks are not commercially available for the intended application, the "clean fleet requirements" may be adjusted as minimally as possible by the CDD to accommodate the unavailability of commercially available vehicles/trucks. AIR-15 (continued): The City shall quantify the air pollution and GHG emissions resulting from any modification of this condition. Within 12 months of failing to meet a “clean fleet” requirement the property owner/tenant/lessee shall implement a Voluntary Emissions Reduction Agreement (VERA) providing pound for pound mitigation of the criteria pollutant, toxic air contaminants, and GHG emissions quantified by the City through a process that develops, funds, and implements emission reduction projects, with the Air District serving a role of administrator of the emission reduction projects and verifier of the successful mitigation effort. The VERA shall prioritize projects in the South Stockton and surrounding area. Property owner/tenant/lessee shall continue to fund the VERA each year in an amount necessary to achieve pound for pound mitigation of emissions resulting from not meeting the clean fleet requirements until the owner/tenant/lessee fully complies. AIR-15 (continued): The Operator shall implement the proposed measures after CDD review and approval. Any extension of time granted to implement this condition shall be limited to the shortest period of time necessary to allow for 100% electrification under the clean fleet requirements. The CDD staff may seek the recommendation of the California Air Resources Board in determining whether there has been a manufacturing disruption or insufficient vehicles/trucks	Applicant or tenant is responsible for compliance and submittal of documentation	CDD Planning is responsible for review and acceptance of documentation

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
commercially available for the intended application.		
AIR-16: Condition of Approved Compliance Report: The Operator shall submit a condition of approval compliance report within30 days of, but not later than, the following dates: December 31, 2023, December 31, 2025, and December 31, 2027. The report shall outline clean fleet requirements applicable at each report interval and include documentation demonstrating compliance with each requirement. The City shall consider each report at a noticed publichearing and determine whether the Operator has complied with the applicable clean fleet requirements. If the Operator has not met each 100% clean fleet requirement by December 31, 2027, then the Operator shall submit subsequent reports every year until the 100% clean fleet requirement is implemented. The City shall consider each subsequent report at a noticed public hearing and determine whether the Operator has complied with the clean fleet requirements, including any minimal adjustments to the requirements by the CDD to accommodate the manufacturing disruption or unavailability of commercially available vehicles/trucks, as described in the previous paragraph. Notice of the above hearings shall be provided to all properties located within 1,000 feet of the project site and through the ASK Stockton list serve. AIR-16 (continued): After the 100% clean fleet requirement has been implemented and confirmed by the CDD, the Operator shall submit to the CDD an on-going compliance report every three years containing all necessary documentation to verify that the Operator is meeting the clean fleet requirements. At the time it confirms that the 100% clean fleet requirement has been implemented, the CDD will establish the due date for the first on-going compliance report. Each subsequent on-going compliance report shall be due within 30 days of, but not later than, the three-year anniversary of the preceding due date. The on-going compliance reports and accompanying documentation shall be made available to the public upon request.	Applicant or tenant is responsible for preparation of compliance reports	CDD Planning is responsible for review and acceptance of compliance reports
AIR-17: Zero Emission Forklifts, Yard trucks and Yard Equipment: Owners, operators or tenants shall require all forklifts, yard trucks, and other equipment used	Tenant or owner is responsible for use of	CDD Planning will be responsible for review and

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
for on-site movement of trucks, trailers and warehoused goods, as well as landscaping maintenance equipment used on the site, to be electrically powered or zero-emission. The owner, operator or tenant shall provide on-site electrical charging facilities to adequately service electric vehicles and equipment.	complying equipment.	acceptance of compliance reports
AIR-18: Truck Idling Restrictions: Owners, operators or tenants shall be required to make their best effort to restrict truck idling onsite to a maximum of three minutes, subject to exceptions defined by CARB in the document: *commercial_vehicle_idling_requirements_July 2016*. Idling restrictions shall be enforced by highly-visible posting at the site entry, posting at other on-site locations frequented by truck drivers, conspicuous inclusion in employee training and guidance material and owner, operator or tenant direct action as required.	Tenant or owner is responsible for enforcement and signage.	CDD Planning will be responsible for review and acceptance of compliance reports
AIR-19: Electric Truck Charging: At all times during project operation, owners, operators or tenants shall be required to provide electric charging facilities on the project site sufficient to charge all electric trucks domiciled on the site and such facilities shall be made available for all electric trucks that use the project site.	Tenant or owner is responsible for use of complying equipment.	CDD Planning will be responsible for review and acceptance of compliance reports
AIR-20: Project Operations, Food Service: Owners, operators or tenants shall establish locations for food or catering truck service and cooperate with food service providers to provide consistent food service to operations employees.	Tenant or owner will be responsible for establishment of food service locations.	CDD Planning will be responsible for review and acceptance of compliance reports
AIR-21: Project Operations, Employee Trip Reduction: Owners, operators or tenants shall provide employees transit route and schedule information on systems serving the project area and coordinate ridesharing amongst employees.	Tenant or owner will be responsible for provision of the required information.	CDD Planning will be responsible for review and acceptance of compliance reports.
AIR-22: Yard Sweeping: Owners, operators or tenants shall provide periodic yard and parking area sweeping to minimize dust generation.	Tenant or owner will be responsible for periodic yard sweeping.	CDD Planning will be responsible for review and acceptance of compliance reports

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
AIR-23: Diesel Generators: Owners, operators or tenants shall prohibit the use of diesel generators, except in emergency situations, in which case such generators shall have Best Available Control Technology (BACT) that meets CARB's Tier 4 emission standards	Tenant or owner will be responsible for compliance with prohibition.	CDD Planning will be responsible for review and acceptance of compliance reports
AIR-24: Truck Emission Control: Owners, operators or tenants shall ensure that trucks or truck fleets domiciled at the project site be model year 2014 or later, and maintained consistent with current CARB emission control regulations	Tenant or owner will be responsible for truck fleet records, inspection and maintenance.	CDD Planning will be responsible for review and acceptance of compliance reports
AIR-25: SmartWay: Owners, operators or tenants shall enroll and participate the in SmartWay program for eligible businesses	Tenant or owner will be responsible for SmartWay participation.	CDD Planning will be responsible for review and acceptance of compliance reports
AIR-26: Designated Smoking Areas: Owners, operators or tenants shall ensure that any outdoor areas allowing smoking are at least 25 feet from the nearest property line.	Tenant or owner will be responsible for smoking area designation.	CDD Planning will be responsible for review and acceptance of compliance reports
AIR-27: Project construction shall be subject to all adopted City building codes, including the adopted Green Building Standards Code, version July 2022 or later. Prior to the issuance of building permits, the applicant/developer shall demonstrate (e.g., provide building plans) that the proposed buildings are designed and will be built to, at a minimum, meet the Nonresidential Voluntary Measures of the California Green Building Standards code, Divisions A5.1, 5.2 and 5.5, including but not limited to the Tier 2 standards in those Divisions, where applicable, such as the Tier 2 advanced energy efficiency requirements as outlined under Section A5.203.1.2.	Applicant is responsible for incorporating these requirements into project plans and specifications.	CDD Building will be responsible to ensure that subject requirements are included in plans and specifications.
AIR-28: All tenant lease agreements for the project site shall include a provision requiring the tenant/lessee to comply with all applicable requirements of the MMRP, a copy of which shall be attached to each tenant/lease agreement.	Applicant is responsible for incorporating these requirements into project	CDD Building will be responsible to ensure that subject requirements are included in plans and

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
	plans and specifications.	specifications.
Exposure of Sensitive Receptors to Criteria Pollutants. This is a significant issue.		
AIR-29: The project applicant, to reduce carbon monoxide concentrations to an acceptable level, shall contribute fair-share costs to an improvement on the Mariposa Road and Carpenter Road intersection that would widen the northeast-bound Carpenter Road approach to include an exclusive northeast-bound-to northwest-bound left-turn lane, and a combined through/right-turn lane. (See also Transportation Improvement Measure TRANS-2 in Chapter 16.0, Transportation.) Implement all mitigation measures for Impact: AIR-2, Mitigation Measures #s AIR-8 through AIR-28.	The applicant will be responsible for payment of fair share costs. As provided in the referenced mitigation measures	The Department of Public Works will be responsible for ensuring that fair share costs are paid prior to approval of improvement plansAs provided in the referenced mitigation measures
7.0 BIOLOGY		
Special-Status Species and Habitats. This is a potentially significant issue.		
BIO-1: The developer shall apply to the San Joaquin Council of Governments (SJCOG) for coverage under the San Joaquin County Multi-Species Open Space and Habitat Conservation Plan (SJMSCP). The project site shall be inspected by the SJMSCP biologist, who will recommend which Incidental Take Minimization Measures (ITMMs) set forth in the SJMSCP should be implemented. The project applicant shall pay the required SJMSCP fee, if any, and be responsible for the implementation of the specified ITMMs. Setbacks along North Littlejohns Creek shall be as specified in the SJMSCP- approved buffer reduction.	The applicant will be responsible for submitting the SJMSCP coverage application, payment of required fees and implementation of ITMMs. The ODS' Engineer will be responsible for incorporating ITMM requirements in the	CDD Planning will verify that SJMSCP coverage has been obtained and that other mitigation measures have been implemented as required by ITMMs.

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
	project plans and specifications. The Contractor will be responsible for adherence to the plans and specifications, hiring a qualified biologist if required and implementing the biologist recommendations.	
Waters of the U.S. and Wetlands. This is a potentially significant issue		
BIO-2: Prior to the start of construction work in the area where seasonal wetlands have been identified, the project developer shall conduct a wetland delineation identifying jurisdictional Waters of the U.S. and wetlands. The delineation shall be verified by the U.S. Army Corps of Engineers (Corps). The delineation shall be used to determine if any project work will encroach upon any jurisdictional water, thereby necessitating an appropriate permit. For any development work that may affect a delineated jurisdictional Water, the project developer shall obtain any necessary permits from the U.S. Army Corps of Engineers prior to the start of development work within these locations. Depending on the Corps permit issued, the project applicant shall also apply for a Section 401 Water Quality Certification from the Central Valley Regional Water Quality Control Board. If the seasonal wetlands are avoided, or if phased development occurs in areas where no wetlands have been identified, then this mitigation measure does not apply.	The applicant will be responsible for obtaining the required wetland delineation and verification, for proposing adequate mitigation, for obtaining required permits and providing proof of issuance to the City.	The CDD Planning will be responsible for ensuring that the wetland delineation has been completed, required permits have been issued and that specified mitigation measures are incorporated into project plans and specifications.
BIO-3: Prior to the start of construction work in North Littlejohns Creek, the project developer shall obtain any necessary permits from the California Department of Fish and Wildlife and the Central Valley Flood Protection Board. The project developer shall comply with all conditions attached to any required permit.	The applicant will be responsible for obtaining the required permits and providing proof of issuance to the City.	The CDD Planning will be responsible for ensuring that required permits have been issued.

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
BIO-4:Prior to the start of construction work in the area where seasonal wetlands have been identified, the project developer shall obtain any necessary Waste Discharge Requirements from the Central Valley Regional Water Quality Control Board. Pursuant to the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan, the filling of seasonal wetlands containing vernal pool invertebrates shall be delayed until the wetlands are dry and SJCOG biologists can collect the surface soils from the wetlands, to store them for future use on off-site seasonal wetland creation on SJCOG preserve lands. If the seasonal wetlands are avoided, then this mitigation measure does not apply.	The applicant will be responsible for obtaining Waste Discharge Requirements if necessary and for timing of fill in coordination with the SJCOG biologists.	The CDD Planning will be responsible for ensuring that Waste Discharge Requirements have been obtained and that seasonal wetland fill is coordinated with SJCOG.
Fish and Wildlife Migration		
Implementation of Mitigation Measure BIO-1.	As provided for BIO-1	As provided for BIO-1
Local Biological Requirements. This is a potentially significant issue.		
BIO-5: If removal of any oak tree on the project site is required, a certified arborist shall survey the oak trees proposed for removal to determine if they are Heritage Trees as defined in Stockton Municipal Code Chapter 16.130. The arborist report with its findings shall be submitted to the City's Community Development Department. If Heritage Trees are determined to exist on the property, removal of any such tree shall require a permit to be issued by the City in accordance with Stockton Municipal Code Chapter 16.130. The permittee shall comply with all permit conditions, including tree replacement at specified ratios.	The applicant will be responsible for surveying oak trees to be removed, preparation of an arborist report and obtaining permits for removal of Heritage trees, if any.	The CDD Planning will be responsible for review of the arborist report and ensuring that any necessary tree removal permits have been obtained.
Habitat Conservation Plans. This is a potentially significant issue.		
Implement Mitigation Measure BIO-1.	As provided for BIO-1	As provided for BIO-1
8.0 CULTURAL RESOURCES		

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
Archaeological and Tribal Cultural Resources. This is a potentially significant issue.		
CULT-1: As noted, the field surveys conducted by Solano Archaeological Services on the project site led to the recording of two potential historical resources: three transmission lines and the remains of a well. Both resources were evaluated on the criteria for listing on the California Register of Historical Resources (see Regulatory Framework above). Neither were determined to meet any of the criteria for such listing. Since these criteria are very similar to those for listing on the National Register of Historic Places, the resources also would not meet criteria for listing on the National Register of Historic Places. As such, the two resources are not considered to have historical value. The project would have no impact on historical resources. It should be noted that the project is unlikely to affect the three transmission lines in any case.	The applicant will be responsible for incorporating these requirements in the project plans and specifications. The Contractor will be responsible for reporting discoveries to the City, for hiring a qualified archaeologist to analyze the discovery and coordinate with Native American tribes as necessary, and for implementing the archaeologist's treatment recommendations.	CDD Planning will be responsible for ensuring that cultural resource requirements have been incorporated into project plans and specifications and that discovery reports are properly documented.
Impact CULT-2: Archaeological and Tribal Cultural Resources . This is a potentially significant issue.		
CULT-1: If any subsurface archaeological resources, including human burials and associated funerary objects, are encountered during construction, all construction activities within a 50-foot radius of the encounter shall be immediately halted until a qualified archaeologist can examine these materials and evaluate their significance. The City shall be immediately notified in the event of a discovery. If burial resources or tribal cultural resources are discovered, the City shall notify the appropriate tribal representative, who may examine the materials with the	The applicant and contractor will be responsible for suspending construction activity if human remains are encountered, reporting finds to the City and County Coroner and	CDD Planning will be responsible for responding to reports of burial or human remain finds as required, including notification of and coordination with Native American representatives.

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
archaeologist and advise the City as to their significance. The archaeologist, in consultation with the tribal representative if contacted, shall recommend mitigation measures needed to reduce potential cultural resource effects to a level that is less than significant in a written report to the City, with a copy to the tribal representative. The City shall be responsible for implementing the report recommendations. Avoidance is the preferred means of disposition of tribal cultural resources. The contractor shall be responsible for retaining qualified professionals, implementing recommended mitigation measures, and documenting mitigation efforts in written reports to the City. CULT-2: The project shall comply with the provisions of the City of Stockton Municipal Code Section 16.36.050. If a historical or archaeological resource or human remains may be impacted by the project, the Secretary of the Cultural Heritage Board shall be notified, any survey needed to determine the significance of the resource shall be conducted, and the proper environmental documents shall be prepared. CULT-3: In the event that archaeological resources are discovered during any construction, construction activities shall cease, and the Community Development Department shall be notified so that the extent and location of discovered materials may be recorded by a qualified archaeologist, and disposition of artifacts may occur in compliance with State and federal law.	retaining a qualified archaeologist to evaluate the find and provide a written report to the City. The City will be responsible for notifying Native American representatives and for overseeing compliance with Public Resources Code requirements.	
9.0 GEOLOGY, SOILS, AND MINERAL RESOURCES		
Impact GEO-1: Faulting and Seismicity. This is a potentially significant issue.		
GEO-1: The project shall obtain a Notice of Intent issued by the SWRCB for	Applicant will be	CDD Building and Public

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
compliance with the Construction General Permit. The project shall prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) including a site map, description of construction activities and identification of Best Management Practices (BMPs) that will prevent soil erosion and discharge of other construction-related pollutants GEO-2: The project applicant shall comply with Stockton Municipal Code Section 15.48.050, which requires construction activities to be designed and conducted to minimize discharge of sediment and all other pollutants and Section 15.48.070, which contains standards for implementation of Best Management Practices.	responsible for all activities related to the Construction General Permit and incorporation of these standards in project plans and specifications.	Works will be responsible for ensuring that project has complied with Construction General Permit
Impact GEO-3: Soil Erosion. This is a potentially significant issue.		
GEO-3: The project applicant shall submit a geologic soils report, prepared by a registered civil engineer, in compliance with Stockton Municipal Code Section 16.192.020. The report's recommendations shall be incorporated into the final design and construction plans.	Applicant will be responsible for submittal of the soils report.	CDD Building will be responsible for review and approval of the geotechnical report and project plans and specifications.
GEO-4: Project plans and specifications shall comply with the most recent version of the California Building Code adopted by the City of Stockton at the time of project approval.	Applicant will be responsible for preparation of plans and submittal of conforming plans and specifications.	CDD Building will be responsible for review of project plans and specifications.
Impact GEO-5: Paleontological Resources and Unique Geological Features. This is a potentially significant issue.		
GEO-5: If any subsurface paleontological resources are encountered during construction, all construction activities within a 50-foot radius of the encounter shall be immediately halted until a qualified paleontologist can examine these	The ODS will be responsible for incorporating	The City will be responsible for ensuring that paleontology requirements

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
materials, initially evaluate their significance and, if potentially significant, recommend measures on the disposition of the resource. The City shall be immediately notified in the event of a discovery. The contractor shall be responsible for retaining qualified professionals, implementing recommended mitigation measures, and documenting mitigation efforts in written reports to the City.	requirements in project plans and specifications. The ODS contractor will be responsible for suspending construction activity if paleontological resources are encountered, reporting finds to the City and retaining a qualified paleontologist to evaluate the find and provide a written report to the City.	have been incorporated into project plans and specifications and that discovery reports are properly documented.
10.0 GREENHOUSE GAS EMISSIONS		
Impact GHG-1: Project GHG Construction Emissions and Consistency with Applicable Plans and Policies. This is a potentially significant impact.		
GHG-1: The project shall implement the Off-Road Vehicles Best Management Practices specified in the Stockton Climate Action Plan. At least three (3) percent of the construction vehicle and equipment fleet shall be powered by electricity. Construction equipment and vehicles shall not idle their engines for longer than three (3) minutes. AIR-2: The project applicant shall comply, as applicable, with the provisions of the California Air Resources Board's Regulation for In-Use Off-Road Diesel Fueled	The applicant will be responsible for incorporating these requirements in the project plans and specifications. The contractor will be responsible for	The CDD Planning will be responsible for overseeing implementation of these requirements and review and acceptance of written reports.

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
Fleets, which applies to all self-propelled off-road diesel vehicles 25 horsepower or greater used in California and most two-engine vehicles (except on-road two-engine sweepers). These provisions include imposing limits on idling and requiring a written idling policy. It also requires fleets to reduce their emissions by retiring, replacing, or repowering older engines, or by installing Verified Diesel Emission Control Strategies (i.e., exhaust retrofits). AIR-1: Comply with SJVAPCD Rule 9510 for project construction. AIR-2: Comply with SJVAPCD Regulation VIII for the control of dust emissions, submit a project Dust Control Plan. AIR-3: Architectural Coatings: VOC content of <10 g/L. AIR-4: Comply with SJVAPCD: AIR-5: Provide transit and ridesharing information for construction workers. AIR-6: Contractor to locations for food or catering truck service to construction workers. AIR-7: Use cleanest available off-road construction equipment (recommended by SJVAPCD).	periodically reporting compliance with these conditions to the Community Development Department.	
Impact GHG-2: Project GHG Operational Emissions and Consistency with Applicable Plans and Policies. This is a potentially significant impact.		
AIR-8: Comply with SJVAPCD Rule 9510 requirements for project operations. AIR-9: Employers with 100 employees shall submit an Employer Trip	As provided in Chapter 6.0 Air Quality	As provided in Chapter 6.0 Air Quality

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
Reduction Implementation Plan (ETRIP) to the City for review and approval. AIR-10: Comply with SJVAPCD Rule 4101prohibiting emissions of visible air contaminants. AIR-11: Comply with SJVAPCD Rule 4601 limiting VOC emissions from architectural coatings. AIR-12: Buildings to be solar ready, and install solar panels to provide power for operational base power use. AIR-13: Emission standards for heavy-duty trucks (Class 7 and 8) domiciled on the project site, clean vehicle requirements. AIR-14: Zero Emission Vehicles: Emission standards for vehicles/delivery vans/trucks (Class 2 through 6), clean vehicle requirements. AIR-15: Demonstrate compliance with "clean fleet" requirements in AMM-2 and AMM-3 within 30-days of occupancy. Operator shall submit Clean Fleet condition of approval compliance report at December 31, 2023, 2025 and 2027, tri-annually afterward. In the event of a disruption in clean fleet supply, the applicant will implement a Voluntary Emissions Reduction Agreement (VERA). AIR-16: Submittal of Clean Fleet condition of approval compliance report within 30 days of, but not later than, the following dates: December 31, 2023, December 31, 2025, and December 31, 2027. AIR-17: Requirement for forklifts, yard trucks and yard equipment, all zero emission. AIR-18: Limit truck idling to a maximum of three minutes.		

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
AIR-19: Operators to provide electric truck charging facility. AIR-20: Operators to provide locations for food or catering truck service. AIR-21: Operators to provide employees with alternative commute information. AIR-22: Yard Sweeping: Operators to provide periodic yard and parking area sweeping to minimize dust generation. AIR-23: Diesel Generators: Operators shall prohibit the use of diesel generators. AIR-24: Emission controls for trucks or truck fleets domiciled at the project site. AIR-25: Operators participate in EPA SmartWay. AIR-26: Operators shall designate smoking areas at least 25 feet from the nearest property line. AIR-27: Project construction is subject to adopted City building codes, including adopted Green Building Standards Code, Tier 2 advanced energy efficiency requirements for specified divisions. AIR-28: All tenant lease agreements for the project site shall include a provision requiring the tenant/lessee to comply with all applicable requirements of the MMRP, a copy of which shall be attached to each tenant/lease agreement.		

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
11.0 HAZARDS		
Impact HAZ-1: Hazardous Material Transportation and Storage. This is a potentially significant issue.		
HAZ-1: New business on the project site that may handle quantities of hazardous materials equal to or greater than 55 gallons of a liquid, 500 pounds of a solid, or 200 cubic feet of a compressed gas at any given time shall submit a Hazardous Materials Business Plan to the Certified Unified Program Agency (CUPA) of San Joaquin County. The Hazardous Materials Business Plan shall include an inventory of hazardous materials and hazardous wastes and an emergency response plan for incidents involving hazardous materials and wastes. HAZ-2: Proposed business uses that involve the manufacture, storage, handling, or processing of hazardous materials in sufficient quantities that would require s Hazardous Materials Business Plan and the use is within 1,000 feet of a residential zoning district, the project shall comply with Stockton Municipal Code Section 16.36.080, which governs use, handling, storage, and transportation of hazardous materials.	Applicant will be responsible for compliance with hazardous material regulations.	The San Joaquin County CUPA will be responsible for monitoring compliance.
Impact HAZ-2: Hazardous Materials Release. This is a potentially significant issue.		
GEO-1: The project shall obtain a Notice of Intent issued by the SWRCB for compliance with the Construction General Permit. The project shall prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) including a site map, description of construction activities and identification of Best Management Practices (BMPs) that will prevent soil erosion and discharge of other construction-related pollutants.	Applicant will be responsible for all activities related to the Construction General Permit.	CDD Building and Public Works will be responsible for ensuring that project has complied with Construction General Permit
GEO-2: The project applicant shall comply with Stockton Municipal Code Section 15.48.050, which requires construction activities to be designed and conducted to minimize discharge of sediment and all other pollutants and Section 15.48.070,	Applicant will be responsible for incorporation of these	CDD Building and Public Works will be responsible for ensuring that project has

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
which contains standards for implementation of Best Management Practices.	standards in project plans and specifications.	complied with Construction General Permit
Impact HAZ-4: Airport Hazards. This is a potentially significant issue.		
HAZ-3: The project shall be submitted to the San Joaquin County Airport Land Use Commission for review of project-associated objects that exceed 100 feet in height	CDD Planning staff is responsible for submitting project information to ALUC.	CDD Planning will be responsible for ensuring that ALUC review is completed, and requirements incorporated into conditions of approval
12.0 HYDROLOGY AND WATER QUALITY		
Impact: HYDRO -1: Surface Water Resources and Quality. This is a potentially significant issue.		
Implement storm water quality protections described in GEO-HYDRO-1: Industrial uses on the project shall obtain coverage under the Central Valley RWQCB Industrial General Permit program and implement pollution control measures using the best available technology economically achievable and best conventional pollutant control technology. All facility operators shall prepare, retain on site, and implement a SWPPP implementing applicable Industrial General Permit requirements, including a monitoring program.	As described in GEO-1 Applicant will be responsible for obtaining coverage under the Industrial General Permit.	As described in GEO-1 Municipal Utilities will be responsible for ensuring that Industrial Permit coverage is obtained.
13.0 LAND USE AND PLANNING		

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
There are no potentially significant or significant impacts in this issue area.		
14.0 NOISE		
Increase in Noise Levels in Excess of Standards-Traffic. This is a significant issue.		
NOISE-1: The applicant, the City of Stockton and other project developers impacting Mariposa Road traffic shall consider the use of noise-reducing pavement and utilize it where feasible in planned widening projects for Mariposa Road.		
Increase in Noise Levels in Excess of Standards-Other Project Noise. This is a potentially significant issue		
NOISE-2: Sound walls and/or berms 10 feet in height shall be required where existing residential uses or residentially zoned areas are located adjacent to the project site. Figure 3 of the project noise study (Figure 14-2 of ~~this EIR~~ the DEIR) shows the locations of the recommended sound walls based on the proposed conceptual plan. Where openings in sound walls occur for access or emergency access, solid gates shall be installed. 10-foot sound walls are expected to provide a 10 dB reduction in noise levels. Site plan modifications, and/or additional noise analysis by a qualified acoustical consultant may warrant changes to these requirements, assuming that compliance with City noise standards is maintained. NOISE-3: Project operation shall at all times comply with the provisions of Stockton Municipal Code Chapter 16.60, including: Section 16.60.040, which states that new or expanded commercial, industrial, and	The applicant will be responsible for incorporating noise wall requirements in the project plans and specifications. The ODS will be responsible for retaining a noise consultant to review and recommend alternative noise wall requirements as appropriate.	The CDD Planning will be responsible for ensuring that noise wall requirements are met in project plans and specifications and for review and approval of any proposed noise wall modifications,

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
other land use-related noise sources shall mitigate their noise levels such that they do not adversely impact noise-sensitive land uses (e.g., residences) and do not exceed City noise standards.		
Increase in Noise Levels in Excess of Standards-Construction. This is a potentially significant issue.		
NOISE-4: Construction activities associated with the project shall adhere to the requirements of the City of Stockton Municipal Code with respect to hours of operation. The applicant shall ordinarily limit construction activities to the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday. No construction shall occur on Sundays or national holidays without a written permit from the City. All construction equipment shall be in good working order and shall be fitted with factory-equipped mufflers. NOISE-5: Project construction comply with the provisions of Stockton Municipal Code Chapter 16.60, including: Section 16.60.030, which contains restrictions on construction noise, including operating or causing the operation of tools or equipment on private property used in alteration, construction, demolition, drilling, or repair work between the hours of 10:00 p.m. and 7:00 a.m. so that the sound creates a noise disturbance across a residential property line, except for emergency work of public service utilities. [Proposed EIR mitigation measure NOISE-2 more restrictive on construction days and hours.	The applicant will be responsible for incorporating these requirements in the project plans and specifications. The Contractor will be responsible for conformance with noise requirements.	The CDD Planning will be responsible for monitoring compliance with these requirements.

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
15.0 PUBLIC SERVICES AND RECREATION		
Impact PSR-1: Fire Protection Services. This is a potentially significant issue.		
PSR-1: Project buildings shall include an Early Suppression, Fast Response (ESFR) fire sprinkler system.	Applicant will be responsible for design and installation of the ESFR system	CDD Building will be responsible for checking plans for and inspection of the required system
PSR-2: City departments, including Fire, Community Development, and Finance, together with industrial project proponents, shall develop and implement a plan for financing, construction and staffing of a new fire station in the vicinity of the project site. Development and implementation of the plan will involve a multi-year process helping the Department meet increasing service demands and to reduce response times. The project applicant shall contribute to the costs of constructing and staffing the new fire station in accordance with the adopted plan.	Stockton Fire will be responsible overseeing new fire station and CFD process	
16.0 TRANSPORTATION		
TRANS-1: Motor Vehicle Transportation Plans – Intersections. Level of significance is not applicable under LOS analysis.		
TRANS-1: The project applicant should contribute fair-share costs to an improvement on the Mariposa Road and 8th Street/Farmington Road intersection that would split the northeast-bound combined through/right-turn lane into an exclusive northeast-bound through lane and a "free" northeast-bound-to-southeast-bound right-turn lane. Existing pavement width is considered adequate to accommodate this improvement.	The applicant will be responsible for design and install of "end of trip" facilities.	CDD Planning will be responsible for ensuring plans and specs include required facilities

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
TRANS-2: The project applicant should contribute fair-share costs to an improvement on the Mariposa Road and Carpenter Road intersection that would widen the northeast-bound Carpenter Road approach to include an exclusive northeast-bound-to northwest-bound left-turn lane, and a combined through/right-turn lane. (See also Mitigation Measure AIR-1 in Chapter 6.0, Air Quality.)	Owner or tenant will be responsible for implementing vanpool or shuttle program and submittal of documentation to the city	CDD Planning will be responsible for verifying that program is in place an operating
TRANS-2: Motor Vehicle Transportation Plans - Roadway Segments. Level of significance is not applicable under LOS analysis.		
TRANS-3: The project applicant should contribute fair-share costs to an improvement on the segment of Mariposa Road from SR 99 to 8th Street/Farmington Road that would widen the portions of this roadway segment that are currently one lane in each direction to two lanes in each direction.	Owner or tenant will be responsible for implementing vanpool or shuttle program and submittal of documentation to the city	CDD Planning will be responsible for verifying that program is in place an operating
TRANS-6: Consistency with CEQA Guidelines Section 15064.3(b). Level of significance is not applicable under LOS analysis.		
TRANS-1: The project shall provide "end-of-trip" facilities for bicycle riders to encourage the use of bicycling as a viable form of travel to destinations, especially to work. End-of-trip facilities shall include showers, secure bicycle lockers, and changing spaces. TRANS-2: The project shall implement an employer-sponsored vanpool or shuttle. A vanpool will usually service employees' commute to work, while a shuttle will service nearby transit stations and surrounding commercial centers.	Owner or tenant will be responsible for implementing vanpool or shuttle program and submittal of documentation to the city	CDD Planning will be responsible for verifying that program is in place an operating

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
Employer-sponsored vanpool programs entail an employer purchasing or leasing vans for employee use, and often subsidizing the cost of at least program administration. Scheduling is within the employer's purview, and rider charges shall be set on the basis of vehicle and operating cost. TRANS-3: The project shall implement SJVAPCD Rule 9410. Rule 9410, which requires employers with at least 100 employees to implement a trip reduction/transportation demand management program, or ETRIP. [See Air Quality section above.] ETRIP requirements are consistent with a Commute Trip Reduction program recommended by the traffic impact study as a mitigation measure. See also EIR Mitigation Measures TRANS-1 and TRANS-2, which require "end-of-trip" facilities and an employer-sponsored vanpool or shuttle.		
17.0 UTILITIES AND ENERGY		
Impact UTIL-4: Solid Waste. This is a potentially significant impact.		

Impact/Mitigation Measures	Implementation Responsibility	Monitoring/Reporting Responsibility
UTIL-1: As a Condition of Approval, the project applicant shall comply with the provisions of Stockton Municipal Code Sections 8.28.020 through 8.28.070 regarding construction and demolition waste. Permit applicants for the project shall be required to meet the waste diversion requirement of at least 50 percent of materials generated as discards by the project, regardless of whether the permit applicant performs the work or hires contractors, subcontractors, or others to perform the work.	Applicant will be responsible for compliance with construction waste recycling requirements.	CDD Building will be responsible for overseeing construction waste recycling.
Impact UTIL-6: Project Energy Consumption. This is a potentially significant impact.		
UTIL-2: As a Condition of Approval, the project applicant shall comply with the most recent version of the California Energy Code adopted by the City of Stockton at the time of project approval. AIR-9: Employers with 100 employees shall submit an Employer Trip Reduction Implementation Plan (ETRIP) to the City for review and approval. AIR-12: Buildings to be solar ready, and install solar panels to provide power for operational base power use.	Applicant will be responsible for incorporating Energy Code requirements in project plans and specifications.	CDD Building will be responsible for review and approval of building plans and specifications.

Exhibit F

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:	
City of Stockton 425 N. El Dorado St, 1st Floor Stockton, CA 95202 Attention: City Clerk Record for the Benefit of The City of Stockton *Pursuant to Government Code Section 27383*	
	Space Above Reserved for Recorder's Use Only

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF STOCKTON, a
California municipal corporation

AND

GREENLAW DEVELOPMENT, LLC
a California limited liability company

MARIPOSA INDUSTRIAL PARK PROJECT

Effective Date: _____, 2022

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") dated for reference purposes as of _____, 2022 ("**Agreement Date**"), is entered into by and between GREENLAW DEVELOPMENT, LLC, a California limited liability company ("**Developer**") and the CITY OF STOCKTON, a California municipal corporation ("**City**"). Developer and City are sometimes referred to individually herein as a "**Party**" and collectively as the "**Parties**."

R E C I T A L S

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties. The following recitals are a substantive part of this Agreement; capitalized terms used herein and not otherwise defined are defined in Article 1 of this Agreement.

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risks of development, the Legislature of the State of California enacted section 65864 *et seq*. of the Government Code ("**Development Agreement Statute**"), which authorizes a city and a developer having a legal or equitable interest in real property to enter into a binding, long-term development agreement, establishing certain development rights in the property.

B. In accordance with the Development Agreement Statute, the City Council has adopted a development agreement ordinance codified as Chapter 16.128 of the City's Municipal Code ("**Development Agreement Ordinance**"), which authorizes the execution of development agreements and sets forth the required contents and form of those agreements. The provisions of the Development Agreement Statute and the City's Development Agreement Ordinance are collectively referred to herein as the "**Development Agreement Law**."

C. Developer holds a legal or equitable interest in that certain approximately 203-acre real property, as defined by Government Code subsections 65865(a) and (b), located within the unincorporated area of the County of San Joaquin (the "**County**") commonly known as the Mariposa Industrial Park (the "**Property**"). The Property is currently comprised of nine (9) separate parcels bearing Assessors Parcel Numbers 179-220-100, 179-220-110, 179-220-120, 179-220-130, 179-220-160, 179-220-170, 179-220-180, 179-220-190, and 179-220-240. The Property is more particularly described and depicted in Exhibit A attached hereto and incorporated herein.

D. Not later than fourteen (14) days following its execution of this Agreement, the City will submit an application to the Local Agency Formation Commission ("**LAFCO**") to annex the Property into the City (the "**Annexation Proceedings**"). The potential environmental impacts from development of the Property were evaluated by the City, in compliance with the requirements of the California Environmental Quality Act ("**CEQA**"), in that certain Environmental Impact Report for the Mariposa Industrial Park (State Clearinghouse No. 2020120283) certified by the City on _____, 2022 (the "**MIP EIR**"). Development of the Property as described in the MIP EIR, with the modifications shown on Exhibit B hereto, is referred to herein as the "**Project**."

E. This Agreement sets forth, among other things, the applicable fees, policies and zoning requirements that apply to development of the Property, and is intended by the City

and Developer to provide Developer with vested rights to develop the Property in accordance with the terms and conditions of this Agreement. Consistent with the State policy expressed by Government Code section 65864, this Agreement is intended to reduce the uncertainty of the planning and entitlement process which can result in waste of resources and escalation of development costs; provide certain assurances to Developer that upon successful completion of the Annexation Proceedings Developer may proceed with development of the Property in accordance with the Project Approvals and Applicable Law (as defined herein) and subject to the terms of this Agreement; strengthen the public planning process; encourage private participation in comprehensive planning; and reduce the economic costs of development.

F. The Planning Commission on March 10, 2022, recommended, by adoption of Resolution No. 2022-03-10-0501-01 and 2022-03-10-0501-02, that the City Council take the following actions:

1. Make the appropriate written findings relating to significant environmental impacts, adopt a statement of overriding considerations, adopt a mitigation monitoring and reporting plan, and certify the MIP EIR, all in accordance with the applicable requirements of CEQA and the CEQA Guidelines.

2. Adopt an ordinance authorizing the City to execute this Agreement and allow structures of up to 100 feet tall on the Property

G. Prior to its approval of this Agreement, the City Council took the following actions to review and plan for the future development and use of the Property (collectively, the "**Existing Approvals**"):

3. Made written findings relating to significant environmental impacts, adopted a statement of overriding considerations, adopted a mitigation monitoring and reporting plan, and certified the MIP EIR, all in accordance with the applicable requirements of CEQA and the CEQA Guidelines.

4. Adopted Ordinance No. _____, authorizing the City to execute this Agreement and allowing for structures of up to 100 feet tall on the Property.

H. Under this Agreement, Developer will provide substantial public benefits to the City through its development of the Property and the Project as described herein, including:

1. The Project will, at no cost to the City, fund the preparation of a Rate and Method of Apportionment and other formation documents to support the formation of a Community Facilities District to support the design, construction, staffing, operation and maintenance of critical fire and police protection facilities for the Mariposa Industrial Park area and surrounding areas in south Stockton and its sphere of influence and, if the City establishes such Community Facilities District, the Property will participate in the Community Facilities District.

2. The Project will generate short-term construction jobs related to Property development, including Property grading, infrastructure and building construction, and long-term

employment-generating uses in the industrial components of the Project consistent with City objectives for creating employment opportunities for residents.

3. The Project will implement the City's General Plan land use and economic development policies designed to attract employment- and tax-generating businesses that support and promote the economic diversity of the City (General Plan Policy LU-4.2).

I. As provided in Article 6 of this Agreement, the Parties intend to work in good faith to consider potential use of public financing under the Mello-Roos Community Facilities Act of 1982 (Government Code sections 53311 et seq.) ("**Mello-Roos Act**") for certain Public Benefit Facilities needed in connection with the Project. The financing of such facilities through a Mello-Roos Act community facilities district would fulfill the express legislative goals of the Development Agreement Statute; strengthen the public planning process by linking development rights to financing of public facilities; encourage participation by private landowners in the comprehensive planning required by such financing; reduce economic risk and costs of development by spreading the costs of needed facilities over time; and allow Developer, in exchange for voluntary participation in such financing programs, to proceed with development in accordance with existing City policies, rules and regulations.

J. For the reasons recited herein, City and Developer have determined that the Project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Project Approvals, thereby encouraging planning for, investment in, and commitment to use and development of the Property. Development of the Property in accordance with the terms of this Agreement will in turn provide substantial public benefits to the City, thereby achieving the goals and purposes for which the Development Agreement Law was enacted.

K. The terms and conditions of this Agreement have undergone review by City staff, the Planning Commission and the City Council at publicly noticed meetings, and have been found to be fair, just and reasonable, in conformance with the Development Agreement Law and consistent with the goals, policies, standards and land use designations specified in the General Plan, and consistent with the requirement under Government Code Section 65867.5, and further, the City Council finds that the economic interests of City's citizens and the public health, safety and welfare will be best served by entering into this Agreement.

L. The City Council approved this Agreement by Ordinance No. _____, adopted by the City Council on _____, 2022 ("**Enacting Ordinance**").

NOW, THEREFORE, in consideration of the mutual promises, covenants and provisions set forth herein, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

A G R E E M E N T

ARTICLE 1.
DEFINITIONS

"***Agreement***" means this Development Agreement and all Exhibits hereto.

"***Agreement Date***" means the reference date identified in the preamble to this Agreement.

"***Annexation Date***" is defined in Section 2.1.

"***Annexation Deadline***" is defined in Section 2.1.

"***Annexation Proceedings***" is defined in Recital D.

"***Annual Review***" is defined in Section 10.1.

"***Applicable City Regulations***" is defined in Section 4.2.

"***Applicable Law***" means the Applicable City Regulations and all State and Federal laws and regulations applicable to the Property and the Project as such State and Federal laws are enacted, adopted and amended from time to time, as more particularly described in Section 4.5 (Changes in Applicable Law).

"***Assignee***" is defined in Section 13.3.

"***Assignment***" is defined in Section 13.2.

"***Capital Financing and Debt Management Policy***" means the City's Debt Management Policy for Capital and Land Secured Financing, Policy Number 17.01.040, with an effective date of October 30, 2018, as it may be amended from time to time.

"***CEQA***" is defined in Recital D.

"***CEQA Guidelines***" means the State CEQA Guidelines (California Code of Regulations, Title 14, section 15000, et seq.), as amended from time to time.

*"**CFD**"* is defined in Section 7.2.2.

"***Changes in Applicable Law***" is defined in Section 4.5.

"***City***" means the City of Stockton, a California municipal corporation.

"***City Council***" means the City Council of the City of Stockton.

"***City Manager***" means the City's City Manager or his or her designee.

"***City Parties***" means and includes City and its elected and appointed officials, officers, agents, employees, contractors and representatives.

"***Claims***" means liabilities, obligations, orders, claims, damages, fines, penalties and expenses, including attorneys' fees and costs.

"***Connection Fees***" means those fees charged by City on a citywide basis or by a utility provider to utility users as a cost for connecting water, sanitary sewer, and other

applicable utilities, except for any such fee or portion thereof that constitutes an Impact Fee, as defined below.

*"**Consultant Fees**"* is defined in Section 5.3.

"***Default***" is defined in Section 14.1.

"***Developer***" means Greenlaw Development, LLC, and its permitted successors and assignees.

"***Development Agreement Law***" is defined in Recital B.

"***Development Agreement Ordinance***" is defined in Recital B.

"***Development Agreement Statute***" is defined in Recital A.

"***Effective Date***" means the date that this Agreement becomes effective as determined under Section 3.1.

"***Enacting Ordinance***" refers to the Ordinance identified in Recital L.

"***Existing Approvals***" is defined in Recital G.

"***Extension Term***" is defined in Section 3.2.2.

"***Final***" means the date on which (1) all applicable appeal periods for the filing of any administrative appeal challenging the issuance or effectiveness of each of the Existing Approvals and this Agreement shall have expired and no such appeal shall have been filed; (2) in the event of any administrative appeal or Litigation Challenge challenging any of the Existing Approvals and/or this Agreement, that the administrative appeal or Litigation Challenge is settled or there is a final determination or judgment upholding the Existing Approvals and this Agreement, as applicable, and the administrative appeal or Litigation Challenge is no longer subject to appeal.

"***General Plan***" means the Envision Stockton 2040 General Plan of the City of Stockton adopted by the City Council on December 4, 2018.

"***Impact Fees***" means the monetary amount charged by City in connection with a development project for the purpose of defraying all or a portion of the cost of mitigating the impacts of the development project or development of the public facilities related to the development project, including, any "fee" as that term is defined by Government Code section 66000(b). For purposes of this Agreement, a fee that meets both the definitions of an Impact Fee and an Exaction will be considered to be an Impact Fee. Impact Fees do not include Other Agency Fees.

"***Impact Fee Lock Period***" is defined in Section 5.1.

"***Initial Term***" is defined in Section 3.2.1.

*"**LAFCO**"* is defined in Recital D.

"***Litigation Challenge***" is defined in Section 9.1.1.

"***Litigation Delay***" is defined in Section 15.4.2.

"***Major Modification***" is defined in Section 12.2.

*"**Mello-Roos Act**"* is defined in Recital I.

"***Minor Modification***" is defined in Section 12.2.

"*MIP EIR*" is defined in Recital D.

"***Mortgage***" means any mortgage, deed of trust, security agreement, and other like security instrument encumbering all or any portion of the Property, or any of the Developer's rights under this Agreement.

"***Mortgagee***" means the holder of any Mortgage, and any successor, assignee or transferee of any such Mortgage holder.

"***Municipal Code***" means and refers to the Municipal Code of the City of Stockton, as amended from time to time.

"***New City Laws***" means and includes any ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines or other regulations, which are promulgated or adopted by the City (including but not limited to any City agency, body, department, officer or employee) or its electorate (through their power of initiative or otherwise) after the Effective Date.

"***Notice of Breach***" is defined in Section 14.1.

"***Party/Parties***" is defined in the introductory paragraph preceding the Recitals of this Agreement.

"***Permitted Delay***" is defined in Section 15.4.1.

"*PFF Credits*" means credits for PFF Impact Fees as provided by Section 16.72.260 of the City of Stockton Municipal Code.

"***PFF Impact Fees***" means Impact Fees imposed by the City under the City's Municipal Code, as it may be amended or replaced from time to time.

"***Planning Commission***" means the Planning Commission of the City of Stockton.

"***Processing Fees***" means all fees charged on a City-wide basis to cover the cost of City processing of Subsequent Approvals and further including any required supplemental or further environmental review, plan checking, inspection and monitoring at the rates which are in

effect at the time those permits, approvals, parcel and/or subdivision maps, entitlements, reviews or inspections are applied for or requested.

"***Project***" is defined in Recital D.

"***Project Approvals***" means the Existing Approvals and, when and as approved in accordance with the terms of this Agreement, the Subsequent Approvals.

"***Property***" is defined in Recital C.

"***Subdivision Map Act***" means California Government Code sections 66410 through 66499.58, as it may be amended from time to time.

"***Subsequent Approvals***" is defined in Section 8.1.

"***Term***" is defined in Section 3.2.1.

ARTICLE 2.
LAFCO CONDITION; REPRESENTATIONS AND WARRANTIES

2.1 LAFCO Annexation. The Parties hereby acknowledge that pursuant to Government Code subsection 65865(b), this Agreement shall not become operative unless and until the Property is annexed to the City; provided, however, that the Parties' obligations in this Section 2.1 shall be effective and binding on the Parties immediately upon the Effective Date. The Parties agree to cooperate diligently and in good faith to submit an annexation application to LAFCO as soon as practicable following the Effective Date. The Parties further agree that this Agreement shall automatically terminate if the Annexation Proceedings have not been successfully completed on or before the Annexation Deadline (defined below), and as a result of such termination this Agreement shall be entirely null and void. Subject to potential extension as provided herein, the "**Annexation Deadline**" shall be December 31, 2022. The Annexation Deadline shall be subject to automatic extension in the event of Litigation Challenge as provided in Section 15.4.2 and may also be extended by mutual agreement of the Parties, each in its sole and absolute discretion. To avoid uncertainty, the Parties acknowledge that the action which must occur to successfully complete the Annexation Proceedings by the Annexation Deadline is issuance of the Certificate of Completion by LAFCO. The date upon which LAFCO issues such Certificate of Completion shall be the "**Annexation Date**". In the event this Agreement is terminated or deemed terminated as a result of the inability or failure to successfully complete the Annexation Proceedings by the Annexation Deadline then, upon request by either Party, City and Developer shall execute, acknowledge and record in the Official Records a memorandum of termination memorializing the termination of this Agreement.

2.2 City Representations and Warranties. City represents and warrants to Developer that:

2.2.1 Corporate Formation and Powers. City is a municipal corporation, and has all necessary powers under the laws of the State of California to enter into and perform the undertakings and obligations of City under this Agreement.

2.2.2 Duly Authorized. The execution and delivery of this Agreement and the performance of the obligations of City hereunder have been duly authorized by all necessary City Council action and all necessary approvals have been obtained.

2.2.3 Valid Obligation. This Agreement is a valid obligation of City and is enforceable in accordance with its terms.

The foregoing representations and warranties are made as of the Agreement Date. During the Term of this Agreement, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.2 not to be true, immediately give written notice of such fact or condition to Developer.

2.3 Developer Representations and Warranties. Developer represents and warrants to City that:

2.3.1 Company Formation and Powers. Developer is duly organized, validly existing and in good standing under the laws of the State of California and is authorized to conduct business in California and has all necessary powers under the laws of the State of California to own property and in all other respects enter into and perform the undertakings and obligations of Developer under this Agreement.

2.3.2 Duly Authorized. The execution and delivery of this Agreement and the performance of the obligations of Developer hereunder have been duly authorized by all necessary corporate, partnership or company action and all necessary shareholder, member or partner approvals, as applicable, have been obtained.

2.3.3 Valid Obligation. This Agreement is a valid obligation of Developer and is enforceable in accordance with its terms.

2.3.4 Developer's Property Interest. Developer has a legal or equitable interest in each of the parcels comprising the Property.

2.3.5 No Bankruptcy. Developer has not (a) made a general assignment for the benefit of creditors; (b) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Developer's creditors; (c) suffered the appointment of a receiver to take possession of all, or substantially all, of Developer's assets; (d) suffered the attachment or other judicial seizure of all, or substantially all, of Developer's assets; or (e) admitted in writing its inability to pay its debts as they come due.

The foregoing representations and warranties are made as of the Agreement Date. During the Term of this Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this 2.3 not to be true, immediately give written notice of such fact or condition to City.

ARTICLE 3.
EFFECTIVE DATE AND TERM

3.1 Effective Date. The Effective Date of this Agreement ("**Effective Date**") shall be the later of (a) the date that is thirty (30) days after the date the Enacting Ordinance is adopted, or (b) the date this Agreement is fully executed by the Parties. Said date shall function as the Effective Date for purposes of this Agreement even if, as anticipated by the Parties, the Annexation Date occurs later. The Parties acknowledge that section 65868.5 of the Development Agreement Statute requires that this Agreement be recorded with the County Recorder no later than ten (10) days after the City enters into this Agreement, and that the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all permitted successors in interest to the Parties to this Agreement. The City Clerk shall cause such recordation.

3.2 Term.

3.2.1 Initial Term of Agreement. Subject to extension for Litigation Delay as provided in Section 15.4.2 below, the "**Initial Term**" of this Agreement shall commence on the Annexation Date and shall expire on the tenth (10^{th}) anniversary of the Annexation Date, unless extended or earlier terminated as provided herein. As used herein "**Term**" means the Initial Term, plus any Extension Term (defined below).

3.2.2 Extension of Initial Term. The Initial Term of this Agreement may be extended by mutual written agreement of the Parties from the date of expiration of the Initial Term until the date which is five (5) years following the expiration of the Initial Term ("**Extension Term**"), provided that at the end of the Initial Term: (a) Developer is not, at the time, in Default of any of its obligations hereunder following notice and expiration of applicable cure periods; and (b) the applicable Developer warranties and representations in Section 2.3 above continue to be true and correct. Following the expiration of the Term, or the earlier completion of development of the Project and satisfaction of all of Developer's obligations in connection therewith, this Agreement shall be deemed terminated and of no further force and effect.

3.2.3 Memorandum of Extension. If the Extension Term is granted, City and Developer agree to execute, acknowledge and record in the Official Records of San Joaquin County a memorandum evidencing approval of the Extension Term.

ARTICLE 4.
DEVELOPMENT RIGHTS; APPLICABLE LAWS

4.1 Vested Rights. The Property is hereby made subject to the provisions of this Agreement. Developer shall have the vested right to develop the Property in accordance with and subject to the Existing Approvals, the Subsequent Approvals, Applicable Law and this Agreement, which shall control the permitted uses, density and intensity of use of the Property, rate of development, and the maximum height (as amended by this Agreement) and size of buildings on the Property.

4.2 Applicable City Regulations. City and Developer acknowledge and agree that, per the Development Agreement Statute, City is restricted in its authority to limit its police power by contract and that the particular limitations, reservations and exceptions set forth in this Agreement are intended to reserve to City those selected police powers that cannot be so limited. Notwithstanding the foregoing reservations and exceptions, it is the intent of City and Developer that this Agreement be construed to provide Developer with rights afforded by law, including but not limited to, the Development Agreement Statute. Therefore, the laws, rules, regulations, official policies, standards and specifications of City applicable to the development of the Property and Project shall be, collectively, the following "**Applicable City Regulations**":

4.2.1 Project Approvals and Agreement. Those rules, regulations, official policies, standards and specifications of the City set forth in the Project Approvals and this Agreement, including without limitation the right to construct structures of up to one hundred (100) feet tall on the Property;

4.2.2 City Rules as of Effective Date. With respect to matters not addressed by and not otherwise inconsistent with the Project Approvals and this Agreement, those laws, rules, regulations, official policies, standards and specifications (including City ordinances and resolutions) in force and effect on the Effective Date governing permitted uses, building locations, timing and manner of construction, densities, intensities of uses, heights (as set forth herein) and sizes, subdivisions and requirements for on- and off-site infrastructure and public improvements, including the City's zoning development standards applicable to the Project and the Property. In the event of a conflict between the City Rules described in this Section 4.2.2 and the Project Approvals or this Agreement, such conflict shall be resolved in favor of the Project Approvals or this Agreement.

4.2.3 Procedural Rules. New City Laws that relate to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure imposed at any time, provided such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties.

4.2.4 Building Codes. New City Laws that revise City's uniform construction codes, including City's building code, plumbing code, mechanical code, electrical code, fire code, grading code and other uniform construction codes, as of the date of permit issuance, provided, that such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

4.2.5 Public Health and Safety. New City Laws that are necessary to protect physical health and safety of the public; provided, that such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

4.2.6 New City Laws Not in Conflict. New City Laws that do not materially interfere with Developer's vested rights under this Agreement or the Project Approvals;

4.2.7 New City Laws Mandated by Changes in Applicable Law. New City Laws mandated by Changes in Applicable Law as provided in Section 4.5 below; and

4.2.8 Other New City Laws. New City Laws that do not apply to the Property and/or the Project due to the limitations set forth above, but which the Parties mutually agree in writing shall be incorporated into the Applicable City Regulations.

4.3 Life of Project Approvals. The term of any and all Project Approvals shall automatically be extended for the longer of the Term of this Agreement or the term otherwise applicable to such Project Approvals. Without limiting the generality of the foregoing, pursuant to the Subdivision Map Act, any vesting or tentative maps heretofore or hereafter approved in connection with development of the Project or the Property shall be extended for the Term (and may be subject to other extensions provided under the Subdivision Map Act). In the event that this Agreement is terminated prior to the expiration of the Term, the term of any Project Approval and the vesting period for any subdivision map approved as a Project Approval shall be the term otherwise applicable to the approval, which shall commence to run on the date that the Project Approval was issued. If upon expiration or earlier termination of this Agreement and the Project Approvals, Developer has not developed the entirety of the Property consistent with this Agreement and the Project Approvals, then the City Council, in its discretion, at any time may change the underlying and use designations or entitlements applicable to the parcels comprising such Property consistent with all Applicable Laws and procedures.

4.4 Timing of Development. City and Developer acknowledge that Developer cannot at this time predict what portions of the Project will be included within any phase of the Project, when or the rate at which the phases will be developed or the order in which each phase will be developed. Such decisions can depend upon numerous factors that are not within the control of Developer, such as market orientation and demand, interest rates, absorption rates of residential units, availability of financing and other similar factors. In particular, and not in any limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. The Town of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development prevailing over such parties' agreement, it is the desire to avoid that result by acknowledging that, except as otherwise provided for in this Agreement, Developer's vested rights under this Agreement include the right to develop the Property and the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its discretion, subject to the terms, requirements and conditions of the Existing Approvals and this Agreement, including provisions addressing required phasing of on- and off-site public improvements.

4.5 Changes in Applicable Law. As provided in Section 65869.5 of the Development Agreement Law, this Agreement shall not preclude the applicability to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by (i) changes in State or Federal laws or (ii) any regional governmental agency that, due to the operation of State law (and not the act of City through a memorandum of understanding, joint exercise of powers authority, or otherwise that is undertaken or entered into following the Effective Date) ("**Changes in Applicable Law**"). In the event Changes in Applicable Law prevent or preclude compliance with one or more provisions of this Agreement, the Parties shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in Applicable Law. Following the meeting between the

Parties, the provisions of this Agreement may, to the extent legally feasible, and upon mutual agreement of the Parties, be modified or suspended, but only to the minimum extent necessary to comply with such Changes in Applicable Law. In such event, this Agreement together with any required modifications shall continue in full force and effect. Nothing in this Agreement shall preclude Developer from contesting by any available means (including administrative or judicial proceedings) such Changes in Applicable Law or their applicability to the Project.

ARTICLE 5.
CITY FEES AND FEE CREDITS

5.1 Impact Fees

For the period commencing on the Annexation Date and continuing until the 10th anniversary of the Annexation Date ("**Impact Fee Lock Period**"), Developer shall pay when due any and all PFF Impact Fees imposed by City at the time of the Annexation Date in accordance with the current City PFF Impact Fee Rate Table provided in this Section below:

CITY PFF IMPACT FEE RATE TABLE

Public Facilities Fee Name	**Warehouse/Low Density**	**High Cube Distribution (Building over 500ksf)**
Agricultural Mitigation (Rate Per Net Parcel Area within Pay Zone Area. Note: May acquire the agricultural easement in lieu of paying fee)	$10,494.00	$10,494.00
Air Quality (Rate Per 1,000 sq.ft.)	$405	$405
City Office Space (Rate Per 1,000 sq.ft.)	$25.50	$25.50
Community Recreation Center (Rate Per 1,000 sq.ft.)	$23.25	$23.25
Fire Station (Rate Per 1,000 sq.ft.)	$54.00	$54.00
Libraries (Rate Per 1,000 sq.ft.)	$56.00	$56.00
Police (Rate Per 1,000 sq.ft.)	$62.00	$62.00
Street Improvement (Rate Per 1,000 sq.ft.)	$931.50	$390.17
Traffic Signal Fee (Rate Per 1,000 sq.ft.)	$108	$108
Surface Water (Rate Per square foot floor area divided by 0.60)	$0.228	$0.228

All City PFF Impact Fees are subject to a 3.5% Administrative Fee at the time of fee collection. On the first anniversary of the Annexation Date and every twelve (12) months thereafter until expiration of the Impact Fee Lock Period, all City PFF Impact Fee Rates are subject to a two percent (2%) inflationary increase adjustment. Developer agrees that City shall not be bound by the requirements of the Mitigation Fee Act (Government Code § 66000 *et seq*.) with respect to such Impact Fees. Developer hereby further waives and releases any claims it may have to challenge the legality of the imposition, use or expenditure of the Impact Fees collected by City during the Impact Fee Lock Period on the grounds that City's imposition, use or expenditure of such fees violates one or more requirements or limitations imposed by the Mitigation Fee Act or any other provision of Applicable Law.

Following expiration of the Impact Fee Lock Period, City may charge and, subject to Developer's right to pay under protest and pursue a challenge in law or equity to any new or increased Impact Fees, Developer shall pay any and all Impact Fees imposed by City, including new Impact Fees adopted after the Annexation Date; provided, however, City shall only require Developer to pay new Impact Fees (including increases in existing Impact Fees) that are uniformly applied by City to all substantially similar types of development projects and properties. To the extent Developer has earned PFF Credits for completed public improvements, City shall apply such accrued PFF Credits toward PFF Impact Fees payable by Developer until such PFF Credits are exhausted. Except as explicitly set forth in this Agreement, the application and administration of PFF Impact Fees to and for the Property shall be as set forth in the normally applicable requirements of the Stockton Municipal Code.

5.2 **Other Applicable City Fees**. Except as explicitly excluded by this Agreement, City may charge, and Developer agrees to pay, all Processing Fees, Connection Fees, and all pass-through fees collected by the City on behalf of other outside agencies, based on fee rates established by said outside agencies that are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties.

5.3 **Consultant Fees**. In addition to charging the foregoing Processing Fees, City, in its reasonable discretion and following consultation with Developer, may contract with one or more outside inspectors, engineers or consultants to perform all or any portion of the monitoring, inspection, testing and evaluation services to be performed in connection with construction and development of the Project ("**Consultant Fees**"). Developer shall pay to City, within thirty (30) days following City's written demand therefor and the City's submission of invoices, the full amount of all Consultant Fees, plus a fifteen percent (15%) administration charge. The Consultant Fees, together with the associated administrative charge, shall be in addition to, and not in lieu of, the Processing Fees; provided, however, City agrees not to double-charge Developer (through the imposition of both a Processing Fee and Consultant Fee) for any individual monitoring, inspection, testing or evaluation service.

ARTICLE 6.
CFD FOR FIRE STATION FACILITY

6.1 CFD Formation. The Parties shall cooperate in good faith to establish a Community Facilities District consistent with the provisions of Section 7.2.2 of this Agreement, pursuant to the Mello-Roos Act and the City's Capital Financing and Debt Management Policy for the design and construction of a fire station to provide fire protection services to the Property and surrounding areas within the City of Stockton and its sphere of influence, consistent with this Agreement, the Project Approvals and Applicable Law.

6.2 Funding for CFD Formation. Developer shall fund the analysis and preparation of a Rate and Method of Apportionment ("**RMA**") and formation documents for a Community Facilities District (South Stockton Industrial/Commercial Services and Maintenance District) (the "**CFD**") consistent with the provisions of Section 7.2.2, in an amount not to exceed one hundred thousand dollars ($100,000.00).

6.3 Developer's Cooperation and Consent. Regarding formation of a Community Facilities District consistent with the provisions of Section 7.2.2 of this Agreement, Developer will (i) execute all necessary petitions and ballots and waive all election waiting and protest periods at City's request; (ii) support City's adoption of local policies related to use of said Community Facilities District financing; (iii) allow special tax liens to encumber the Property to accomplish the goals of the Community Facilities District; (iv) be deemed to have irrevocably consented to formation of the Community Facilities District, issuance of Community Facilities District bonds, and the imposition of a special tax against the Property at rates and pursuant to a method of apportionment appropriate to fund the debt service on any Community Facilities District bonds sold to finance the construction of the fire station; and (v) agree not to protest or object to formation of the Community Facilities District or levy of an appropriate special tax consistent therewith.

ARTICLE 7.
COMPLIANCE WITH LAWS; COMMUNITY BENEFITS

7.1 Compliance with Applicable Law. Developer, at its sole cost and expense, shall comply with requirements of, and obtain all permits and approvals required by Applicable Law, including requirements of regional, State and Federal agencies having jurisdiction over the Project.

7.2 Community Benefits. The Project will afford the City the following public benefits, which could not be secured from Developer in the absence of the Project and this Agreement:

7.2.1 The Project will generate short-term construction jobs related to the development of the Property and the Project, including Property grading, infrastructure and building construction, and long-term employment-generating uses in the industrial and office components of the Project, consistent with City objectives for creation of employment opportunities for residents.

7.2.2 Not later than thirty (30) days following the Effective Date of this Agreement, Developer shall pay to City $60,000 to fund the analysis and preparation of a Rate and Method of Apportionment ("**RMA**") and formation documents for a Community Facilities District (South Stockton Industrial/Commercial Services and Maintenance District) (the "**CFD**"). Should the costs of preparing the RMA and formation documents exceed $60,000, Developer shall provide additional funding, but the total of Developer's funding for the RMA and the formation documents (including Developer's $60,000 initial funding payment) shall not exceed $100,000.

The primary purposes of the CFD are to provide funding for the construction, staffing, equipment, and maintenance for a fire station with a police substation office (the "**Station**"). The current estimated construction cost for the Station is $10 million, and the total of the currently estimated annual staffing, equipment, and maintenance costs for the Station is $3.0 million ($2.2 million for staffing and $0.8 million for equipment and maintenance costs).

The annexation area for the CFD will include all currently unapproved commercial and industrial development and parcels within the service area of the Station, both within City limits and that may be annexed into City limits in the future. The CFD will be formed to levy a facilities special tax with a fixed duration, and a services special tax that will continue in perpetuity.

As a condition of the Project approval, Developer shall cooperate with City in the formation of the CFD, based on the RMA and formation documents and on the terms and conditions described above, and in compliance with the requirements of the Mello – Roos Community Facilities Act of 1982 (Government Code §§ 53311 et seq.), including without limitation affirmative votes and the recordation of a Notice of Special Tax Lien.

7.2.3 The Project will implement the City's General Plan land use and economic development policies designed to attract tax-generating businesses that support the economic diversity of the City (General Plan Policy LU-4.2).

7.2.4 Developer will guarantee certain levels of funding for the Station. If on the fifth anniversary of the Annexation Date the CFD has not collected $1,500,000 in special taxes from all parcels within the CFD, then Developer is obligated to make a payment to the CFD, that payment amount being $1,500,000 less any special taxes already collected by the fifth anniversary of the Annexation Date. Additionally, if on the tenth anniversary of the Annexation Date the CFD has not collected $3,000,000 in special taxes from all parcels in the CFD, then Developer is obligated to make a payment to the CFD, that payment amount being $3,000,000 less all special taxes already collected by the tenth anniversary of the Annexation Date and less any payments previously made by Developer pursuant to this Section 7.2.4. Both the fifth and tenth anniversary payments are separate, independently occurring, obligations. Payments, if obligated, become due 30 days after the respective anniversary date. If the CFD has not been formed on the date that a Developer payment becomes due under this Section 7.2.4, then Developer shall make the payment or payments to the City.

ARTICLE 8.
COOPERATION AND IMPLEMENTATION

8.1 Subsequent Approvals. Certain subsequent land use approvals, entitlements, and permits other than the Existing Approvals (collectively, "**Subsequent Approvals**"), will be necessary or desirable for implementation of the Project. The Subsequent Approvals may include the following ministerial and discretionary applications and permits: amendments of the Existing Approvals, grading permits, building permits, sewer and water connection permits, certificates of occupancy, lot line adjustments, site plans, development plans, land use plans, building plans and specifications, parcel maps and/or subdivision maps, conditional use permits, design review, demolition permits, improvement agreements, encroachment permits, and any amendments to, or repealing of, any of the foregoing. In connection with any Subsequent Approval, the City shall exercise its discretion in accordance with Applicable Law, the Project Approvals and, as provided by this Agreement, including the reservations of authority set forth herein.

8.2 Processing Applications for Subsequent Approvals.

8.2.1 Processing Consistent with Vested Rights. With the Existing Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Applications for Subsequent Ministerial Approvals that are consistent with this Agreement and the Existing Approvals shall be processed and considered in a manner consistent with the vested rights granted by this Agreement and shall be deemed to be tools to implement those final policy decisions, and shall be approved by City so long as they are consistent with this Agreement and the Existing Approvals. While City expressly reserves its discretion with respect to all Subsequent Discretionary Approvals, City agrees that it shall not use its authority in considering any application for a Subsequent Discretionary Approval to change the policy decisions reflected by the Existing Approvals, including changing the permitted uses of the Property or the permitted rate of development, or otherwise to prevent development of the Project as set forth in the Existing Approvals.

8.2.2 City Discretion. Nothing herein shall limit the ability of City to require the necessary reports, analysis or studies to assist in determining that the requested Subsequent Ministerial Approval is consistent with this Agreement and the Existing Approvals. If the City determines that an application for a Subsequent Ministerial Approval is not consistent with this Agreement or the Existing Approvals and should be processed as an application for a Subsequent Discretionary Approval rather than a Subsequent Ministerial Approval, the City shall specify in writing the reasons for such determination and may propose a modification which would be processed as a Subsequent Ministerial Approval. Developer shall then either modify the application to conform to this Agreement and the Existing Approvals, as the case may be, or the City shall process the application as an application for a Subsequent Discretionary Approval.

8.3 Mitigation Measures. Developer agrees to and shall comply with the mitigation measures attached hereto as Exhibit C and with all applicable mitigation measures in the MIP EIR, as described in the Mitigation Monitoring/Reporting Program approved by the City on December 6, 2022. Developer shall include in all tenant lease agreements for the project site a provision requiring the tenant/lessee to comply with all applicable requirements of the measures in this Section 8.3, a copy of which shall be attached to each tenant/lease agreement.

8.3.1 Prohibition on Cold Storage and Transport Refrigeration Units. Cold storage facilities are prohibited on the site and transport refrigeration units (TRUs) may not enter the site. Any future proposal to construct cold storage facilities on the site or to allow TRUs to enter the site shall require an amendment to this Agreement that shall be deemed and processed as a Major Modification to this Agreement, an application to the City for a conditional use permit, and be subject to review under the California Environmental Quality Act and Stockton Municipal Code Chapter 16.168.

8.3.2 Additional Construction Requirements. Construction plans shall include a 10-foot by 65-foot landscaped berm along the 623-lineal foot and 493-lineal foot portions of the west line of the site, located north and south of Marfargoa Road, as shown on Exhibit B. Landscaping of the berm shall include fast-growing evergreen trees to provide maximum visual screening, as determined by a qualified landscape architect. Construction plans shall also include a 10-foot wall along the 881-lineal foot and 1,316-lineal foot portions of the west line of the site, located north and south of Clark Drive, as shown on Exhibit B. Construction plans shall also identify a 60-foot "no truck" zone along the entire length of the west line of the site, as shown on Exhibit B. Construction plans shall also identify and prohibit building construction within a setback area located a minimum of 300 feet from the property line of residential properties along Marfargoa Road and Clark Drive, as shown on Exhibit B. Notwithstanding the foregoing, the stairwells of ancillary/accessory buildings may encroach into the 300-foot setback area.

8.3.3 Additional Signage Requirements. The City shall coordinate with the County to develop and install signage prohibiting non-emergency vehicle access to the project site from Clark Drive or Marfargoa Road. Developer will be responsible for the costs of the signage determined to be appropriate by the City and the County.

8.3.4 Additional Financial Contribution. Prior to the issuance of a grading permit, Developer will provide $200,000 to a non-profit organization serving disadvantaged residents of San Joaquin County approved by the City's Community Development Director, to fund a program to reduce exposure to emissions and noise from vehicle and truck traffic and industrial operations, for residents located with within the geographic area bounded by Munford Avenue, Mariposa Road, Little John's Creek and the SR99 Frontage Road. The program may fund or reimburse home air filtration systems, HVAC modifications, window replacements, weather stripping, or similar improvements; publicly available electric vehicle charging station(s); and/or air quality monitoring sensors with publicly available real time data (such as PurpleAir censors).

8.4 Other Agency Subsequent Approvals; Authority of City. Other public agencies not within the control of City may possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies. Nevertheless, City shall be bound by, and shall abide by, its covenants and obligations under this Agreement in all respects when dealing with any such agency regarding the Property. City shall cooperate with Developer, to the extent appropriate and as permitted by law, in Developer's efforts to obtain, as may be required, Other Agency Subsequent Approvals.

8.5 **Subsequent CEQA Review**. The City has certified the MIP EIR, which evaluates the environmental effects of full development, operation and use of the Project, and has imposed all feasible mitigation measures to reduce the significant environmental effects of the Project. The Parties understand and agree that the MIP EIR is intended to be used not only in connection with the Existing Approvals, but also, to the extent legally permitted, in connection with any necessary Subsequent Approvals.

ARTICLE 9.
THIRD PARTY LEGAL CHALLENGE, IMDEMNITY AND INSURANCE

9.1 **Cooperation in the Event of Legal Challenge**.

9.1.1 Cooperation by Parties. City and Developer shall cooperate in the defense of any court action or proceeding instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement or the Project Approvals ("**Litigation Challenge**"), and the Parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information.

9.1.2 Potential Joint Defense. If Developer desires to contest or defend a Litigation Challenge and the Parties determine to undertake a joint defense or contest of such Litigation Challenge: i) the Parties will cooperate in the joint defense or contest of such challenge; ii) Developer shall select the attorney(s) to undertake such defense, subject to City's approval, which shall not be unreasonably withheld; iii) Developer will take the lead role in defending such Litigation Challenge; iv) upon Developer's request, City shall enter into a joint defense agreement in a form reasonably acceptable to the City Attorney to facilitate the sharing of materials and strategies related to the defense of such Litigation Challenge without waiver of attorney client privilege; v) Developer shall reimburse City, within forty-five (45) days following City's written demand therefor, which may be made from time to time during the course of such litigation, all reasonable costs incurred by City in connection with the Litigation Challenge.

9.1.3 Potential Separate Defense. If Developer desires to contest or defend any Litigation Challenge and if at any time one or both of the Parties determine that they require separate representation: i) Developer shall take the lead role in defending such Litigation Challenge; ii) Developer shall be separately represented by legal counsel of its choice; iii) in any action or proceeding, City shall be separately represented by the legal counsel of its choice, selected after consultation with Developer (including consultation as to the scope and budget for such separate representation), with reasonable costs of such representation to be paid by Developer; iv) Developer shall reimburse City, within forty-five (45) days following City's written demand therefor, which may be made from time to time during the course of such litigation, all reasonable costs incurred by City in connection with the Litigation Challenge; v) prior to exceeding any previously established budget for the separate City legal representation, City shall confer with and obtain Developer's input on any proposed budget augmentation or scope revision; and vi) upon Developer's request, City shall enter into a joint defense agreement in a form reasonably acceptable to the City Attorney to facilitate the sharing of materials and strategies related to the defense of such Litigation Challenge without waiver of attorney client privilege.

9.1.4 Cost Awards and Proposed Settlements. Developer shall indemnify, defend, and hold harmless City Parties from and against any damages, attorneys' fees or cost awards, assessed or awarded against City by way of judgment, settlement, or stipulation entered in connection with a Litigation Challenge. Any proposed settlement of a Litigation Challenge by a Party shall be subject to the approval of the other Party, such approval not to be unreasonably withheld, conditioned or delayed. If the terms of the proposed settlement would constitute an amendment or modification of this Agreement or any Project Approvals, the settlement shall not become effective unless such amendment or modification is approved by City in accordance with Applicable Law, and the City reserves its full legislative discretion with respect thereto.

9.2 **Indemnity**. Developer shall indemnify, at City's request defend, and hold the City Parties harmless from and against any and all Claims arising directly as a result of Developer's acts, omissions, negligence or willful misconduct in connection with Developer's performance under this Agreement or arising directly as a result of Developer's (or Developer's contractors, subcontractors, agents, or employees) work performed in connection with the development of the Property or the Project, including without limitation, Claims involving bodily injury, death or property damage. Developer's indemnification obligations set forth in this Section shall not apply to the extent any such Claims are the result of the negligence or willful misconduct of any City Party.

9.3 **Insurance**. Prior to commencement of construction of the Project, Developer shall procure and maintain, or cause its contractor(s) to procure and maintain, until the earlier of (a) the expiration of the Term; or (b) the completion of the Project, a commercial general liability policy in an amount not less than Five Million Dollars ($5,000,000) combined single limit, including contractual liability together with a comprehensive automobile liability policy in the amount of Two Million Dollars ($2,000,000), combined single limit. Such policy or policies shall be written on an occurrence form, so long as such form of policy is then commonly available in the commercial insurance marketplace and shall be placed with insurers with a current A.M. Best's rating of no less than A-: VII or a rating otherwise approved by the City in its sole discretion. If Developer desires to satisfy the foregoing insurance requirements through its contractor, then Developer shall require in its construction contract with the general contractor that said general contractor comply with all of the requirements of this Section 9.3. Developer or its contractor shall furnish at City's request appropriate certificate(s) of insurance evidencing the insurance coverage required hereunder, and City Parties shall be named as additional insured parties in such policies. The certificate of insurance shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination ten (10) days advance notice in the case of cancellation for nonpayment of premiums) where the insurance carrier provides such notice to the Developer. Coverage provided hereunder by Developer, or its contractor shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of City.

ARTICLE 10.
ANNUAL REVIEW

10.1 Annual Review. As required by California Government Code Section 65865.1 and pursuant to Section 16.128.110 of the Development Agreement Ordinance, the City of Stockton Planning Commission shall review this Agreement and all actions taken pursuant to the terms of this Agreement with respect to the development of the Project every twelve (12) months at a duly noticed public hearing to determine good faith compliance with this Agreement ("**Annual Review**"). Specifically, the Annual Review shall be conducted for the purposes of determining good faith compliance with the terms and/or conditions of this Agreement. Each Annual Review shall also document the status of Project development. In the event the Planning Commission recommends modification or termination of this Agreement in connection with such Annual Review, the action to effectuate such modification or termination must be taken by City Council.

10.2 Conduct of Annual Review. The annual review shall be conducted as provided in this Section 10.2. By December 1st of each year, Developer shall provide documentation of its good faith compliance with this Agreement during the calendar year, including a completed annual review form in a form reasonably specified by City from time to time. The information required to be provided as part of the annual review may include, among other items, the status of Project construction and the status of building permit issuances. If the City Manager finds good faith compliance by Developer with the terms of this Agreement, Developer shall be notified in writing and the review for that period shall be concluded. If the City Manager is not satisfied that Developer is performing in accordance with the terms and conditions of this Agreement, the City Manager shall prepare a written report specifying why the Developer may not be in good faith compliance with this Agreement, refer the matter to the City Council, and notify Developer in writing at least fifteen (15) business days in advance of the time at which the matter will be considered by the City Council. This notice shall include the time and place of the City Council's public hearing to evaluate good faith compliance with this Agreement, a copy of the City Manager's report and recommendations, if any, and any other information reasonably necessary to inform Developer of the nature of the proceeding. The City Council shall conduct a public hearing at which Developer must submit evidence that it has complied in good faith with the terms and conditions of this Agreement. Developer shall be given an opportunity to be heard at the hearing. The findings of the City Council on whether Developer has complied with this Agreement for the period under review shall be based upon substantial evidence in the record. If the City Council determines, based upon substantial evidence, that Developer has complied in good faith with the terms and conditions of this Agreement, the review for that period shall be concluded. If the City Council determines, based upon substantial evidence in the record, that Developer has not complied in good faith with the terms and conditions of this Agreement, or there are significant questions as to whether Developer has complied with the terms and conditions of this Agreement, the City Council, at its option, may continue the hearing and may notify Developer of the City's intent to meet and confer with Developer within thirty (30) days of such determination, prior to taking further action. Following such meeting, the City Council shall resume the hearing in order to further consider the matter and to make a determination regarding Developer's good faith compliance with the terms and conditions of this Agreement. In the event City determines Developer is not in good faith compliance with the terms and conditions of this

Agreement, City may give Developer a written Notice of Breach, in which case the provisions of Article 14, below, shall apply.

10.3 Failure to Conduct Annual Review. Failure of City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor shall Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

ARTICLE 11.
MORTGAGEE PROTECTION

11.1 Mortgagee Protection. Neither entering into this Agreement nor a breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value. Nothing in this Agreement shall prevent or limit Developer, at its sole discretion, from granting one or more Mortgages encumbering all or a portion of Developer's interest in the Property or portion thereof or improvement thereon as security for one or more loans or other financing, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of Mortgagee who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Developer shall provide the City with a copy of the deed of trust or mortgage within ten (10) days after its recording in the official records of San Joaquin County; provided, however, that Developer's failure to provide such document shall not affect any Mortgage, including without limitation, the validity, priority or enforceability of such Mortgage.

11.2 Mortgagee Not Obligated. No Mortgagee (including one who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise) shall have any obligation to construct or complete construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with this Agreement and the other Project Approvals nor to construct any improvements thereon or institute any uses other than those uses or improvements provided for or authorized by this Agreement, or otherwise under the Project Approvals. Except as otherwise provided in this Section 11.2, all of the terms and conditions contained in this Agreement and the other Project Approvals shall be binding upon and effective against and shall run to the benefit of any person or entity, including any Mortgagee, who acquires title or possession to the Property, or any portion thereof.

11.3 Notice of Default to Mortgagee. If City receives a notice from a Mortgagee requesting a copy of any Notice of Default given Developer hereunder and specifying the address for service thereof, then City agrees to use its diligent, good faith efforts to deliver to such Mortgagee, concurrently with service thereon to Developer, any Notice of Default given to Developer. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of Default claimed or the areas of noncompliance set forth in City's Notice of Default. If a Mortgagee is required to obtain possession in order to cure any Default, the time to cure shall be tolled so long as the Mortgagee is attempting to obtain possession, including by appointment of a receiver or foreclosure, but in

no event may this period exceed 120 days from the date the City delivers the Notice of Default to Developer.

11.4 No Supersedure. Nothing in this Article 11 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision or public improvement agreement or other obligation incurred with respect to the Project outside this Agreement, nor shall any provision of this Article 11 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 11.3.

ARTICLE 12.
AMENDMENT OF AGREEMENT AND PROJECT APPROVALS

12.1 Amendment by Written Consent. Except as otherwise expressly provided herein (including Article 10 relating to City's annual review and Article 14 relating to termination in the event of a breach), this Agreement may be terminated, modified or amended only by mutual written consent of the Parties hereto or their successors in interest or assignees and in accordance with the provisions of Government Code sections 65967, 65867.5 and 65868, and City Municipal Code Section 16.128.

12.2 Major Modifications to Agreement. Any amendment to this Agreement which affects or relates to (a) the Term; (b) permitted uses of the Property; (c) provisions for the reservation or dedication of land; (d) conditions, terms restrictions or requirements for subsequent discretionary actions; (e) the type, location, density and intensity of the use of the Property or the maximum height or size of proposed buildings; or (f) providing of community benefits by Developer, shall be deemed a "**Major Modification**" and shall require giving of notice and a public hearing before the Planning Commission and City Council. In addition, any modifications or changes to the County-requested Project modifications described in Exhibit B hereto shall be deemed a Major Modification for which the County shall be given notice in accordance with Stockton Municipal Code section 16.128.120, and an opportunity to comment thereon. Any amendment which is not a Major Modification shall be deemed a "**Minor Modification**" and shall not, except to the extent otherwise required by Applicable Law, require notice of public hearing before the Parties may execute an amendment hereto. The City Manager or his or her designee shall have the authority to determine if an amendment is a Major Modification or a Minor Modification.

12.3 Minor Modifications. The City Manager or his or her designee shall have the authority to review and approve amendments to this Agreement provided that such amendments are not Major Modifications. No public notice shall be required for a Minor Modification.

12.4 Requirement for Writing. No modification, amendment or other change to this Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing which refers expressly to this Agreement and is signed by duly authorized representatives of both City and Developer.

ARTICLE 13.
ASSIGNMENT

13.1 General. Because of the necessity to coordinate development of the entirety

of the Property pursuant to plans for the Project, certain restrictions on the right of Developer to assign or transfer its interest under this Agreement with respect to the Property, or any portion thereof, are necessary in order to assure the achievement of the goals, objectives and public benefits of the Project and this Agreement. Developer agrees to and accepts the restrictions set forth in this Article 13 as reasonable and as a material inducement to City to enter into this Agreement.

13.2 Notice of Assignment. Developer shall provide the City with written notice of any proposed transfer or assignment of Developer's rights or obligations hereunder (each, an "**Assignment**") at least thirty (30) days prior to such Assignment and request City's consent to such Assignment, as provided herein. Each such notice of proposed Assignment shall be accompanied by evidence of the corporate, limited liability company or other legal entity's existence and good standing and a proposed form of Assignee's assumption of Developer's obligations hereunder substantially in the form of Exhibit D, which would be recorded in the Official Records of San Joaquin County concurrent with the transfer. Developer shall pay the actual costs borne by City in connection with its review of the proposed Assignment, including the costs incurred by the City Attorney's Office.

13.3 Assignment Processing. Notwithstanding any other limitations in this Article 13, Developer may, upon provision of Notice, execution of an agreement documenting such Assignment in accordance with Section 13.2, and provision of evidence of entity formation and good standing, at any time, assign its rights and obligations under this Agreement with respect to all or any portion of the Property without the consent of City to any person, partnership, joint venture, firm, company, corporation or other entity (any of the foregoing, an "**Assignee**") acquiring all or a portion of the Property.

13.4 Release of Transferring Developer. Upon a transfer of all or a portion of the Property, Developer shall be released from any further liability or obligations hereunder with respect to the portion so transferred and the Assignee shall be deemed to be the Developer under this Agreement with respect to such transferred Property as specified in the assignment and assumption agreement provided: (i) neither Developer nor Assignee is in default under this Agreement at the time of such transfer; (ii) Developer and Assignee have executed and acknowledged and delivered to City for recordation in the Official Records of the County an assignment and assumption agreement substantially in the form of Exhibit C attached hereto; and (iii) the Assignee has expressly assumed for the benefit of City the obligations of Developer as to the portion of the Property so transferred. No release of Developer shall be effective unless and until each of the above conditions have been met. Notwithstanding anything to the contrary contained in this Agreement, if an Assignee Defaults under this Agreement, such Default shall not constitute a Default by Developer (or any other Assignee) with respect to any other portion of the Property hereunder and shall not entitle City to terminate or modify this Agreement with respect to such other portion of the Property.

13.5 Partial Assignment. Subject to the limitations set forth in this Article 13, in the event of a transfer of a portion of the Property, Developer shall have the right to assign its rights, duties and obligations under this Agreement that are applicable to the transferred portion, and retain all rights, duties and obligations applicable to the retained portions of the Property. Upon Developer's request, City, at Developer's expense, shall cooperate with Developer and any

proposed Assignee to allocate rights, duties and obligations under this Agreement and the Project Approvals between the assigned portion of the Property and the retained Property. Assignee shall succeed to the rights, duties and obligations of Developer only with respect to the parcel or parcels, or portion of the Property so purchased, transferred, ground leased or assigned, and Developer shall continue to be obligated under this Agreement with respect to any remaining portions of the Property retained by Developer and not assigned.

13.6 Successive Assignment. In the event there is more than one Assignment under the provisions of this Article 13, the provisions of this Article 13 shall apply to each successive Assignment and Assignee.

13.7 Other Permitted Transfers. The provisions in this Article 13 shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses or modifying existing easements to facilitate development of the Property consistent with the Project Approvals; (ii) encumbering the Property or any portion hereof or of the improvements thereon by a Mortgage securing financing with respect to the Property or Project; or (iii) transferring all or a portion of the Property pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a Mortgage, or to any transferee from a Mortgagee or owner of the Property upon foreclosure or after a conveyance in lieu of foreclosure.

ARTICLE 14.
DEFAULT; REMEDIES; TERMINATION

14.1 Breach and Default. Subject to Permitted Delays or by mutual consent in writing, and except as otherwise provided by this Agreement, breach of, failure, or delay by either Party to perform any term or condition of this Agreement shall constitute a "**Default**." In the event of any alleged Default of any term, condition, or obligation of this Agreement, the Party alleging such Default shall give the defaulting Party notice in writing specifying the nature of the alleged Default and the manner in which the Default may be satisfactorily cured ("**Notice of Breach**"). The defaulting Party shall cure the Default within thirty (30) days following receipt of the Notice of Breach, provided, however, if the nature of the alleged Default is non-monetary and such that it cannot reasonably be cured within such thirty (30) day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter at the earliest practicable date, shall be deemed to be a cure, provided that if the cure is not diligently prosecuted to completion, then no additional cure period shall be provided. If the alleged failure is cured within the time provided above, then no Default shall exist and the noticing Party shall take no further action to exercise any remedies available hereunder. If the alleged failure is not cured, then a Default shall exist under this Agreement and the non-defaulting Party may exercise any of the remedies available under this Agreement. Further, as provided in Section 13.6 above, following transfer of all or any portion of the Property and an assignment or a partial assignment of this Agreement to an Assignee, a Default by such Assignee under this Agreement shall not constitute a Default by Developer (or any other Assignee) and shall not entitle City to terminate or modify this Agreement with respect to any portion of the Property retained by Developer.

14.2 Withholding of Permits. In the event of a Default by Developer (where the determination of such Default has been made by the City Council based on substantial evidence presented at a noticed public hearing), City shall have the right to refuse to issue any permit or

other Subsequent Approvals to which Developer would otherwise have been entitled pursuant to this Agreement until such Default is cured. This provision is in addition to and shall not limit any actions that City may take to enforce the conditions of the Project Approvals.

14.3 Termination. In the event of a Default by a Party, the non-defaulting Party shall have the right to terminate this Agreement upon giving notice of intent to terminate pursuant to Government Code section 65868 and regulations of City implementing such section. Following notice of intent to terminate, the matter shall be scheduled for consideration and review in the manner set forth in Government Code section 65867 and City regulations implementing said section. Following consideration of the evidence presented in said review before the City Council, a Party alleging Default by the other Party may give written notice of termination of this Agreement to the other Party. Termination of this Agreement shall be subject to the provisions of Section 14.9. Where Developer is the defaulting Party and Developer has previously conveyed portions of the Property and partially assigned this Agreement to one or more third party transferees, City's right to terminate this Agreement shall be limited to those portion(s) of the Property then owned by Developer.

14.4 Specific Performance for Violation of a Condition. If City issues a Project Approval pursuant to this Agreement in reliance upon a specified condition being satisfied by Developer in the future, and if Developer then fails to satisfy such condition, City, in addition to its other rights and remedies available under public improvement agreements, performance bonds or other instruments, shall be entitled to specific performance for the purpose of causing Developer to satisfy such condition.

14.5 Legal Actions.

14.5.1 Institution of Legal Actions. In addition to any other rights or remedies and subject to the limitation of damages in Section 14.7, a Party may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof, or to obtain any other remedies consistent with the purpose of this Agreement. Any such legal action shall be brought in the Superior Court for San Joaquin County, California, except for actions that include claims in which the Federal District Court for the Eastern District of the State of California has original jurisdiction, in which case the Eastern District of the State of California shall be the proper venue.

14.5.2 Acceptance of Service of Process. In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City Clerk of City or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Developer, service of process on Developer shall be made by personal service upon Rob Mitchell, Greenlaw Development, LLC, who is an agent of Developer for service of process, or in such other manner as may be provided by law.

14.6 Rights and Remedies Are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the

same Default or any other Default by the other Party, except as otherwise expressly provided herein.

14.7 No Money Damages. In no event shall a Party, or its boards, commissions, officers, agents or employees, be liable in money damages, including without limitation, actual, consequential or punitive damages, for any Default under this Agreement. It is expressly understood and agreed that the sole legal remedy available to a Party for a breach or violation of this Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement by the other Party, or to terminate this Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Agreement including, but not limited to, obligations to pay attorneys' fees and obligations to advance monies or reimburse monies. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Agreement by the other Party.

14.8 Surviving Provisions. In the event this Agreement is terminated, neither Party shall have any further rights or obligations hereunder, except for those obligations of City and Developer set forth in Sections 9.1 and 9.2.

ARTICLE 15.
MISCELLANEOUS PROVISIONS

15.1 Incorporation of Recitals, Exhibits and Introductory Paragraph. The Recitals contained in this Agreement, the introductory paragraph preceding the Recitals, and the Exhibits attached hereto are incorporated into this Agreement as if fully set forth herein.

15.2 Covenants Binding on Successors and Assigns and Run with Land. Except as otherwise more specifically provided in this Agreement, this Agreement and all of its provisions, rights, powers standards, terms, covenants and obligations, shall be binding upon the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns, and all other persons or entities acquiring the Property, or any interest therein, and shall inure to the benefit of the Parties and their respective successors and assigns, as provided in Government Code Section 65868.5.

15.3 Notice. Any notice, demand or request which may be permitted, required or desired to be given in connection herewith shall be given in writing and directed to the City and Developer as follows:

If to the City: City Clerk
City of Stockton
425 N. El Dorado St, 1st Floor
Stockton, CA 95202
Telephone: (209) 937-8458
Email: City.Clerk@StocktonCA.gov

with copies to: City Manager
City of Stockton
425 N. El Dorado St, 2nd Floor
Stockton, CA 95202
Telephone: (209) 937-8212
Email: City.Manager@StocktonCA.gov

and: City Attorney
City of Stockton
425 N. El Dorado St, 1st Floor
Stockton, CA 95202
Telephone: (209) 937-8333
Email: City.Attorney@StocktonCA.gov

If to Developer: Greenlaw Development, LLC
Attention: Rob Mitchell
18301 Von Karman Avenue, Suite 301
Irvine, CA 92612Telephone: (949) 331-1353
Email: rob@greenlawpartners.com

with a copy to: Thia Cochran
Cochran Law Group
18301 Von Karman Avenue, Suite 301
Irvine, CA 92612
Telephone: (949) 833-9600
Email: thia@cochranlawgroup.com

Notices are deemed effective if delivered by: (a) certified mail, return receipt requested; (b) commercial courier, with delivery to be effective upon verification of receipt; or (c) email, upon actual receipt at the email addresses listed above. Any Party may change its respective address for notices by providing written notice (including email) of such change to the other Parties.

15.4 Permitted and Litigation Related Delays.

15.4.1 Permitted Delay. Performance by either Party of an obligation hereunder shall be excused during any period of "**Permitted Delay**." Permitted Delay shall mean delay beyond the reasonable control of a Party caused by (a) calamities, including without limitation earthquakes, floods, and fire; (b) civil commotion; (c) riots or terrorist acts; (d) strikes or other forms of material labor disputes; (e) shortages of materials or supplies; or (f) vandalism.

A Party's financial inability to perform or obtain financing or adverse economic conditions generally shall not be grounds for claiming a Permitted Delay. The Party claiming a Permitted Delay shall notify the other Party of its intent to claim a Permitted Delay, the specific grounds of the same and the anticipated period of the Permitted Delay within thirty (30) business days after the occurrence of the conditions which establish the grounds for the claim. If notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. The period of Permitted Delay shall last no longer than the conditions preventing performance. In no event shall any Permitted Delay extend the Term of this Agreement.

15.4.2 Litigation Delay. If, as a result of a Litigation Challenge, the Annexation Proceedings cannot be completed by the initial Annexation Deadline of two years following the Agreement Date as specified in Section 2.1 above, then the Annexation Deadline shall be extended for the period of the Litigation Challenge but in no event more than 12 months beyond the initial Annexation Deadline as specified in Section 2.1. If, following the Annexation Date, this Agreement or any of the Existing Approvals are still not Final as a result of a Litigation Challenge (a "**Litigation Delay**"), then the Initial Term of this Agreement and the time within which each Party shall be required to perform any act under this Agreement shall be extended by the period of time between the Annexation Date and the date on which the Existing Approvals and this Agreement all become Final, subject to an outside date that is 36 months after the Annexation Date, at which point there shall be no further extension of the Term as a result of any Litigation Delay, unless approved by the City Council in its sole, absolute discretion.

15.5 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15.6 Waivers. Notwithstanding any other provision in this Agreement, any failures or delays by any Party in asserting any of its rights and remedies under this Agreement shall not operate as a waiver of any such rights or remedies, or deprive any such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. A Party may specifically and expressly waive in writing any condition or breach of this Agreement by the other Party, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. Consent by one Party to any act by the other Party shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or similar acts in the future.

15.7 Construction of Agreement. All Parties have been represented by counsel in the preparation and negotiation of this Agreement and this Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement. Unless the context clearly requires otherwise, (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not

exclusive; (e) "includes" and "including" are not limiting; and (f) "days" means calendar days unless specifically provided otherwise.

15.8 Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants, or conditions of this Agreement.

15.9 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provisions, in which case any Party may terminate this Agreement by providing written notice thereof to the other Party.

15.10 Time is of the Essence. Time is of the essence of this Agreement. All references to time in this Agreement shall refer to the time in effect in the State of California.

15.11 Extension of Time Limits. The time limits set forth in this Agreement may be extended by mutual consent in writing of the Parties in accordance with the provisions of this Agreement.

15.12 Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City.

15.13 Entire Agreement. This Agreement (including all exhibits attached hereto, each of which is fully incorporated herein by reference), integrates all of the terms and conditions mentioned herein or incidental hereto, and constitutes the entire understanding of the Parties with respect to the subject matter hereof, and all prior or contemporaneous oral agreements, understandings, representations and statements, and all prior written agreements, understandings, representations, and statements are terminated and superseded by this Agreement.

15.14 Estoppel Certificate. Developer or its lender may, at any time, and from time to time, deliver written notice to the City requesting the City to certify in writing that: (a) this Agreement is in full force and effect; (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications; and (c) Developer is not in Default of the performance of its obligations, or if in Default, to describe therein the nature and extent of any such Defaults. Developer shall pay, within thirty (30) days following receipt of City's invoice, the actual costs borne by City in connection with its review of the proposed estoppel certificate, including the costs expended by the City Attorney's Office in connection therewith. The Community Development Director shall be authorized to execute any certificate requested by Developer hereunder. The form of estoppel certificate shall be in a form reasonably acceptable to the City Attorney. The Community Development Director shall execute and return such certificate within thirty (30) days following Developer's request therefor. Developer and City acknowledge that a certificate hereunder may be relied upon by tenants, assignees, investors, partners, bond counsel, underwriters, bond holders and Mortgagees. The request shall clearly indicate that failure of the City to respond within the thirty-day period will lead to a second and

final request. Failure to respond to the second and final request within fifteen (15) days of receipt thereof shall be deemed approval of the matters set forth in the estoppel certificate.

15.15 Recordation of Termination. Upon completion of performance of the Parties or termination of this Agreement, a written statement acknowledging such completion or termination shall be recorded by City in the Official Records of San Joaquin County.

15.16 City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise.

15.17 Negation of Partnership. The Parties specifically acknowledge that the Project is a private development, that no Party to this Agreement is acting as the agent of any other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Developer, the affairs of the City, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise.

15.18 No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the signatory Parties and their successors and assigns, including Mortgagees. No other person shall have any right of action based upon any provision in this Agreement.

15.19 Standard for Consents and Approvals. In cases where the written consent or approval of a party is required hereunder and a standard of review and/or timeline for the granting or withholding of such consent or approval is not set forth, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

15.20 Governing State Law. This Agreement shall be construed in accordance with the laws of the State of California, without reference to its choice of law provisions.

15.21 Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A-1: Property Description

Exhibit A-2: Site Map

Exhibit B: Project Modifications

Exhibit C: Mitigation Monitoring/Reporting Program

Exhibit D: Form of Assignment and Assumption Agreement

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the Effective Date.

CITY:

CITY OF STOCKTON,
a California municipal corporation

By: _____

[Signature must be notarized]

ATTEST:

By: _____
Eliza R. Garza, City Clerk

APPROVED AS TO FORM:

By: _____
Lori M. Asuncion, City Attorney

DEVELOPER:

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

[Signatures must be notarized]

EXHIBIT A-1

[Property Description – To be Inserted]

EXHIBIT A-2

[Site Map – To be Inserted]

EXHIBIT B

[Project Modifications – To be Inserted]

EXHIBIT C

FORM ASSIGNMENT AND ASSUMPTION AGREEMENT

City of Stockton)
425 N. El Dorado St, 1st Floor)
Stockton , CA 95202)
Attention: City Clerk)
Record for the Benefit of)
The City of Stockton)
Pursuant to Government Code)
Section 27383)

(*Space Above This Line for Recorder's Use Only*)

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Assignment Agreement") is entered into as of the ____ day of _____, 20__, by and among Greenlaw Development, LLC, a California limited liability company, ("Assignor"), _____, a _____ ("Assignee"), and the City of Stockton, a municipal corporation ("City").

R E C I T A L S

A. Assignor has entered into a Development Agreement with City effective _____ (Recorder's Document No. _____) ("Development Agreement"), to facilitate the development and use of that certain real property consisting of approximately 120 acres within the City of Stockton, County of San Joaquin, State of California, which is legally described in Exhibit A-1 to the Development Agreement and shown on the map attached to the Development Agreement as Exhibit A-2 ("Site"). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement.

B. Assignor is the fee owner of the Site, designated as APNs _____, more particularly described in Attachment 1 attached hereto and incorporated herein ("Property").

C. Assignor desires to transfer its interest in the Property to Assignee concurrently with execution of this Assignment Agreement and Assignee desires to so acquire such interest in the Property from Assignor.

D. Article 13 of the Development Agreement provides that Assignor may assign its rights and obligations under the Development Agreement to another party, provided that the Assignor shall have provided to City at least thirty (30) days prior written notice and provided

that the assignor and the assignee document the assignment in an agreement substantially in the form of this Assignment Agreement.

E. Assignor has provided the required written notice to City of its intent to enter into an assignment and assumption agreement as required by Section 13.2 of the Development Agreement.

F. Assignor desires to assign to Assignee and Assignee desires to assume all rights and obligations of Assignor under the Development Agreement [*or describe portion of rights and obligations assigned in case of partial assignment*]. Upon execution of this Assignment Agreement and transfer to Assignee of legal title to the Property, Assignor desires to be released from any and all obligations under the Development Agreement with respect to the Property.

A G R E E M E N T

NOW, THEREFORE, Assignor, Assignee and City hereby agree as follows:

1. Assignment by Assignor. Assignor hereby assigns, transfers and grants to Assignee, and its successors and assigns, all of Assignor's rights, title and interest and obligations, duties, responsibilities, conditions and restrictions under the Development Agreement with respect to the Property (collectively, "Rights and Obligations").

2. Acceptance and Assumption by Assignee. Assignee, for itself and its successors and assigns, hereby accepts such assignment and assumes all such Rights and Obligations, whether accruing before or on or after the Assignment Agreement Effective Date (defined in Section 16 below). Assignee agrees, expressly for the benefit of City, to comply with, perform and execute all of the Rights and Obligations of Developer with respect to the Property arising from or under the Development Agreement.

3. Release of Assignor. Assignee and City hereby fully release Assignor from all Rights and Obligations. Both Assignor and Assignee acknowledge that this Assignment Agreement is intended to fully assign all of Assignor's Rights and Obligations to Assignee, and it is expressly understood that Assignor shall not retain any Rights and Obligations whatsoever with respect to the Property.

4. Substitution of Assignor. Assignee hereafter shall be substituted for and replace Assignor in the Development Agreement with respect to the Property. Whenever the term "Developer" appears in the Development Agreement with respect to the Property, it shall hereafter mean Assignee.

5. Assignor and Assignee Agreements, Indemnifications and Waivers.

a. Assignee represents and warrants to City as follows:

(i) Assignee is a _____ duly formed within and in good standing under the laws of the State of _____. The copies of

the documents evidencing the formation of Assignee, which have been delivered to City, are true and complete copies of the originals, as amended to the date of this Assignment Agreement. Assignee has full right, power and lawful authority to undertake all obligations as provided herein and the execution, performance and delivery of this Assignment Agreement by Assignee has been fully authorized by all requisite actions on the part of Assignee.

(ii) Assignee's execution, delivery and performance of its obligations under this Assignment Agreement will not constitute a default or a breach under any contract, agreement or order to which Assignee is a party or by which it is bound.

(iii) Assignee has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Assignee's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Assignee's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Assignee's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

(iv) As of the Assignment Agreement Effective Date, Assignee will own fee simple title to the Property.

b. Assignor and Assignee hereby acknowledge and agree that the City has not made, and will not make, any representation or warranty that the assignment and assumption of the Development Agreement provided for hereunder will have any particular tax implications for Assignor or Assignee.

c. Assignor and Assignee each hereby waives and releases and each hereby agrees to indemnify and hold City harmless from any and all damages, liabilities, causes of action, claims or potential claims against City (including attorneys' fees and costs) arising out of this Assignment Agreement.

d. Assignor acknowledges and agrees that the Rights and Obligations with respect to the Property have been fully assigned to Assignee by this Assignment Agreement and, accordingly, that Assignee shall have the exclusive right to assert any claims against City with respect to such Rights and Obligations. Accordingly, without limiting any claims of Assignee under the Development Agreement, Assignor hereby waives any claims or potential claims by Assignor against City to the extent arising solely out of the Rights and Obligations with respect to the Property.

6. Development Agreement in Full Force and Effect. Except as specifically provided herein with respect to the assignment, all the terms, covenants, conditions and

provisions of the Development Agreement are hereby ratified and shall remain in full force and effect.

7. Recording. Assignor shall cause this Assignment Agreement to be recorded in the Official Records of San Joaquin County, California, and shall promptly provide conformed copies of the recorded Assignment Agreement to Assignee and City.

8. Successors and Assigns. Subject to the restrictions on transfer set forth in the Development Agreement, all of the terms, covenants, conditions and provisions of this Assignment Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns, pursuant to Article 13 and Section 15.2 of the Development Agreement.

9. Assignee Address for Notices. The address of Assignee for the purpose of notices, demands and communications under Section 15.3 of the Development Agreement shall be:

_____
_____
_____
_____
Attention: _____
Telephone: _____

With a copy to: _____
_____
_____
_____
Attention: _____
Telephone: _____

10. Applicable Law/Venue. This Assignment Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to its choice of law provisions. Any legal actions under this Assignment Agreement shall be brought only in the Superior Court of the County of San Joaquin State of California.

11. Interpretation. All parties have been represented by counsel in the preparation and negotiation of this Assignment Agreement and this Assignment Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Assignment Agreement. Unless the context clearly requires otherwise: (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; and (e) "includes" and "including" are not limiting.

12. Headings. Section headings in this Assignment Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Assignment Agreement.

13. Severability. Except as otherwise provided herein, if any provision(s) of this Assignment Agreement is (are) held invalid, the remainder of this Assignment Agreement shall not be affected, except as necessarily required by the invalid provisions, and shall remain in full force and effect unless amended or modified by mutual consent of the parties.

14. Counterparts. This Assignment Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the parties to this Assignment Agreement had executed the same counterpart.

15. City Consent. City is executing this Assignment Agreement for the limited purpose of consenting to the assignment and assumption and clarifying that there is privity of contract between City, on the one hand, and Assignee on the other, with respect to the Development Agreement.

16. Effective Date. The Effective Date of this Assignment Agreement shall be the date upon which Assignee obtains fee title to or a ground lease for the Property and Assignor delivers evidence of the transfer to City ("Assignment Agreement Effective Date"). For the purposes of this Section, the evidence of transfer shall consist of a duly recorded deed or ground lease, and title report.

[*SIGNATURES FOLLOW ON SEPARATE PAGES*]

IN WITNESS WHEREOF, Assignor, Assignee and City have entered into this Assignment Agreement as of the date first above written.

ASSIGNOR

_____, a

_____

By: _____

Name: _____

Its: _____

[Signature must be notarized]

By: _____

Name: _____

Its: _____

[Signature must be notarized]

ASSIGNEE

_____, a

_____

By: _____

Name: _____

Its: _____

[Signature must be notarized]

By: _____

Name: _____

Its: _____

[Signature must be notarized]

[*SIGNATURES CONTINUED ON NEXT PAGE*]

CITY
CITY OF STOCKTON, a municipal corporation

By: _____
_____, City Manager
[Signature must be notarized]

ATTEST:

By: _____
_____, City Clerk

APPROVED AS TO FORM:

By: _____
_____, City Attorney

EXHIBIT A

Property Legal Description

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE UNINCORPORATED AREA OF SAN JOAQUIN COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF SECTION 59 AND 69 OF THE C. M. WEBER GRANT, AS DESCRIBED IN THAT CERTAIN DOCUMENT RECORDED JANUARY 14, 2005, AS DOCUMENT NO. 2005-010345, THAT CERTAIN DOCUMENT RECORDED NOVEMBER 12, 2008, AS DOCUMENT NO. 2008-177643, THAT CERTAIN DOCUMENT RECORDED FEBRUARY 10, 2020, AS DOCUMENT NO. 2020-017708 AND THAT CERTAIN DOCUMENT RECORDED DECEMBER 24, 2019, AS DOCUMENT NO. 2019-151974 SAN JOAQUIN COUNTY RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT AT THE SOUTHEAST CORNER PARCEL ONE OF THE LANDS OF HOGGAN ESTATES. LLC, AS DESCRIBED IN THAT CERTAIN DOCUMENT RECORDED JANUARY 14, 2005, AS DOCUMENT NO. 2005-010345, SAN JOAQUIN COUNTY RECORDS, SAID POINT ALSO BEING ALONG THE EXISTING BOUNDARY OF THE STOCKTON CITY LIMIT LINE;

THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID PARCEL ONE AND ALSO ALONG THE EXISTING BOUNDARY OF THE STOCKTON CITY LIMIT LINE, (1) SOUTH 72° 09’ 06” EAST, 2410.37 FEET, TO THE SOUTHWEST CORNER OF SAID PARCEL ONE, SAID POINT ALSO BEING ALONG THE EASTERLY LINE OF THE “MAP OF SUBDIVISION NO. 4 CLARKADOTA FIG PLANTATIONS”, FILED IN BOOK 10 OF MAPS & PLATS, AT PAGE 38, SAN JOAQUIN COUNTY RECORDS;

(2) THENCE LEAVING SAID EXISTING BOUNDARY OF THE STOCKTON CITY LIMIT AND RUNNING ALONG SAID EASTERLY LINE OF THE “MAP OF SUBDIVISION NO. 4 CLARKADOTA FIG PLANTATIONS” NORTH 17° 09’ 06” WEST, 3940.90, TO THE NORTHEAST CORNER THEREOF, BEING A POINT ON THE NORTHERLY LINE OF SAID SECTION 59 OF THE C. M. WEBER GRANT,

(3) THENCE ALONG SAID NORTHERLY LINE OF SECTIONS 59 AND 69 OF SAID C. M. WEBER GRANT, NORTH 72° 09’ 06” EAST, 1691.35 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF MARIPOSA ROAD,

(4) THENCE ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE, SOUTH 59° 53’ 28” EAST, TO THE WESTERLY LINE OF THE LANDS OF OCHOA, AS DESCRIBED IN THAT CERTAIN DOCUMENT RECORDED SEPTEMBER 12, 2008, AS DOCUMENT NO. 2008-149798, SAN JOAQUIN COUNTY RECORDS,

(5) THENCE ALONG SAID WESTERLY LINE OF OCHOA THE FOLLOWING TWO COURSES: SOUTH 71° 52’ 14’’” EAST, 282.52 FEET, AND

(6) SOUTH 59° 48’ 18” WEST, 170.97 FEET, TO A POINT ON THE EASTERLY LINE OF THE LANDS OF MARIPOSA ROAD OWNERS, LLC, AS DESCRIBED IN THAT CERTAIN DOCUMENT

RECORDED DECEMBER 24, 2019, AS DOCUMENT NO. 2019-151974, SAN JOAQUIN COUNTY RECORDS,

(7) THENCE ALONG SAID EASTERLY LINE OF THE LANDS OF MARIPOSA ROAD OWNERS, LLC, SOUTH 17° 50' 54" EAST, 1065.25 FEET, TO THE NORTHWESTERLY CORNER OF THE LANDS OF THE TOLENTINO TRUST AS DESCRIBED IN THAT CERTAIN DOCUMENT RECORDED FEBRUARY 25, 2019, AS DOCUMENT NO. 2019-019341, SAN JOAQUIN COUNTY RECORDS,

(8) THENCE ALONG THE NORTHERLY LINE OF SAID LANDS OF THE TOLENTINO TRUST, SOUTH 72° 29' 06" WEST, 301.20 FEET, TO THE NORTHWESTERLY CORNER THEREOF,

(9) THENCE ALONG THE WESTERLY LINE OF THE LANDS OF THE TOLENTINO TRUST, AND ALONG THE WESTERLY LINE OF THE LANDS OF LOTT TRUST, AS DESCRIBED IN THAT CERTAIN DOCUMENT RECORDED AUGUST 11, 2008, AS DOCUMENT NO. 2008-130946, SAN JOAQUIN COUNTY RECORDS, SOUTH 17° 50' 54" EAST, 717.85 FEET, TO THE SOUTHWESTERLY CORNER OF SAID LANDS OF LOTT TRUST,

(10) THENCE ALONG THE SOUTHERLY LINE OF THE LANDS OF LOTT TRUST, NORTH 72° 09' 06" EAST, 301.20 FEET, TO THE SOUTHEASTERLY CORNER THEREOF, ALSO BEING A POINT ON THE EASTERLY LINE OF THE LANDS OF HOGGAN ESTATES. LLC, AS DESCRIBED IN THAT CERTAIN DOCUMENT RECORDED NOVEMBER 11, 2008, AS DOCUMENT NO. 2008-177643, SAN JOAQUIN COUNTY RECORDS,

(11) THENCE ALONG SAID EASTERLY LINE OF THE LANDS OF LEWIS, AND THE EASTERLY LINE OF THE LANDS OF HOGGAN ESTATES, LLC, AS DESCRIBED IN THAT CERTAIN DOCUMENT RECORDED JANUARY 14, 2005, AS DOCUMENT NO. 2005-010345, SAN JOAQUIN COUNTY RECORDS, SOUTH 17° 50' 24" EAST, 1077.85 FEET, TO THE **POINT OF BEGINNING.**

CONTAINING 205.78 ACRES, MORE OR LESS.

FOR ASSESSMENT PURPOSES ONLY. THIS DESCRIPTION OF LAND IS NOT A LEGAL PROPERTY DESCRIPTION AS DEFINED IN THE SUBDIVISION MAP ACT (GOVERNMENT CODE SECTION 66410) AND MAY NOT BE USED AS THE BASIS FOR AN OFFER FOR SALE OF THE LAND DESCRIBED.

Location Map and Aerial Photo

Property Information

Property ID	17922019-109393
Location	5110 E MARIPOSA RD
Owner	

CITY OF STOCKTON

MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

City of Stockton, CA makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 01/19/2022
Data updated 01/03/2022

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

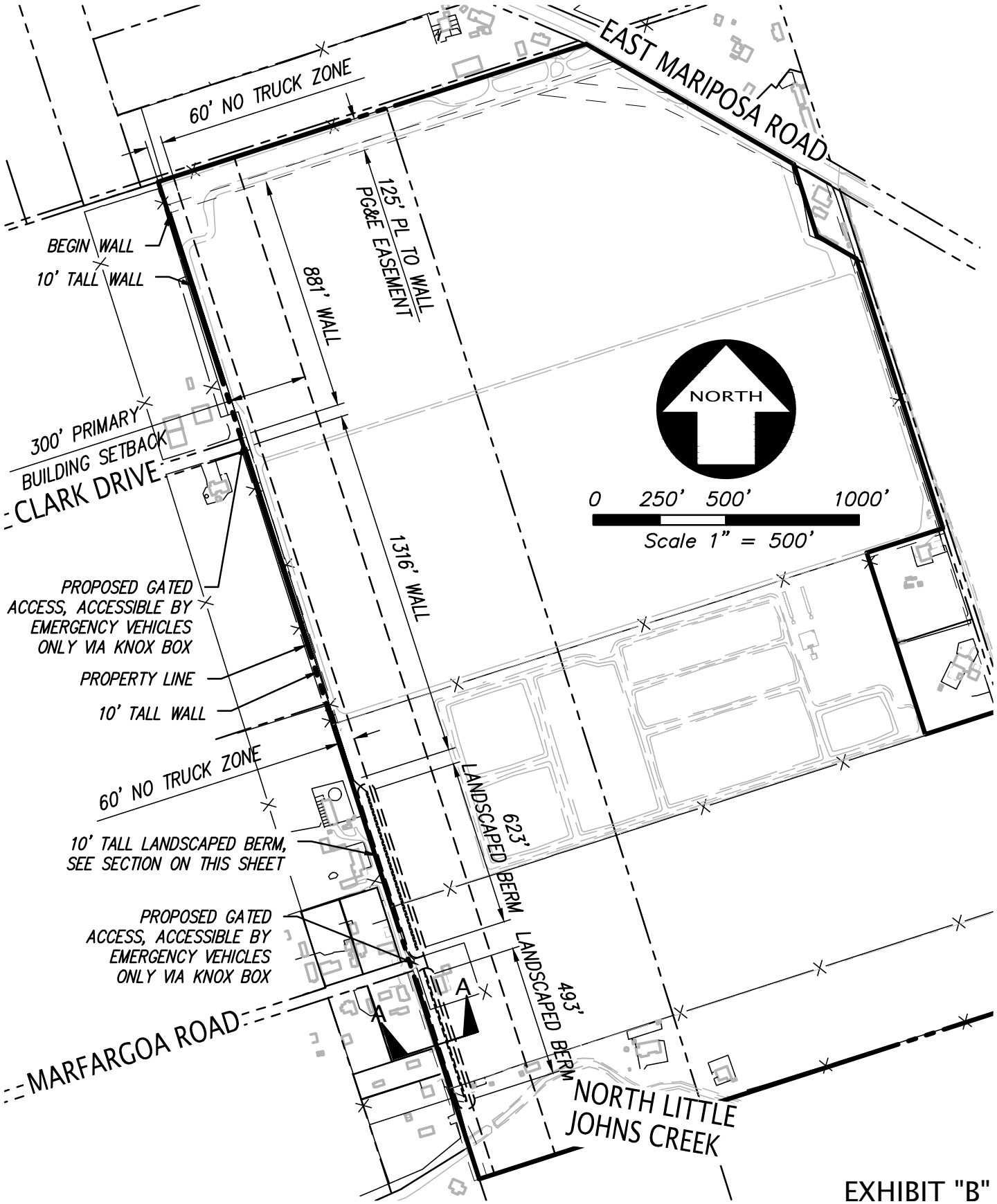


EXHIBIT "B"

KIER+WRIGHT
250 Cherry Lane, Suite 107, 208 Phone: (209) 328-1123
Manteca, CA 95337 www.kierwright.com

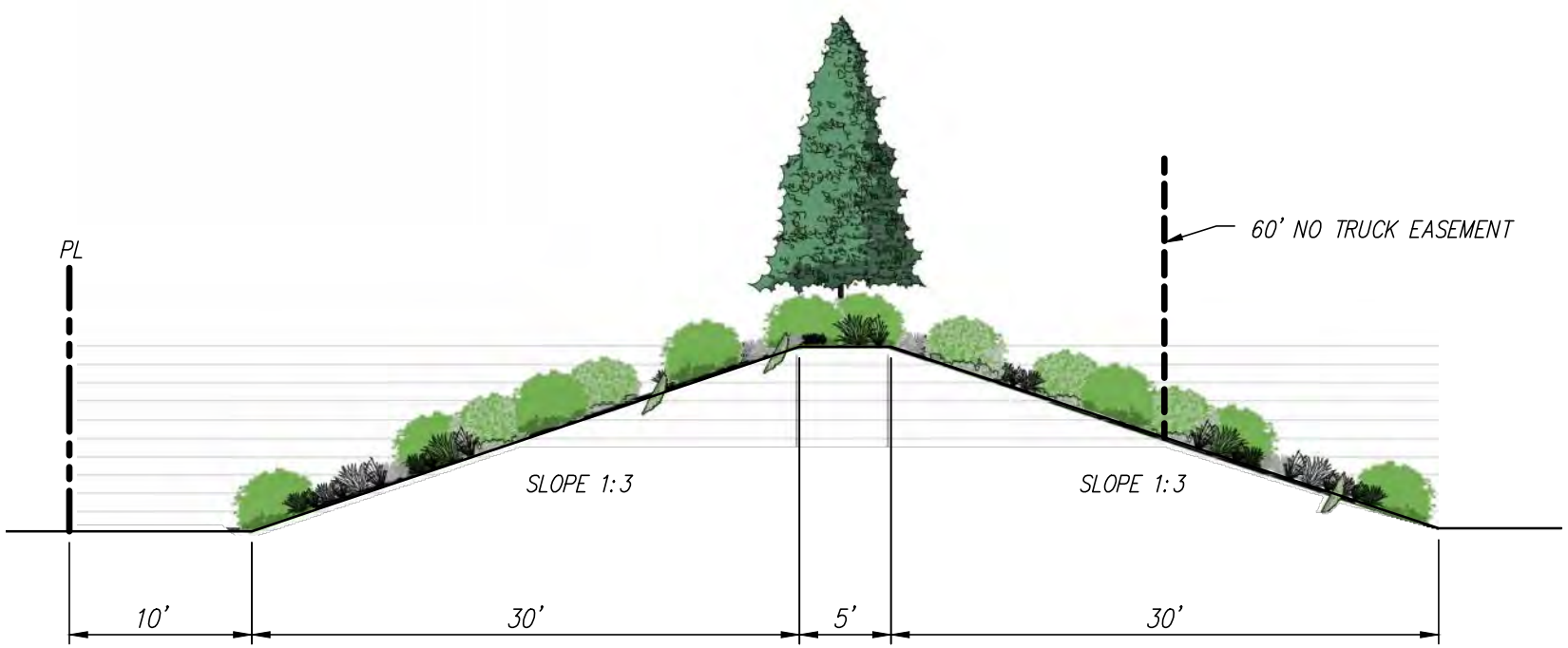
PROJECT MODIFICATIONS

SAN JOAQUIN COUNTY, CALIFORNIA

DATE	NOV., 2022
SCALE	AS SHOWN
BY	MBE / JTQ
JOB NO.	A20631-3
SHEET	1 OF 2

NOTES:

- THERE SHALL BE NO COLD STORAGE FACILITIES OR REFRIGERATED TRUCKS ALLOWED ON THE PROJECT SITE WITHOUT FURTHER ANALYSIS OF THE POTENTIAL AIR QUALITY AND NOISE IMPACTS ASSOCIATED WITH SUCH FACILITIES AND TRUCKS.
- THE BERM AND WALL DEPICTED ON THIS EXHIBIT B SHALL BE CONSTRUCTED PRIOR TO THE OCCUPANCY OF ANY STRUCTURES ON THE PROJECT SITE.
- NO TRUCK TRAILER CIRCULATION OR PARKING SHALL BE ALLOWED IN THE NO TRUCK ZONE DEPICTED ON THIS EXHIBIT B.



A 10' TALL LANDSCAPED BERM

SCALE: 1" = 20'

EXHIBIT "B"

KIER+WRIGHT
250 Cherry Lane, Suite 107, 208 Phone: (209) 328-1123
Manteca, CA 95337 www.kierwright.com

PROJECT MODIFICATIONS

SAN JOAQUIN COUNTY, CALIFORNIA

DATE	NOV., 2022
SCALE	AS SHOWN
BY	MBE / JTQ
JOB NO.	A20631-1
SHEET	2 OF 2

Z:\2020\A20631-3\DWG\EXHIBITS\COUNTY 10' WALL EXHIBIT\COUNTY EXHIBIT 10' WALL.dwg 4-01-22 04:31:34 PM jquilantang

Exhibit G

ORDINANCE NO. 1891

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA AMENDING CHAPTER 9 OF THE FONTANA MUNICIPAL CODE TO REVISE ARTICLE V FOR MODIFICATIONS AND CLARIFICATION TO BUFFERING AND SCREENING REQUIREMENTS, METHODS TO IMPROVE TRAFFIC CIRCULATION, REQUIREMENTS FOR ALTERNATIVE ENERGY, AND IMPROVEMENTS TO CONSTRUCTION REQUIREMENTS AS IT RELATES TO INDUSTRIAL COMMERCE CENTERS THROUGHOUT THE CITY.

WHEREAS, the City of Fontana (the "City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, on or about May 7, 2021, the governing board of the South Coast Air Quality Management District ("SCAQMD") adopted Rule 2305, the Warehouse Indirect Source Rule ("Rule 2305"); and

WHEREAS, Rule 2305 requires warehouses greater than 100,000 square feet to directly reduce nitrogen oxide and diesel particulate matter emissions, or to otherwise facilitate emission and exposure reductions of these pollutants in nearby communities; and

WHEREAS, SCAQMD has also adopted Rule 402 prohibiting emissions that cause injury and/or annoyance to a substantial number of people, including odors; Rule 403 requiring dust control measures during construction; Rule 1113 requiring the use of low Volatile organic compounds ("VOC") paints and coatings; Rule 1186 requiring use of SCAQMD certified street sweepers; and Rule 2202 requiring establishment of rideshare programs for facilities employing more than 250 employees; and

WHEREAS, the California Air Resources Board ("CARB") adopted Rule 2485 restricting diesel engine idling to five minutes or less; and

WHEREAS, California Building Standards Commission adopted Part 11, Title 24 of the California Code of Regulations, known as CALGreen, which generally requires low energy use features, low water use features, all-electric vehicle ("EV") parking spaces and charging facility accommodation, carpool/vanpool parking spaces, and short-term and long-term bicycle parking facilities; and

WHEREAS, the City of Fontana currently regulates industrial commerce centers in Specific Plans, Chapter 30 of the Zoning and Development Code, and in Chapter 9, and Article V (Industrial Commerce Centers Sustainability Standards) of the Municipal Code. Furthermore, Ordinance No. 1879 that established Article V in Chapter 9 of the Municipal Code was adopted by City Council on February 8, 2022; and

WHEREAS, the City initiated Municipal Code Amendment (AMD) No. 21-001R1 amend Chapter 9 (Environmental Protection and Resource Extraction) of the Municipal Code to modify Article V to revise Industrial Commerce Centers Sustainability Standards, which includes modifications and clarification to buffering and screening requirements, methods to improve traffic circulation, requirements for alternative energy, and improvements to construction as it relates to industrial commerce centers throughout the city; and

WHEREAS, December 21, 2021, the City Council held the second reading and adopted Ordinance No. 1879 for Municipal Code Amendment (AMD) No. 21-001 to add Article V to establish sustainability standards for industrial commerce centers throughout the city; and

WHEREAS, On March 22, 2022, the City Council held a duly noticed public hearing on Municipal Code Amendment (AMD) No. 21-001R1, and the supporting documents in evidence, the City Council found that the Municipal Code Amendment is in conformance with General Plan and does not change any of the Land Use Designation of any properties and it is consistent with the General Plan and furthers Action B of Goal 3 in Chapter 12 to promote renewable energy programs for government, Fontana businesses, and Fontana residences; and

WHEREAS, a notice of the public hearing was published in the local *San Bernardino County Sun* newspaper on Saturday, March 12, 2022 and posted at City.

THE CITY COUNCIL OF THE CITY OF FONTANA DOES ORDAIN AS FOLLOWS:

Section 1. The above recitals are true and correct and are fully incorporated herein.

Section 2. Article V of Chapter 9 of the Fontana Municipal Code is hereby amended and renumbered follows:

ARTICLE V. – Industrial Commerce Centers Sustainability Standards

Sec. 9-70. – Applicability.

This Article is applicable to all Warehouse uses throughout the city, as defined in Section 30-12 of Chapter 30, Article 1, Division 4; and as listed as a type of "Warehousing Use" in Table No. 30-530 and includes all warehouse uses in Specific Plans. The following sections shall supersede any existing requirements in the Municipal Code and Specific Plans.

Sec. 9-71. – Buffering and Screening / Adjacent uses.

(1) For any Warehouse building larger than 50,000 square feet in size, a ten-foot-wide landscaping buffer shall be required, measured from the property line of all adjacent sensitive receptors. For any Warehouse

building larger than 400,000 square feet in size, a twenty-foot-wide landscaping buffer shall be required, measured from the property line of all adjacent sensitive receptors. The buffer area(s) shall include, at a minimum, a solid decorative wall(s) of at least ten feet in height, natural ground landscaping, and solid screen buffering trees, as described below, unless there is an existing solid block wall. For any Warehouse building equal to or less than 50,000 square feet in size, a solid decorative wall(s) of at least ten feet in height shall be required when adjacent to any sensitive receptors. Sensitive receptor shall be defined as any residence including private homes, condominiums, apartments, and living quarters, schools, preschools, daycare centers, in-home daycares, health facilities such as hospitals, long term care facilities, retirement and nursing homes, community centers, places of worship, parks (excluding trails), prisons, and dormitories.

(2) Trees shall be used as part of the solid screen buffering treatment. Trees used for this purpose shall be evergreen, drought tolerant, minimum 36-inch box, and shall be spaced at no greater than 40-feet on center. The property owner and any successors in interest shall maintain these trees for the duration of ownership, ensuring any unhealthy or dead trees are replaced timely as needed.

(3) All landscaping shall be drought tolerant, and to the extent feasible, species with low biogenic emissions. Palm trees shall not be utilized.

(4) All landscaping areas shall be properly irrigated for the life of the facility to allow for plants and trees to maintain growth.

(5) Trees shall be installed in automobile parking areas to provide at least 35% shade cover of parking areas within fifteen years. Trees shall be planted that are capable of meeting this requirement.

(6) Unless physically impossible, loading docks and truck entries shall be oriented away from abutting sensitive receptors. To the greatest extent feasible, loading docks, truck entries, and truck drive aisles shall be located away from nearby sensitive receptors. In making feasibility decisions, the City must comply with existing laws and regulations and balance public safety and the site development's potential impacts to nearby sensitive receptors. Therefore, loading docks, truck entries, and drive aisles may be located nearby sensitive receptors at the discretion of the Planning Director, but any such site design shall include measures designed to minimize overall impacts to nearby sensitive receptors."

(7) For any Warehouse building larger than 400,000 square feet in size, the building's loading docks shall be located a minimum of 300 feet away, measured from the property line of the sensitive receptor to the nearest

dock door which does not exclusively serve electric trucks using a direct straight-line method.

Sec. 9-72. – Signage and Traffic Patterns.

(1) Entry gates into the loading dock/truck court area shall be positioned after a minimum of 140 feet of total available stacking depth inside the property line. The stacking distance shall be increased by 70 feet for every 20 loading docks beyond 50 docks. Queuing, or circling of vehicles, on public streets immediately pre- or post-entry to an industrial commerce facility is strictly prohibited unless queuing occurs in a deceleration lane or right turn lane exclusively serving the facility.

(2) Applicants shall submit to the Engineering Department, and obtain approval of, all turning templates to verify truck turning movements at entrance and exit driveways and street intersection adjacent to industrial buildings prior to entitlement approval. Unless not physically possible, truck entries shall be located on Collector Streets (or streets of a higher commercial classification), and vehicle entries shall be designed to prevent truck access on streets that are not Collector Streets (or streets of a higher commercial classification), including, but not limited to, by limiting the width of vehicle entries.

(3) Anti-idling signs indicating a 3-minute diesel truck engine idling restriction shall be posted at industrial commerce facilities along entrances to the site and in the dock areas and shall be strictly enforced by the facility operator.

(4) Prior to issuance of certificate of occupancy facility operators shall establish and submit for approval to the Planning Director a Truck Routing Plan to and from the State Highway System based on the City's latest Truck Route Map. The plan shall describe the operational characteristics of the use of the facility operator, including, but not limited to, hours of operations, types of items to be stored within the building, and proposed truck routing to and from the facility to designated truck routes that avoids passing sensitive receptors, to the greatest extent possible. The plan shall include measures, such as signage and pavement markings, queuing analysis and enforcement, for preventing truck queuing, circling, stopping, and parking on public streets. Facility operator shall be responsible for enforcement of the plan. A revised plan shall be submitted to by the Planning Director prior to a business license being issued by the City for any new tenant of the property. The Planning Director shall have discretion to determine if changes to the plan are necessary including any additional measures to alleviate truck routing and parking issues that may arise during the life of the facility.

(5) Signs and drive aisle pavement markings shall clearly identify the on-site circulation pattern to minimize unnecessary on-site vehicular travel.

(6) Facility operators shall post signs in prominent locations inside and outside of the building indicating that off-site parking for any employee, truck, or other operation related vehicle is strictly prohibited. City may require facility operator to post signs on surface or residential streets indicating that off-site truck parking is prohibited by City ordinance and/or the Truck Routing Plan.

(7) Signs shall be installed at all truck exit driveways directing truck drivers to the truck route as indicated in the Truck Routing Plan and State Highway System.

(8) Signs shall be installed in public view with contact information for a local designated representative who works for the facility operator and who is designated to receive complaints about excessive dust, fumes, or odors, and truck and parking complaints for the site, as well as contact information for the SCAQMD's on-line complaint system and its complaint call-line: 1-800-288-7664. Any complaints made to the facility operator's designee shall be answered within 72 hours of receipt.

(9) All signs under this Section shall be legible, durable, and weather-proof.

(10) Prior to issuance of a business license, City shall ensure for any facility with a building or buildings larger than 400,000 total square feet, that the facility shall include a truck operator lounge equipped with clean and accessible amenities such as restrooms, vending machines, television, and air conditioning."

Sec. 9-73. – Alternative Energy.

(1) On-site motorized operational equipment shall be ZE (zero emission).

(2) All building roofs shall be solar-ready, which includes designing and constructing buildings in a manner that facilitates and optimizes the installation of a rooftop solar photovoltaic (PV) system at some point after the building has been constructed.

(3) The office portion of a building's rooftop that is not covered with solar panels or other utilities shall be constructed with light colored roofing material with a solar reflective index ("SRI") of not less than 78. This material shall be the minimum solar reflective rating of the roof material for the life of the building."

(4) On buildings over 400,000 square feet, prior to issuance of a business license, the City shall ensure rooftop solar panels are installed and operated in such a manner that they will supply 100% of the power needed to operate all non-refrigerated portions of the facility including the parking areas.

(5) At least 10% of all passenger vehicle parking spaces shall be electric vehicle (EV) ready, with all necessary conduit and related appurtenances installed. At least 5% of all passenger vehicle parking spaces shall be equipped with working Level 2 Quick charge EV charging stations installed and operational, prior to building occupancy. Signage shall be installed indicating EV charging stations and specifying that spaces are reserved for clean air/EV vehicles. Unless superior technology is developed that would replace the EV charging units, facility operator and any successors in interest shall be responsible for maintaining the EV charging stations in working order for the life of the facility.

(6) Unless the owner of the facility records a covenant on the title of the underlying property ensuring that the property cannot be used to provide chilled, cooled, or freezer warehouse space, a conduit shall be installed during construction of the building shell from the electrical room to 100% of the loading dock doors that have potential to serve the refrigerated space. When tenant improvement building permits are issued for any refrigerated warehouse space, electric plug-in units shall be installed at every dock door servicing the refrigerated space to allow transport refrigeration units (TRUs) to plug in. Truck operators with TRUs shall be required to utilize electric plug-in units when at loading docks.

(7) Bicycle racks are required per Section 30-714 and in the amount required for warehouse uses by Table 30-714 of the Zoning and Development Code. The racks shall include locks as well as electric plugs to charge electric bikes. The racks shall be located as close as possible to employee entrance(s). Nothing in this section shall preclude the warehouse operator from satisfying this requirement by utilizing bicycle parking amenities considered to be superior such as locating bicycle parking facilities indoors or providing bicycle lockers.

Sec. 9-74. – Operation and Construction.

(1) Cool surface treatments shall be added to all drive aisles and parking areas or such areas shall be constructed with a solar-reflective cool pavement such as concrete.

(2) To ensure that warehouse electrical rooms are sufficiently sized to accommodate the potential need for additional electrical panels, either a secondary electrical room shall be provided in the building, or the primary electrical room shall be sized 25% larger than is required to satisfy the service requirements of the building or the electrical gear shall be installed with the initial construction with 25% excess demand capacity.

(3) Use of super-compliant VOC architectural and industrial maintenance coatings (e.g., paints) shall be required.

(4) The facility operator shall incorporate a recycling program.

(5) The following environmentally responsible practices shall be required during construction:

a. The applicant shall use reasonable best efforts to deploy the highest rated CARB Tier technology that is available at the time of construction. Prior to permit issuance, the construction contractor shall submit an equipment list confirming equipment used is compliant with the highest CARB Tier at the time of construction. Equipment proposed for use that does not meet the highest CARB Tier in effect at the time of construction, shall only be approved for use at the discretion of the Planning Director and shall require proof from the construction contractor that, despite reasonable best efforts to obtain the highest CARB Tier equipment, such equipment was unavailable.

b. Use of electric-powered hand tools, forklifts, and pressure washers.

c. Designation of an area in any construction site where electric-powered construction vehicles and equipment can charge.

d. Identification in site plans of a location for future electric truck charging stations and installation of a conduit to that location.

e. Diesel-powered generators shall be prohibited except in case of emergency or to establish temporary power during construction.

(6) A Property Maintenance Program shall be submitted for review and approval by the Planning Director or his/her designee prior to the issuance of building permits. The program shall provide for the regular maintenance of building structures, landscaping, and paved surfaces in good physically condition, and appearance. The methods and maximum intervals for maintenance of each component shall be specified in the program.

(7) Property owner shall provide facility operator with information on incentive programs such as the Carl Moyer Program and Voucher Incentive Program and shall require all facility operators to enroll in the United States Environmental Protection Agency's SmartWay Program.

Section 3. Based on the foregoing, the City Council determines that the project is categorically exempt from further review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(B)(3) (the common-sense exemption) and, alternatively, pursuant to CEQA Guidelines Section 15307 (Actions by Regulatory Agencies for Protection of Natural Resources) and 15308 (Actions by Regulatory Agencies for Protection of the Environment), and Section No. 3.22 of the 2019 Local Guidelines for Implementing CEQA, as implementation of this Ordinance is to improve the environment. The Council hereby directs staff to prepare, execute and file with the San Bernardino County Clerk a notice of exemption within five working days after the adoption of this Ordinance.

Section 4. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The people of the City of Fontana hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 5. This Ordinance shall take effect thirty (30) days after the date of its adoption.

Section 6. The City Clerk shall certify to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this Ordinance, the Ordinance, or a summary thereof, along with the names of the City Council members voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City of Fontana. The City Clerk is the custodian of records for this Ordinance and the records are available at 8353 Sierra Avenue, Fontana CA 92335.

APPROVED AND ADOPTED 12th day of April, 2022.

READ AND APPROVED AS TO LEGAL FORM:

DocuSigned by:
Ruben Duran
622D5F9CCD6240C...
City Attorney

I, Germaine McClellan Key, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council, do hereby certify that the foregoing Ordinance is the actual Ordinance

adopted by the City Council and was introduced at a regular meeting on the 22nd day of March, 2022, and was finally passed and adopted not less than five days thereafter on the 12th day of April, 2022, by the following vote to wit:

AYES: Mayor Warren, Mayor Pro Tem Garcia, Council Members, Cothran, Roberts and Sandoval
NOES: None
ABSENT: None
ABSTAIN: None

DocuSigned by:
Germaine McClellan Key
8FCB7DF749584D6...
City Clerk of the City of Fontana

DocuSigned by:
Acquanetta Warren
9B476BADB96B46B...
Mayor of the City of Fontana

ATTEST:

DocuSigned by:
Germaine McClellan Key
8FCB7DF749584D6...
City Clerk

NOTICE OF EXEMPTION

PTO: Clerk of the Board of Supervisors
County of San Bernardino
385 N. Arrowhead Avenue, 2nd Floor
San Bernardino, CA 92415-0130

FROM: City of Fontana
Planning Department
8353 Sierra Avenue
Fontana, CA 92335

1. Project Title: **Municipal Code Amendment (MCA) No. 21-001R1 for an Amendment to Chapter 9 of the Municipal Code to Modify Article V to Revise Sustainability Standards for Industrial Commercial Centers throughout the City.**

2. Project Location - Specific: **Citywide**

3. (a) Project Location - City: **Fontana**
   (b) Project Location - County: **San Bernardino**

4. Description of nature, purpose, and beneficiaries of Project: **The proposed Municipal Code Amendment (MCA) No. 21-001R1 is for the amendment of Chapter 9 of the Municipal Code to modify Article V to revise industrial commerce centers sustainability standards. That includes modifications and clarification to buffering and screening requirements, clarification on building orientation, requirements for alternative energy, and improvements to construction as it relates to industrial commercial centers throughout the city.**

5. Name of Public Agency approving project: **City of Fontana**

6. Name of Person or Agency carrying out project: **City of Fontana**

7. Exempt status: (Check one)
   (a) _____ Ministerial project.
   (b) _____ Not a project.
   (c) _____ Emergency Project.
   (d) __X__ Categorical Exemption. State type and class number Sections 15307 (Actions by Regulatory Agencies for Protection of Natural Resources) and 15308 (Actions by Regulatory Agencies for Protection of the Environment) and Section No. 3.22 of the Local 2019 Guidelines for Implementing the CEQA.
   (e) _____ Declared Emergency.
   (f) _____ Statutory Exemption. State Code section number: _____
   (g) __X__ Other. Explanation: 15061(B)(3) (the common-sense exemption)

Reason why project was exempt: The Ordinance includes additional more restrictive standards and clarification of existing standards for industrial commerce centers to improve environmental quality and does not include the construction of any structures. All new projects involving construction of industrial commerce centers will continue to be subject to an Administrative Site Plan/Design Review, where a project-specific analysis based on location and project details will be conducted, subject to CEQA review/documentation. Therefore, all industrial commerce center projects will be subject to CEQA, standard Conditions of Approval, and all other State/Federal/Local requirements.

8. Contact Person: Rina Leung, Senior Planner Telephone: (909) 350-6566

Date Received for Filing:

DiTanyon Johnson
Principal Planner

(Clerk Stamp Here)

ATTACHMENT NO. 2

FONTANA
CALIFORNIA

NOTICE OF PUBLIC HEARING

SI DESEA INFORMACION EN ESPAÑOL REFERENTE A ESTA NOTIFICACION O PROYECTO, FAVOR DE COMUNICARSE AL (909) 350-6728.

In compliance with Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132) and the federal rules and regulations adopted in implementation thereof, the Agenda will be made available in appropriate alternative formats to persons with a disability. Should you need special assistance to participate in this meeting, please contact the City Clerk's Department by calling (909) 350-7602 or email at clerks@fontana.org. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

A PUBLIC HEARING HAS BEEN SCHEDULED BEFORE THE CITY COUNCIL OF THE CITY OF FONTANA FOR THE FOLLOWING:

Municipal Code Amendment (MCA) No. 21-001R1 for an Amendment to Chapter 9 of the Municipal Code to Modify Article V to Revise Sustainability Standards for Industrial Commerce Centers throughout the City

Municipal Code Amendment (MCA) No. 21-001R1 to amend Chapter 9 of the Municipal Code to modify Article V revise sustainability standards that includes modifications and clarification to buffering and screening requirements, methods to improve traffic circulation, requirements for alternative energy, and improvements to construction as it relates to industrial commerce centers throughout the city.

Environmental Determination:	This project qualifies for a categorical exemption pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15061(B)(3) (the common-sense exemption) and, alternatively, pursuant to CEQA Guidelines Section 15307 (Actions by Regulatory Agencies for Protection of Natural Resources) and 15308 (Actions by Regulatory Agencies for Protection of the Environment), and Section No. 3.22 of the 2019 Local Guidelines for Implementing CEQA, as implementation of this Ordinance is to improve the environment.
Location of Property:	Citywide
Date of Hearing:	March 22, 2022
Place of Hearing:	City Hall Council Chambers 8353 Sierra Avenue Fontana, CA 92335

FONTANA
CALIFORNIA

Time of Hearing: 7:00 pm

Should you have any questions concerning this project, please contact, **Rina Leung**, at (909) 350-6566 or rleung@fontana.org

ANY INTERESTED PARTY MAY PROVIDE INFORMATION BY LETTER OR EMAIL WHICH MAY BE OF ASSISTANCE TO THE CITY COUNCIL. A COPY OF THE ENVIRONMENTAL DOCUMENTATION IS AVAILABLE FOR INSPECTION. PLEASE CONTACT THE PLANNER LISTED ABOVE.

IF YOU CHALLENGE IN COURT ANY ACTION TAKEN CONCERNING A PUBLIC HEARING ITEM, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE TO THE CITY AT, OR PRIOR TO, THE PUBLIC HEARING.

Publish:
¼ Page

8353 Sierra Avenue
Fontana, CA 92335

City of Fontana

Action Report

City Council Meeting

File #: 21-1256
Agenda #: B.

Agenda Date: 3/22/2022
Category: Public Hearing

FROM:
Planning Department

SUBJECT:
Municipal Code Amendment (MCA) No. 21-001R1 for an Amendment to Chapter 9 of the Municipal Code to Modify Article V to Revise Sustainability Standards for Industrial Commerce Centers throughout the City

RECOMMENDATION:
Read by title only and waive further reading of and introduce **Ordinance No.___**, an Ordinance of the City Council of the City of Fontana, approving Municipal Code Amendment (MCA) No. 21-001R1 for an amendment to Chapter 9 of the Municipal Code to modify Article V to revise sustainability standards for industrial commerce centers throughout the city, and the reading of the title constitutes the first thereof.

COUNCIL GOALS:
- To promote economic development by pursuing business retention, expansion and attraction.
- To promote economic development by establishing a quick, consistent development process.

DISCUSSION:
The City of Fontana currently regulates industrial commerce centers in Specific Plans, Chapter 30 of the Zoning and Development Code, and in Chapter 9, and Article V (Industrial Commerce Centers Sustainability Standards) of the Municipal Code. Ordinance No. 1879 that established Article V in Chapter 9 of the Municipal Code was adopted by City Council on February 8, 2022.

The proposed Municipal Code Amendment (MCA) No. 21-001R1 is for the amendment of Chapter 9 of the Municipal Code to modify Article V to revise industrial commerce centers sustainability standards. That includes modifications and clarification to buffering and screening requirements, methods to improve traffic circulation, requirements for alternative energy, and improvements to construction as it relates to industrial commerce centers throughout the city.

The following is a brief summary of the revised standards that shall apply to all industrial commerce centers in the City of Fontana (a detailed comprehensive list of all the requirements is located in the Ordinance, Attachment No. 1):

1. Additional requirements for larger buildings over 400,000 square feet:
    a. A 20-foot wide landscaping buffer adjacent to sensitive receptors;
    b. A minimum of 300 feet separation of the building's loading dock from a sensitive receptor; and
    c. A requirement to include a truck operator lounge.

2. An additional requirement for parking lot trees to provide at least 35% shade cover of parking areas within fifteen years.

3. Clarification on orientation of loading docks and truck entries.

4. Additional alternative energy improvements to require the office portion that is not covered with solar panels or utilities to include light colored roofing with a solar reflective index of not less than 78.

5. Revision of VOC paints to be super-compliant instead of low.

6. Clarification of documentation requirements in utilizing the available highest rated CARB Tier technology during construction.

ENVIRONMENTAL FINDING:
This project is exempt per the California Environmental Quality Act (CEQA) pursuant to Guidelines Section 15061(B)(3) (the common-sense exemption) and, alternatively, pursuant to CEQA Guidelines Section 15307 (Actions by Regulatory Agencies for Protection of Natural Resources) and 15308 (Actions by Regulatory Agencies for Protection of the Environment), and Section No. 3.22 of the 2019 Local Guidelines for Implementing CEQA, as implementation of this Ordinance is to reduce potential impacts to air and environmental quality.

FISCAL IMPACT:
None

MOTION:
Approve staff's recommendation

ATTACHMENTS:

1. City Council Ordinance
2. Notice of Exemption
3. Public Hearing Notice

DocuSign

Certificate Of Completion

Envelope Id: 440205DFA28145CBBF15211C45B14006
Subject: URGENT Please DocuSign: Ordinance 1891
Source Envelope:
Document Pages: 14 | Signatures: 4
Certificate Pages: 5 | Initials: 0
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Status: Completed

Envelope Originator:
City Clerk
8353 Sierra Avenue
Fontana, CA 92335
clerks@fontana.org
IP Address: 192.146.186.96

Record Tracking

Status: Original
4/13/2022 | 12:23 PM

Holder: City Clerk
clerks@fontana.org

Location: DocuSign

Signer Events	Signature	Timestamp
Ruben Duran ruben.duran@bbklaw.com Security Level: Email, Account Authentication (None)	DocuSigned by: Ruben Duran 622D5F9CCD6240C... Signature Adoption: Pre-selected Style Signed by link sent to ruben.duran@bbklaw.com Using IP Address: 174.195.132.203 Signed using mobile	Sent: 4/13/2022 | 12:23 PM Resent: 4/13/2022 | 04:07 PM Viewed: 4/13/2022 | 04:15 PM Signed: 4/13/2022 | 04:16 PM
Electronic Record and Signature Disclosure: Accepted: 4/13/2022 | 04:15 PM ID: dbe602b4-daf0-4fac-94ee-91f20b9558f7		
Acquanetta Warren awarren@fontana.org Security Level: Email, Account Authentication (None)	DocuSigned by: Acquanetta Warren 9B476DADB90D46B... Signature Adoption: Pre-selected Style Signed by link sent to awarren@fontana.org Using IP Address: 108.184.102.134	Sent: 4/13/2022 | 04:16 PM Resent: 4/13/2022 | 04:37 PM Viewed: 4/13/2022 | 04:51 PM Signed: 4/13/2022 | 04:51 PM
Electronic Record and Signature Disclosure: Accepted: 4/13/2022 | 04:51 PM ID: 502d94e8-da6b-4b13-86e8-e6617b288e64		
Germaine McClellan Key gkey@fontana.org Security Level: Email, Account Authentication (None)	DocuSigned by: Germaine McClellan key 8FCB7DF749584D6... Signature Adoption: Pre-selected Style Signed by link sent to gkey@fontana.org Using IP Address: 107.201.246.59	Sent: 4/13/2022 | 04:51 PM Viewed: 4/13/2022 | 04:58 PM Signed: 4/13/2022 | 04:59 PM
Electronic Record and Signature Disclosure: Accepted: 4/13/2022 | 04:58 PM ID: 598fbdf8-f0a9-44c5-82ad-9d141b1f8c47		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Evelyne Ssenkoloto essenkol@fontana.org Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 10/13/2021 | 04:17 PM ID: e7145250-7347-428b-af51-3066469cc29f	COPIED	Sent: 4/13/2022 | 04:59 PM
Kathy Kasinger kkasinger@fontana.org Records Coordinator Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 4/12/2022 | 07:28 AM ID: 6bf6d243-6517-4841-a35f-dcf0ba649302	COPIED	Sent: 4/13/2022 | 04:59 PM
Susana Gallardo sgallardo@fontana.org Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 4/13/2022 | 04:59 PM
Brittany Medrano bmedrano@fontana.org Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 4/13/2022 | 04:59 PM

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/13/2022 | 12:23 PM
Certified Delivered	Security Checked	4/13/2022 | 04:58 PM
Signing Complete	Security Checked	4/13/2022 | 04:59 PM
Completed	Security Checked	4/13/2022 | 04:59 PM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Fontana (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Fontana:
You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by email send messages to: ctejeda@fontana.org

To advise City of Fontana of your new e-mail address
To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at ctejeda@fontana.org and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..
In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from City of Fontana
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to ctejeda@fontana.org and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Fontana
To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
ii. send us an e-mail to ctejeda@fontana.org and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	•Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically
To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.
By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and

- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and

- Until or unless I notify City of Fontana as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Fontana during the course of my relationship with you.

Exhibit H

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement") is entered into by and between the City of Stockton ("City"), and Rob Bonta, Attorney General of California, on behalf of the People of the State of California ("Attorney General"), and it is dated and effective as of the date that the last Party signs ("Effective Date"). The City, and the Attorney General are referred to as the "Parties."

RECITALS

WHEREAS areas of the City, including south Stockton, have disproportionately suffered from the environmental impacts of industrial land uses located nearby residences and other sensitive receptors such as schools, parks, and hospitals. According to CalEnviroScreen, a tool used to identify communities exposed to high levels of pollution, south Stockton's neighborhoods are exposed to pollution burdens in the top 10% of all communities in California, with some communities registering in the top 1%.

WHEREAS because of the extremely high levels of air pollution to which this environmental justice community is disproportionately exposed, the California Air Resources Board (CARB) has designated the area of south Stockton to the northwest of the Project as a top priority for reductions in emissions and improvements in air quality under AB 617. In 2021, CARB approved Stockton's Community Emissions Reduction Program (CERP) after an extensive public process. The CERP includes projected investments of over $32 million in emission reduction incentives and a variety of other clean air projects in the south Stockton AB 617 community area and additional measures to reduce exposure to air pollution for sensitive receptors.

WHEREAS in recent years, the proliferation of e-commerce and rising consumer expectations of rapid shipping have contributed to a boom in warehouse development. California, with its ports, population centers, and transportation network, has found itself at the center of this trend.

WHEREAS in response to project applications consistent with this demand, the City has approved millions of square feet of warehouse and logistics space, substantial amounts of which have been or will be constructed in the south Stockton community.

WHEREAS the Attorney General has previously submitted letters to the City regarding concerns with significant environmental impacts being created by such warehouse and distribution facility projects, including the Sanchez Hoggan Annexation Project and the South Stockton Commerce Center Project.

WHEREAS the City seeks to minimize additional environmental impacts from new warehouse and distribution facility development sited in south Stockton and throughout the City.

WHEREAS the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq. and California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000-15387, requires, amongst other things, that the City impose feasible mitigation measures on applicable projects to minimize any significant environmental impacts. The California Supreme Court has determined that CEQA requires a lead agency "to implement all mitigation measures unless those measures are truly infeasible." *Sierra Club v. Cty. of Fresno* (2018) 6 Cal.5th 502, 524–25 (citing *City of San Diego v. Board of Trustees of California State University* (2015) 61 Cal.4th 945, 967).

WHEREAS on August 24, 2021, the City released the Draft Environmental Impact Report (EIR) for the Mariposa Industrial Park Project. Public comments submitted on the Draft EIR, including comments from the Attorney General's Office and the Sierra Club, raised concerns that the project's

significant environmental impacts were not sufficiently disclosed, analyzed, and mitigated as required by CEQA.

WHEREAS on February 28, 2022, the City released the Final EIR for the Mariposa Industrial Park Project. In response, once again stakeholders, including the Attorney General's Office and the Sierra Club, raised concerns regarding the project, including the lack of feasible mitigation as required under CEQA.

WHEREAS the City, the Attorney General's Office, and the Sierra Club have been engaged in good-faith negotiations regarding additional feasible mitigation measures to reduce the potentially significant environmental impacts that the Mariposa Industrial Park Project may create.

WHEREAS as a result of those good-faith negotiations the City has proposed to require additional feasible mitigation measures on the Mariposa Industrial Park Project to further reduce the project's significant environmental impacts, as identified in the amended Mariposa Industrial Park Final Environmental Impact Report ("Revised Final EIR" State Clearinghouse No. 2020120283). The City Council intends to soon consider adopting: (1) a Resolution certifying that Revised Final EIR together with the adoption of CEQA Findings including a Statement of Overriding Considerations and adoption of a Mitigation Monitoring and Reporting Program ("MMRP"); (2) an Ordinance for the Pre-Zoning of APNs 179-220-10, -12, -13, -16, -17, -18, -19, and -24 (the "Property") to Industrial, Limited; (3) an Ordinance for a Development Agreement; and (4) a Resolution authorizing the filing of an annexation application with the San Joaquin Local Agency Formation Commission (collectively the "Project Approvals").

WHEREAS the City has embarked on a comprehensive update to Title 16 of the City's Municipal Code, known as the Development Code, that is intended to produce a user-friendly Development Code, serving as an effective tool to implement the General Plan, shape future growth, and help realize the community's vision of promoting investment in downtown Stockton and historically underserved areas, preserving and enhancing neighborhood character, and improving community health and safety. The City anticipates adopting and publishing a new updated Development Code in 2023.

WHEREAS the City seeks to establish an ordinance applicable to future warehouse and distribution facility development projects ("warehouse ordinance") in order to set minimum development standards to mitigate environmental impacts from those projects. Such a warehouse ordinance will also provide clarity to stakeholders, including developers and the general public, regarding the requirements needed to construct warehouse and distribution facilities in the City.

AGREEMENT

Either as part of the aforementioned ongoing Development Code amendment process or as a separate, stand-alone process, City staff shall propose a warehouse ordinance to identify and apply all feasible mitigation measures to qualifying warehouse and distribution facility projects to minimize their potentially significant environmental impacts. The proposed warehouse ordinance shall be scheduled for consideration by the City Council before December 31, 2023.

The warehouse ordinance proposed to the City Council shall apply to qualifying facilities engaged in logistics use, which is defined as any warehouse or wholesaling and distribution land use which entails facilities to be used for the storage of farm products, furniture, household goods, or other commercial goods of any nature for distribution to wholesalers and/or retailers, including cold storage. Qualifying facilities do not include self-storage or mini-storage facilities offered for rent or lease to the

general public. Qualifying facilities shall include, at minimum, projects with a building or buildings totaling 100,000 square feet or larger.

In preparing and proposing the warehouse ordinance, City staff shall consider including at minimum the conditions included in Exhibit A. To the extent that the conditions included in Exhibit A are not included in the warehouse ordinance proposed for approval by City Council, City staff shall explain: (1) why such conditions are infeasible as defined under CEQA; (2) what alternative conditions are being proposed for inclusion in-lieu of any such omitted conditions; and (3) how such alternative conditions reduce potentially significant environmental impacts.

If the City enters into this Agreement and adopts the Project Approvals, including all of the Mariposa Industrial Project Enhanced Measures attached to the City's and Developer's separate settlement agreement with the Sierra Club, then the Attorney General shall not file any complaints, claims, grievances, special proceedings, legal challenges, or take any other actions against the City with any state, federal, or local agency or court challenging the City Council's adoption of the Project Approvals or the proposed annexation of the Property to the City of Stockton (the "AG Obligation").

GENERAL TERMS AND CONDITIONS

1. Agreement Term. This Agreement shall remain in effect until the City implements and complies with the commitment pursuant to the agreed-on deadline set forth herein.
2. Default. The Parties agree and acknowledge that time is of the essence for City staff to propose and for the City Council to consider adopting a warehouse ordinance before the December 31, 2023, deadline set forth in this Agreement. The Parties stipulate that the Superior Court in and for San Joaquin County shall have jurisdiction over the Parties and this Agreement to enforce the provisions of the Agreement until performance in full of all terms of the Agreement. The Court shall have full authority to enforce the Agreement as if the Parties had entered the Agreement as a stipulated judgment pursuant to Code of Civil Procedure, section 664.6. Nothing in this Agreement prevents the Attorney General from seeking any and all remedies for non-compliance with the Agreement.
3. No Waiver. This Agreement does not in any way limit or waive the Attorney General's jurisdiction, capacity, authorization, obligation, right, or discretion to determine whether any City action or failure to act complies with CEQA or any other law except as expressly provided in the AG Obligation above.
4. Amendment. No addition to or modification of any term or provision of this Agreement will be effective unless set forth in writing and signed by an authorized representative of each of the Parties.
5. Signing Authority. By signing this Agreement, the persons executing the Agreement represent that they have the capacity and authority to execute the Agreement as the representative of their respective agency and to bind their respective agency to the terms of this Agreement.
6. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, discussions, agreements, commitments, and understandings with respect thereto.
7. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
8. Joint Drafting. This Agreement has been jointly drafted, and the general rule that it be construed against the drafting party is not applicable.
9. Severability. If a court should find any term, covenant, or condition of this Agreement to be invalid or unenforceable, the remainder of the Agreement shall remain in full force and effect.

10. Representation by Counsel. Each of the Parties affirmatively represents that it has been represented throughout this matter by attorneys of its own choosing. Each Party has read this Agreement and has had the terms used herein and the consequences thereof explained by its attorneys of choice. This Agreement is freely and voluntarily executed and agreed to by each Party after having been apprised of all relevant information and data furnished by its attorneys of choice. Each Party in executing this Agreement does not rely upon any inducements, promises, or representations made by any other Party except as set forth herein.
11. Counterparts and Electronic Signatures. This Agreement may be executed with counterpart signatures, each of which shall be deemed an original. The Agreement will be binding upon the receipt of original, facsimile, or electronically communicated signatures.

DATED: December ___, 2022

ROB BONTA
Attorney General of California
CHRISTIE VOSBURG
Supervising Deputy Attorney General

_____
SCOTT LICHTIG
Deputy Attorney General
Attorneys for the People of the State of California

DATED: December ___, 2022

CITY OF STOCKTON

_____
HARRY BLACK
City Manager

EXHIBIT A

In preparing and proposing the warehouse ordinance, City staff shall consider including at minimum the following conditions on qualifying facilities. To the extent that the following conditions are not included in the warehouse ordinance proposed for approval by City Council, City staff shall explain: (1) why such conditions are infeasible as defined under CEQA; (2) what alternative conditions are being proposed for inclusion in-lieu of any such omitted conditions; and (3) how such alternative conditions reduce potentially significant environmental impacts:

Construction Mitigation:

- San Joaquin Valley Air Pollution Control District (SJVAPCD) Regulation VIII Compliance: Construction plans and specifications shall include a Dust Control Plan incorporating the applicable requirements of Regulation VIII, which shall be submitted to the SJVAPCD for review and approval prior to beginning construction in accordance with the requirements of Regulation VIII.
- Construction Vehicles & Equipment:
    - The use of electric-powered, battery-powered, natural gas, or hybrid construction equipment and vehicles are required during construction if commercially available. If substantial evidence is provided by the permittee or its contractor that such equipment is not commercially available, including a description of commercially reasonable efforts to secure such equipment, diesel-powered construction equipment greater than 50 horsepower meeting the highest rated California Air Resources Board (CARB) Tier technology available at the time of construction may be used. Prior to permit issuance, the construction contractor shall submit an equipment list confirming equipment used is compliant with the highest CARB Tier at the time of construction. Equipment proposed for use that does not meet the highest CARB Tier in effect at the time of construction, shall only be approved for use at the discretion of Stockton's Community Development Department (CDD) and shall require proof from the construction contractor that, despite reasonable best efforts to obtain the highest CARB Tier equipment, such equipment was unavailable.
    - All off-road equipment with a power rating below 19 kilowatts (e.g., plate compactors, pressure washers) used during construction of the qualifying facility(ies) shall be electric powered.
    - Subject to all other idling restrictions, off-road diesel-powered equipment shall not be left in the "on position" for more than 10 hours per day.
- Owners, operators or tenants of qualifying facilities shall provide "cool roof" specifications in construction plans verifying that the proposed roof will utilize cool roofing materials with an aged reflectance and thermal emittance values that are equal to or greater than those specified in the current edition of the CALGreen Building Standards Code, Table A5.106.11.2.3 for Tier 1 and the City's Green Building Standards within Chapter 15.72 of the Stockton Municipal Code.
- Temporary electrical hookup to the construction yard and associated work areas shall be required.
- The idling of heavy construction equipment for more than 5 minutes shall be prohibited. The owners, operators or tenants shall provide verification that construction specifications establish a

five-minute idling limit for all heavy-duty construction equipment utilized during construction of the proposed qualifying facility(ies). Signage shall be posted throughout the construction site regarding the idling time limit, and the construction contractor shall maintain a log for review. The log shall verify that construction equipment operators are advised of the idling time limit at the start of each construction day. Idling limits shall be noted in the construction specifications. The maintenance of logs documenting compliance shall be required.

- The construction contractors shall maintain on the construction site an inventory of construction equipment, maintenance records, and datasheets, including design specifications and emission control tier classifications.
- Architectural and industrial maintenance coatings (e.g., paints) applied on the qualifying facility(ies) shall be consistent with a VOC content of <10 g/L. Developer or tenant is not expected to exercise control over materials painted offsite by a third party.
- Qualifying facilities shall require the construction contractor to establish one or more locations for food or catering truck service to construction workers and to cooperate with food service providers to provide consistent food service.
- Qualifying facilities shall require the construction contractor to provide transit and ridesharing information for construction workers.

Site Design:

- Qualifying facilities shall be constructed in compliance with the most current edition of all adopted City building codes, including the adopted Green Building Standards Code. Prior to the issuance of building permits, the applicant/developer of the qualifying facility(ies) shall demonstrate (e.g., provide building plans) that the proposed buildings are designed and will be built to, at a minimum, meet the Tier 2 advanced energy efficiency requirements of the Nonresidential Voluntary Measures of the California Green Building Standards code, Divisions A5.1, A5.2 and A5.5, Energy Efficiency as outlined under Section A5.203.1.2.
- Qualifying facilities and their associated loading docks must be located no closer than 300 feet from sensitive receptors, and the City staff should consider the public health and safety benefits of requiring a larger buffer, up to 1,000 ft. All such setbacks will be measured from the loading dock or any building edge, whichever is closer, to the property line of any nearby sensitive receptors using the straight-line method. The setbacks and buffers required in this ordinance shall prevail over any less-stringent standards in the City's Development Code. Sensitive receptor shall be defined as any residence including private homes, condominiums, apartments, and living quarters, schools, preschools, daycare centers, correctional facilities, parks/recreation facilities, in-home daycares, and health facilities such as hospitals, long term care facilities, retirement and nursing homes.
- Qualifying facilities must include an onsite landscaped buffer, measured from the property line of all adjacent sensitive receptors. The width of the buffer shall be proportionate to the height of the warehouse building with specified minimums as set forth below unless infeasible. Landscaping shall be installed at the periphery of the qualifying facility(ies) site along adjacent rights of way and the landscaping buffer area shall not include the right of way itself. Landscape buffers shall not be required on interior boundaries of the qualifying facility(ies).

- The width of the buffer shall be set at a 2:1 ratio for all warehouses–for every 1 foot of building height, the buffer shall be 2 feet. The landscaping portion of this buffer shall not be less than 50% of this buffer, but may include areas to be used for bioswales, retention/detention areas and/or other stormwater and water quality management areas.
- The buffer area(s) shall include, at a minimum, a solid decorative wall(s) adjacent to sensitive receptors, natural ground landscaping, and solid screen buffering trees, as described below, unless there is an existing solid block wall. Onsite buffer areas shall not include deceleration lanes or right-turn lanes. To the extent allowed by other applicable City codes, policies and regulations the height of the decorative wall shall be at least 14 feet, except in buffer areas adjacent to sensitive receptors. For areas adjacent to sensitive receptors, the decorative wall shall be a minimum of 14 to 18 feet to the extent otherwise permitted by city codes, policies and regulations.
- Trees shall be used as part of the solid screen buffering treatment. Trees used for this purpose shall be evergreen, drought tolerant, and shall be spaced in two rows along the length of the buffer, with trees in each row offset, and each tree no greater than 15 feet on center. Spacing up to 20 feet may be allowed if wide canopy trees are used sufficient to create wall of vegetation that filters warehouse pollution. The property owner, tenant, operator, and any successors in interest shall maintain these trees for the duration of ownership, ensuring any unhealthy or dead trees are replaced with a similar tree as soon as possible.
- All landscaping shall be drought tolerant, and to the extent feasible, species with low biogenic emissions. Palm trees shall not be utilized.
- All landscaping areas shall be properly irrigated for the life of the qualifying facility(ies) to allow for plants and trees to maintain growth with no undue pruning.

<u>Operational Mitigation</u>

- Solar Power/Battery Energy Storage Systems:
  - The building permit application for qualifying facilities must demonstrate sufficient solar panels to provide power for the operation’s base power use at the start of operations and as base power use demand increases. The application shall include analysis of plans to meet (a) projected power requirements at the start of operations and as base power demand increases corresponding to the implementation of the “clean fleet” requirements, and (b) generating capacity of the solar installation.
  - The photovoltaic system(s) shall include a battery energy storage system to serve the qualifying facility(ies) in the event of a power outage to the extent required by the most current edition of the California Building Standards Code.
  - Stockton’s Community Development Department (CDD) shall verify the size and scope of the solar project based upon the analysis of the projected power requirements and generating capacity as well as the available solar panel installation space.
  - In the event sufficient space is not available on the subject lot to accommodate the needed number of solar panels to produce the operation’s base or anticipated power use, the applicant of the qualifying facility(ies) shall demonstrate how all available space has

been maximized (e.g., roof, parking areas, etc.) for photovoltaic and battery energy storage system use. Areas which provide truck movement may be excluded from these calculations unless otherwise deemed acceptable by the supplied reports and applicable building standards.

- The owners, operators or tenants, or qualified solar system contractor engaged by the developer or tenant, shall install the system when the City has approved building permits and the necessary equipment has arrived. The tenant/operator of the qualifying facility(ies) shall commence operation of the system only when it has received permission to operate from the utility. The photovoltaic system owner shall be responsible for maintaining the system(s) at not less than 80% of the rated power for 20 years. At the end of the 20-year period, the owners, operators or tenants shall install a new photovoltaic system meeting the capacity and operational requirements of this measure, or continue to maintain the existing system, for the life of the qualifying facility(ies).

- Electric Vehicles (EV): The following mitigation measures shall be implemented during all on-going business operations and shall be included as part of contractual lease agreement language to ensure the tenants/operators of the qualifying facility(ies) are informed of all on-going operational responsibilities.

  - Heavy-Duty EV Trucks: The property owners, operators or tenants of the qualifying facility(ies) shall ensure that all heavy-duty trucks (Class 7 and 8) domiciled on site are model year 2014 or later from start of operations and shall expedite a transition to zero-emission vehicles, with the fleet fully zero-emission by December 31, 2025, or when commercially available for the intended application, whichever date is later.

  - Medium-Duty EV Vehicles: The property owners, operators or tenants of the qualifying facility(ies) shall utilize a "clean fleet" of vehicles/delivery vans/trucks (Class 2 through 6) as part of business operations as follows: For any vehicle (Class 2 through 6) domiciled on site, the following "clean fleet" requirements apply: (i) 33% of the fleet will be zero emission vehicles at start of operations, (ii) 65% of the fleet will be zero emission vehicles by December 31, 2023, (iii) 80% of the fleet will be zero emission vehicles by December 31, 2025, and (iv) 100% of the fleet will be zero emission vehicles by December 31, 2027.

  - "Domiciled on site" shall mean the vehicle is either (i) parked or kept overnight at the qualifying facility(ies) more than 70% of the calendar year or (ii) dedicated to the qualifying facility(ies) site (defined as more than 70% of the truck routes during the calendar year that start at the qualifying facility(ies) site even if parked or kept elsewhere). The tenant/operator of the qualifying facility(ies) shall not be responsible to meet "clean fleet" requirements for vehicles used by common carriers operating under their own authority that provide delivery services to or from the qualifying facility(ies) site.

  - Zero-emission vehicles which require service can be temporarily replaced with alternate vehicles. Replacement vehicles shall be used for only the minimum time required for servicing fleet vehicles.

- A zero-emission vehicle shall ordinarily be considered commercially available if the vehicle is capable of serving the intended purpose and is included in California's Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project, https://californiahvip.org/ or listed as available in the US on the Global Commercial Vehicle Drive to Zero inventory, https://globaldrivetozero.org/. The City shall be responsible for the final determination of commercial availability, based on all the facts and circumstances at the time the determination is made. In order for the City to make a determination that such vehicles are commercially unavailable, the operator must submit documentation from a minimum of three (3) EV dealers identified on the californiahvip.org website demonstrating the inability to obtain the required EVs or equipment needed within 6 months.
- The tenant/operator of the qualifying facility(ies) shall utilize the zero emission vehicles/trucks required to meet the "clean fleet" requirements. Within 30 days of issuance of the final certificate of occupancy, the tenant/operator shall demonstrate to the satisfaction of CDD staff, that the applicable clean fleet requirements are being met. In the event that there is a disruption in the manufacturing of zero emission vehicles/trucks or that sufficient vehicles/trucks are not commercially available for the intended application, the "clean fleet requirements" may be adjusted as minimally as possible by the CDD to accommodate the manufacturing disruption or unavailability of commercially available vehicles/trucks.
- The tenant/operator of the qualifying facility(ies) shall implement the proposed measures after CDD review and approval. Any extension of time granted to implement this condition shall be limited to the shortest period of time necessary to allow for 100% electrification under the clean fleet requirements. The CDD staff may seek the recommendation of the California Air Resources Board in determining whether there has been a manufacturing disruption or insufficient vehicles/trucks commercially available for the intended application.
- Within 12 months of failing to meet a "clean fleet" requirement, the tenant/operator of the qualifying facility(ies) shall implement a Voluntary Emissions Reduction Agreement (VERA) providing pound for pound mitigation of the criteria pollutant, toxic air contaminants, and GHG emissions quantified by the City through a process that develops, funds, and implements emission reduction projects, with the Air District serving a role of administrator of the emission reduction projects and verifier of the successful mitigation effort. The VERA shall prioritize projects in the area surrounding the new qualifying facility(ies). The tenant/operator shall continue to fund the VERA each year in an amount necessary to achieve pound for pound mitigation of emissions resulting from not meeting the clean fleet requirements until the owner/tenant/lessee fully complies.

- At all times during operation, and to the extent the applicable utility authorizes and has capacity to support, the tenant/operator of the qualifying facility(ies) shall be required to provide electric charging facilities on site sufficient to charge all electric trucks domiciled on the site, and such facilities shall be made available for all electric trucks that use the qualifying facility(ies).
- The tenant/operator of the qualifying facility(ies) shall require all forklifts, yard trucks, and other equipment used for on-site movement of trucks, trailers and warehoused goods, as well as landscaping maintenance equipment used on the site, to be electrically powered or zero-emission.

The tenant/operator shall provide on-site electrical charging facilities to adequately service such electric vehicles and equipment.

- EV Compliance Reporting:
    - The tenant/operator of the qualifying facility(ies) shall procure the zero emission vehicles/trucks required to meet the "clean fleet" requirements above. Within 30 days of issuance of the final certificate of occupancy, the tenant/operator shall submit a condition of approval compliance report outlining compliance with each clean fleet requirement applicable and including documentation demonstrating compliance with each requirement. The tenant/operator shall submit similar reports every two years thereafter until full compliance with the applicable clean fleet requirements is achieved. The City shall consider each report at a noticed public hearing and determine whether the tenant/operator has complied with the applicable clean fleet requirements. If the tenant/operator has not met each 100% clean fleet requirement by December 31, 2027, then the tenant/operator shall submit reports annually until the 100% clean fleet requirement is implemented. The City shall consider each subsequent report at a noticed public hearing and determine whether the Operator has complied with the clean fleet requirements, including any minimal adjustments to the requirements by the CDD to accommodate the manufacturing disruption or unavailability of commercially available vehicles/trucks, as described above. Notice of the above hearings shall be provided to all properties located within 1,000 feet of the qualifying facility(ies) site and through the ASK Stockton list serve.
    - After the 100% clean fleet requirement has been implemented and confirmed by the CDD, the tenant/operator shall submit to the CDD an on-going compliance report every three years containing all necessary documentation to verify that the clean fleet requirements are being met. At the time it confirms that the 100% clean fleet requirement has been implemented, the CDD will establish the due date for the first on- going compliance report. Each subsequent on-going compliance report shall be due within 30 days of, but not later than, the three-year anniversary of the preceding due date. The on-going compliance reports and accompanying documentation shall be made available to the public upon request
- For qualifying facilities at which cold storage and associated transport refrigeration units (TRUs) are proposed or may be a future use, unless the owner of the facility records a covenant on the title of the underlying property ensuring that the property cannot be used to provide cold storage, a conduit shall be installed during construction of the building shell from the electrical room to 100% of the loading dock doors that have potential to serve the refrigerated space. If tenant improvement building permits are issued for any such cold storage space, electric plug-in units shall be installed at every dock door servicing the cold storage space to allow TRUs to plug in and truck operators with TRUs shall be required to utilize the electric plug-in units when at loading docks serving such refrigerated space.
- Prior to the issuance of the first building permit, the applicant/developer shall demonstrate compliance with the SJVAPCD Rule 9510 (Indirect Source Review) to reduce growth in both NOx and PM10 emissions, as required by SJVAPCD and City requirements.

- The tenant/operator of the qualifying facility(ies) shall enroll and participate the in SmartWay program for eligible businesses.
- Truck Routes and Ingress/Egress:
    - Entry gates into the loading dock/truck court area of the qualifying facility(ies) shall be sufficiently positioned to ensure all trucks and other vehicles are contained onsite and inside the property line. Queuing, or circling of vehicles, on public streets immediately pre- or post-entry to an industrial commerce facility is strictly prohibited unless queuing occurs in a deceleration lane or right turn lane exclusively serving the qualified facility(ies).
    - Applicants shall submit to the CDD, and obtain approval of, all turning templates to verify truck turning movements at entrance and exit driveways and street intersection adjacent to industrial buildings prior to entitlement approval. Unless not physically possible, truck entries shall be located on collector streets (or streets of a higher commercial classification), and vehicle entries shall be designed to prevent truck access on streets that are not collector streets (or streets of a higher commercial classification), including, but not limited to, by limiting the width of vehicle entries.
    - Prior to issuance of certificate of occupancy, the tenant/operator of the qualifying facility(ies) shall establish and submit for approval to the CDD a truck routing plan to and from the State Highway System based on the City's latest Truck Route Map. The plan shall describe the operational characteristics of the use of the tenant/operator, including, but not limited to, hours of operations, types of items to be stored within the building, and proposed truck routing to and from the proposed facility(ies) to designated truck routes that avoids passing sensitive receptors, to the greatest extent possible. The plan shall include measures, such as signage and pavement markings, queuing analysis and enforcement, for preventing truck queuing, circling, stopping, and parking on public streets. The tenant/operator shall be responsible for enforcement of the plan. A revised plan shall be submitted to the CDD prior to a business license being issued by the City for any new tenant/operator of the property. The CDD shall have discretion to determine if changes to the plan are necessary including any additional measures to alleviate truck routing and parking issues that may arise during the life of the facility(ies). Signs and drive aisle pavement markings shall clearly identify the onsite circulation pattern to minimize unnecessary on-site vehicular travel.
    - The tenant/operator of the qualifying facility(ies) shall post signs, that may be required by the City, in prominent locations inside and outside of the building indicating that off-site parking for any employee, truck, or other operation related vehicle is strictly prohibited. City may require facility operator to post signs on surface or residential streets indicating that off-site truck parking is prohibited by City ordinance and/or the Truck Routing Plan.
    - Signs shall be installed, as required by the City, at all qualifying facility(ies) truck exit driveways directing truck drivers to the truck route as indicated in the Truck Routing Plan and State Highway System.
    - Upon commencement of operations, the tenant/operator of the qualifying facility(ies) shall be required to restrict truck idling onsite to a maximum of three minutes, subject to exceptions defined by CARB's commercial vehicle idling requirements. The facility must

post highly-visible signs identifying these idling restrictions at the site entry and at other on-site locations frequented by truck drivers and include these restrictions in employee training and guidance material.

- Signs at the qualifying facility(ies) shall be installed, as required by the City, in public view with contact information for a local designated representative who works for the facility(ies) operator and who is designated to receive complaints about excessive dust, fumes, or odors, and truck and parking complaints for the site, as well as contact information for the San Joaquin Valley Air Pollution Control District's on-line complaint system and its complaint call-line: 1-800-281-7003. Any complaints made to the facility(ies) operator's designee shall be answered within 72 hours of receipt.

- Workforce-Related Mitigation:
  - Prior to issuance of occupancy permits, the applicant/developer shall demonstrate to the satisfaction of the City, that the proposed parking areas for employee passenger automobiles are designed and will be built to accommodate EV charging stations, at no cost to employees. At minimum, the parking areas and the number of EV charging stations for employee passenger automobiles shall equal the Tier 1 Nonresidential Voluntary Measures of the California Green Building Standards Code, Section A5.106.5.3.1.
  - Prior to issuance of occupancy permits, the applicant/developer shall demonstrate to the satisfaction of the City, that the proposed parking areas for passenger automobiles are designed and will be built to provide parking for low-emitting, fuel-efficient, and carpool/van vehicles. At minimum, the number of preferential parking spaces for passenger automobiles shall equal the Tier 1 Nonresidential Voluntary Measures of the California Green Building Standards Code, Section A5.106.5.1.1.
  - The tenant/operator of the qualifying facility(ies) shall establish locations for food or catering truck service and cooperate with food service providers to provide consistent food service to operations employees.
  - The tenant/operator of the qualifying facility(ies) shall provide employees transit route and schedule information on systems serving the qualifying facility(ies) area and coordinate ridesharing amongst employees.
  - Designated Smoking Areas: The tenant/operator of the qualifying facility(ies) shall ensure that any outdoor areas allowing smoking are at least 25 feet from the nearest property line.

- Yard Sweeping: Owners, operators or tenants of the qualifying facility(ies) shall provide periodic yard and parking area sweeping to minimize dust generation

- Diesel Generators: Owners, operators or tenants of the qualifying facility(ies) shall prohibit the use of diesel generators, except in emergency situations (including when the utility delays a facility's new electrical service connection), in which case such generators shall have Best Available Control Technology (BACT) that meets CARB's Tier 4 emission standards.

Additional Mitigation

- To the extent a qualifying facility seeks and secures a Development Agreement with/from the City, the applicant, or its successor in interest, and the City shall comply with Government Code section 65865.1 and Stockton Development Code section 16.128.110. The City shall schedule a public hearing at the Planning Commission, with notice to all affected parties, at least every 12 months after approval of the Development Agreement, to receive and discuss the annual report on the status of the qualifying facility(ies)'s compliance with the Development Agreement. At those same hearings, the City shall review all the qualifying facility(ies)'s mitigation measures and conditions of approval for compliance.

- Applicants seeking one or more discretionary permits for proposed qualifying facility(ies) shall engage in a community outreach effort to engage the existing community in determining issues of concern that can be addressed through site design and other means during the land use entitlement process. Suggested outreach efforts include but are not limited to, hosting community meetings, making presentations at advisory and community councils, and hosting job fairs.

Exhibit I

February 20, 2023

Steven Valdez
Planning Manager
Land Use Services Department
County of San Bernardino
385 North Arrowhead Avenue, First Floor
San Bernardino, California 92415-0187
steven.valdez@lus.sbcounty.gov

Dear Steven Valdez:

Thank you for providing the California Air Resources Board (CARB) with the opportunity to comment on the Notice of Preparation (NOP) for the Pepper 210 Commerce Center Project (Project) Draft Environmental Impact Report (DEIR), State Clearinghouse No. 2023010089. The Project proposes a Land Use Category Change (General Plan Amendment) from Resource Land Management (RLM) to General Industrial (GI) and a Zoning District Amendment from Resource Conservation (RC) to Regional Industrial (IR), in conjunction with a Tentative Parcel Map and Conditional Use permit to allow for the placement of a 1,232,660 square-foot warehouse/distribution/logistics building. The Project site is located within an unincorporated area of the County of San Bernardino (County), California, which is the lead agency for California Environmental Quality Act (CEQA) purposes.

Industrial development, such as the Project, can result in high daily volumes of heavy-duty diesel truck, rail traffic and operation of on-site equipment (e.g., forklifts and yard tractors) that emit toxic diesel particulate matter, and contribute to regional air pollution and global climate change.[1] Portions of the Project site are located within the boundaries of the San Bernardino, Muscoy community. This community has been designated as a disadvantaged community under Assembly Bill (AB) 617 (C. Garcia, Chapter 136, Statutes of 2017)[2] and therefore, CARB is concerned about localized air pollutant exposure at the neighborhood level, as well as the Project's regional air quality impacts.

1. With regard to greenhouse gas emissions from this project, CARB has been clear that local governments and project proponents have a responsibility to properly mitigate these impacts. CARB's guidance, set out in detail in the Scoping Plan issued in 2017, makes clear that in CARB's expert view, local mitigation is critical to achieving climate goals and reducing greenhouse gases below levels of significance.
2. Assembly Bill 617, Garcia, C., Chapter 136, Statutes of 2017, modified the California Health and Safety Code, amending § 40920.6, § 42400, and § 42402, and adding § 39607.1, § 40920.8, § 42411, § 42705.5, and § 44391.2.

The Project Would Increase Exposure to Air Pollution in Disadvantaged Communities

The Project, in conjunction with the operation of the other industrial development within the County, will expose the nearby San Bernardino, Muscoy community to increased levels of air pollution. Addressing the disproportionate impacts that air pollution has on disadvantaged communities is a pressing concern across the State, as evidenced by statutory requirements compelling California's public agencies to target these communities for clean air investment, pollution mitigation, and environmental regulation. The following three pieces of legislation need to be considered and included in the DEIR when developing a project like this near a disadvantaged community:

Senate Bill 535 (De León, 2012)

Senate Bill 535 (De León, Chapter 830, 2012)[3] recognizes the potential vulnerability of low-income and disadvantaged communities to poor air quality and requires funds to be spent to benefit disadvantaged communities. The California Environmental Protection Agency (CalEPA) is charged with the duty to identify disadvantaged communities. CalEPA bases its identification of these communities on geographic, socioeconomic, public health, and environmental hazard criteria (Health and Safety Code, section 39711, subsection (a)). In this capacity, CalEPA currently defines a disadvantaged community, from an environmental hazard and socioeconomic standpoint, as a community that scores within the top 25 percent of the census tracts, as analyzed by the California Communities Environmental Health Screening Tool Version 4.0 (CalEnviroScreen). This Project is located with the boundary of the San Bernardino, Muscoy community. The maximum CalEnviroScreen score for the San Bernardino, Muscoy community is in the top one percent, indicating that the area is home to some of the most vulnerable neighborhoods in the State. The air pollution levels in the San Bernardino, Muscoy community routinely exceed state and federal air quality standards. CARB urges the County to ensure that the Project does not adversely impact neighboring disadvantaged communities.

Senate Bill 1000 (Leyva, 2016)

Senate Bill 1000 (SB 1000) (Leyva, Chapter 587, Statutes of 2016)[4] amended California's Planning and Zoning Law. SB 1000 requires local governments that have identified disadvantaged communities to incorporate the addition of an environmental justice element into their general plans upon the adoption or next revision of two or more elements concurrently on or after January 1, 2018. SB 1000 requires environmental justice elements to

3. Senate Bill 535, De León, K., Chapter 800, Statutes of 2012, modified the California Health and Safety Code, adding § 39711, § 39713, § 39715, § 39721and § 39723.
4. Senate Bill 1000, Leyva, S., Chapter 587, Statutes of 2016, amended the California Health and Safety Code, § 65302.

identify objectives and policies to reduce unique or compounded health risks in disadvantaged communities. Generally, environmental justice elements will include policies to reduce the community's exposure to pollution through air quality improvement. SB 1000 affirms the need to integrate environmental justice principles into the planning process to prioritize improvements and programs that address the needs of disadvantaged communities.

Assembly Bill 617 (Garcia, 2017)

The State of California has emphasized protecting local communities from the harmful effects of air pollution through the passage of AB 617. AB 617 requires CARB to develop the process that creates new community-focused and community-driven action to reduce air pollution and improve public health in communities that experience disproportionate burdens from exposure to air pollutants. In response to AB 617, CARB established the Community Air Protection Program with the goal of reducing exposure in communities heavily impacted by air pollution. As part of its role in implementing AB 617, CARB must annually consider the selection of communities for development and implementation of community air monitoring plans and/or community emission reduction programs for those communities affected by a high cumulative exposure burden. The San Bernardino, Muscoy community is one of 15 communities statewide chosen thus far for inclusion in the Community Air Protection Program.

The San Bernardino, Muscoy community was selected for the development of both a Community Air Monitoring Plan and a Community Emissions Reduction Program (CERP) due to its high cumulative exposure burden, the presence of a significant number of sensitive populations (children, elderly, and individuals with pre-existing conditions), and the socioeconomic challenges experienced by its residents. CARB approved the San Bernardino, Muscoy CERP in September 2019, which describes strategies to achieve emissions and exposure reductions throughout this community, including significantly reducing or eliminating emissions from heavy-duty mobile sources and industrial stationary sources.

Health-harming emissions, including particulate matter (PM), toxic air contaminants, and diesel PM generated from the proposed increase in warehouse development in the Project area will negatively impact the community, which is already disproportionately impacted by air pollution from existing freight operations as well as stationary sources of air pollution. Part of the AB 617 process required CARB and the South Coast Air Quality Management District (SCAQMD) to create a highly resolved inventory of air pollution sources within this community.

The DEIR Should Quantify and Discuss the Potential Cancer Risks from Project Operation

Since the Project is near a community that is already burdened by multiple air pollution sources, CARB urges the County and applicant to prepare a health risk assessment (HRA) for the Project. The HRA should account for all potential operational health risks from Project-related diesel particulate matter (diesel PM) emission sources, including, but not limited to, back-up generators, on-site diesel-powered equipment, locomotives, and heavy-duty trucks. The HRA should also determine if the operation of the Project in conjunction with past, present, and reasonably foreseeable future projects or activities would result in a cumulative cancer risk impact on nearby residences. To reduce diesel PM exposure and associated cancer risks, CARB urges the County and applicant to include all the air pollution reduction measures listed in Attachment A.

Since the Project description provided in the NOP does not explicitly state that the proposed industrial land uses would not be used for cold storage, there is a possibility that trucks and trailers visiting the Project-site would be equipped with TRUs.[5] TRUs on trucks and trailers can emit large quantities of diesel exhaust while operating within the Project-site. Residences and other sensitive receptors (e.g., daycare facilities, senior care facilities, and schools) located near where these TRUs could be operating, would be exposed to diesel exhaust emissions that would result in a significant cancer risk impact to the nearby community. If the Project would be used for cold storage, CARB urges the County to model air pollutant emissions from on-site TRUs in the DEIR, as well as include potential cancer risks from on-site TRUs in the Project's HRA. If the Project will not be used for cold storage, CARB urges the County to include one of the following design measures in the DEIR:

- A Project design measure requiring contractual language in tenant lease agreements that prohibits tenants from operating TRUs within the Project-site; or
- A condition requiring a restrictive covenant over the parcel that prohibits the applicant's use of TRUs on the property unless the applicant seeks and receives an amendment to its conditional use permit allowing such use.

The HRA prepared in support of the Project should be based on the latest Office of Environmental Health Hazard Assessment's (OEHHA) guidance (2015 Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments),[6] and CARB's Hot Spots Analysis and Reporting Program (HARP2 model). The Project's mobile PM emissions used to estimate the Project's cancer risk impacts should be based on CARB's latest 2021

5. TRUs are refrigeration systems powered by integral diesel engines that protect perishable goods during transport in an insulated truck and trailer vans, rail cars, and domestic shipping containers.
6. Office of Environmental Health Hazard Assessment (OEHHA). Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments. February 2015. Accessed at: *https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf*.

Emission Factors model (EMFAC2021). Mobile emission factors can be easily obtained by running the EMFAC2021 Web Database: *https://arb.ca.gov/emfac/.*

The HRA should evaluate and present the existing baseline (current conditions), future baseline (full build-out year, without the Project), and future year with the Project. The health risks modeled under both the existing and the future baselines should reflect all applicable federal, state, and local rules and regulations. By evaluating health risks using both baselines, the public and planners will have a complete understanding of the potential health impacts that would result from the Project.

The DEIR Should Quantify and Discuss the Potential Cancer Risks from Project Construction

In addition to the health risks associated with operational diesel PM emissions, health risks associated with construction diesel PM emissions should also be included in the air quality section of the DEIR and the Project's HRA. Construction of the Project would result in short-term diesel PM emissions from the use of both on-road and off-road diesel equipment. The OEHHA guidance recommends assessing cancer risks for construction projects lasting longer than two months. Since construction would very likely occur over a period lasting longer than two months, the HRA prepared for the Project should include health risks for existing residences near the Project-site during construction.

The HRA should account for all diesel PM emission sources related to Project construction, including, but not limited to, off-road mobile equipment, diesel generators, and on-road heavy-duty trucks. As previously stated in Section I of this letter, the cancer risks evaluated in the construction HRA should be based on the latest OEHHA guidance, and CARB's HARP2 model. The cancer risks reported in the HRA should be calculated using the latest emission factors obtained from CARB's latest EMFAC (currently EMFAC 2021) and off-road models.

Conclusion

To reduce the exposure of toxic diesel PM emissions in disadvantaged communities already impacted by air pollution, the final design of the Project should include all existing and emerging zero-emission technologies to minimize diesel PM and NO_x emissions, as well as the greenhouse gases that contribute to climate change. CARB encourages the County and applicant to implement the applicable measures listed in Attachment A of this letter.

Given the breadth and scope of projects subject to CEQA review throughout California that have air quality and greenhouse gas impacts, coupled with CARB's limited staff resources to substantively respond to all issues associated with a project, CARB must prioritize its substantive comments here based on staff time, resources, and its assessment of impacts. CARB's deliberate decision to substantively comment on some issues does not constitute an admission or concession that it substantively agrees with the lead agency's findings and conclusions on any issues on which CARB does not substantively submit comments.

CARB appreciates the opportunity to comment on the NOP for the Project and can provide assistance on zero-emission technologies and emission reduction strategies, as needed. Please include CARB on your State Clearinghouse list of selected State agencies that will receive the DEIR as part of the comment period. If you have questions, please contact Stanley Armstrong, Air Pollution Specialist via email at *stanley.armstrong@arb.ca.gov*.

Sincerely,

Robert Krieger, Branch Chief, Risk Reduction Branch

Attachment

cc: State Clearinghouse
state.clearinghouse@opr.ca.gov

Yassi Kavezade, Organizer, Sierra Club
yassi.kavezade@sierraclub.org

Sam Wang, Program Supervisor, CEQA Intergovernmental Review, South Coast Air Quality Management District
swang1@aqmd.gov

Morgan Capilla, NEPA Reviewer, U.S. Environmental Protection Agency, Air Division, Region 9
capilla.morgan@epa.gov

Taylor Thomas, Research and Policy Analyst, East Yard Communities for Environmental Justice
tbthomas@eycej.org

Stanley Armstrong, Air Pollution Specialist, Risk Reduction Branch

Attachment A
Recommended Air Pollution Emission Reduction Measures for Warehouses and Distribution Centers

The California Air Resources Board (CARB) recommends developers and government planners use all existing and emerging zero to near-zero emission technologies during project construction and operation to minimize public exposure to air pollution. Below are some measures, currently recommended by CARB, specific to warehouse and distribution center projects. These recommendations are subject to change as new zero-emission technologies become available.

Recommended Construction Measures

1. Ensure the cleanest possible construction practices and equipment are used. This includes eliminating the idling of diesel-powered equipment and providing the necessary infrastructure (e.g., electrical hookups) to support zero and near-zero equipment and tools.
2. Implement, and plan accordingly for, the necessary infrastructure to support the zero and near-zero emission technology vehicles and equipment that will be operating on site. Necessary infrastructure may include the physical (e.g., needed footprint), energy, and fueling infrastructure for construction equipment, on-site vehicles and equipment, and medium-heavy and heavy-heavy duty trucks.
3. In construction contracts, include language that requires all off-road diesel-powered equipment used during construction to be equipped with Tier 4 or cleaner engines, except for specialized construction equipment in which Tier 4 engines are not available. In place of Tier 4 engines, off-road equipment can incorporate retrofits, such that, emission reductions achieved are equal to or exceed that of a Tier 4 engine.
4. In construction contracts, include language that requires all off-road equipment with a power rating below 19 kilowatts (e.g., plate compactors, pressure washers) used during project construction be battery powered.
5. In construction contracts, include language that requires all heavy-duty trucks entering the construction site during the grading and building construction phases be model

year 2014 or later. All heavy-duty haul trucks should also meet CARB's lowest optional low-oxides of nitrogen (NO_x) standard starting in the year 2022.[7]

6. In construction contracts, include language that requires all construction equipment and fleets to be in compliance with all current air quality regulations. CARB is available to assist in implementing this recommendation.

Recommended Operation Measures

1. Include contractual language in tenant lease agreements that requires tenants to use the cleanest technologies available, and to provide the necessary infrastructure to support zero-emission vehicles and equipment that will be operating on site.
2. Include contractual language in tenant lease agreements that requires all loading/unloading docks and trailer spaces be equipped with electrical hookups for trucks with transport refrigeration units (TRUs) or auxiliary power units. This requirement will substantially decrease 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 are encouraged and can also be included in lease agreements.[8]
3. Include contractual language in tenant lease agreements that requires all TRUs entering the project-site be plug-in capable.
4. Include contractual language in tenant lease agreements that requires future tenants to exclusively use zero-emission light and medium-duty delivery trucks and vans.
5. Include contractual language in tenant lease agreements that requires all service equipment (e.g., yard hostlers, yard equipment, forklifts, and pallet jacks) used within the project site to be zero-emission. This equipment is widely available and can be purchased using incentive funding from CARB's Clean Off-Road Equipment Voucher Incentive Project (CORE).[9]
6. Include contractual language in tenant lease agreements that requires all heavy-duty trucks entering or on the project site to be zero-emission vehicles, and be fully zero-emission. A list of commercially available zero-emission trucks can be obtained

---

7. In 2013, CARB adopted optional low-NOx emission standards for on-road heavy-duty engines. CARB encourages engine manufacturers to introduce new technologies to reduce NOx emissions below the current mandatory on-road heavy-duty diesel engine emission standards for model-year 2010 and later. CARB's optional low-NOx emission standard is available at: *https://ww2.arb.ca.gov/our-work/programs/optional-reduced-nox-standards*

8. CARB's technology assessment for transport refrigerators provides information on the current and projected development of TRUs, including current and anticipated costs. The assessment is available at: *https://www.arb.ca.gov/msprog/tech/techreport/tru_07292015.pdf*

9. Clean Off-Road Equipment Voucher Incentive Project. Accessible at: *https://californiacore.org/how-to-participate/*

from the Hybrid and Zero-emission Truck and Bus Voucher Incentive Project (HVIP).[10] Additional incentive funds can be obtained from the Carl Moyer Program and Voucher Incentive Program.[11]

7. Include contractual language in tenant lease agreements that requires the tenant to be in, and monitor compliance with, all current air quality regulations for on-road trucks including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation,[12] Advanced Clean Trucks Regulation,[13] Periodic Smoke Inspection Program (PSIP),[14] and the Statewide Truck and Bus Regulation.[15]
8. Include contractual language in tenant lease agreements restricting trucks and support equipment from idling longer than two minutes while on site.
9. Include rooftop solar panels for each proposed warehouse to the extent feasible, with a capacity that matches the maximum allowed for distributed solar connections to the grid.
10. Include contractual language in tenant lease agreements, requiring the installing of vegetative walls[16] or other effective barriers that separate loading docks and people living or working nearby.
11. Include contractual language in tenant lease agreements, requiring all emergency generators to be powered by a non-diesel fuel.
12. The project should be constructed to meet CalGreen Tier 2 green building standards, including all provisions related to designated parking for clean air vehicles, electric

---

10. Zero-Emission Truck and Bus Voucher Incentive Project. Accessible at: *https://californiahvip.org/*
11. Carl Moyer Program and Voucher Incentive Program. *https://ww2.arb.ca.gov/carl-moyer-program-apply*
12. In December 2008, CARB adopted a regulation to reduce greenhouse gas emissions by improving the fuel efficiency of heavy-duty tractors that pull 53-foot or longer box-type trailers. The regulation applies primarily to owners of 53-foot or longer box-type trailers, including both dry-van and refrigerated-van trailers, and owners of the heavy-duty tractors that pull them on California highways. CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation is available at: *https://ww2.arb.ca.gov/our-work/programs/ttghg*
13. On June 25, 2020, CARB approved the Advanced Clean Trucks Regulation. The regulation requires manufacturers to start the transition from diesel trucks and vans to zero-emission trucks beginning in 2024. The rule is expected to result in about 100,000 electric trucks in California by the end of 2030 and about 300,000 by 2035. CARB is expected to consider a fleet regulation in 2021 that would be compatible with the Advanced Clean Trucks regulation, requiring fleets to purchase a certain percentage of zero-emission trucks and vans for their fleet operations. *https://ww2.arb.ca.gov/our-work/programs/advanced-clean-trucks*
14. The PSIP program requires that diesel and bus fleet owners conduct annual smoke opacity inspections of their vehicles and repair those with excessive smoke emissions to ensure compliance. CARB's PSIP program is available at: *https://www.arb.ca.gov/enf/hdvip/hdvip.htm*
15. The regulation requires that newer heavier trucks and buses must meet particulate matter filter requirements beginning January 1, 2012. Lighter and older heavier trucks must be replaced starting January 1, 2015. By January 1, 2023, nearly all trucks and buses will need to have 2010 model-year engines or equivalent. CARB's Statewide Truck and Bus Regulation is available at: *https://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm*
16. Effectiveness of Sound Wall-Vegetation Combination Barriers as Near-Roadway Pollutant Mitigation Strategies (2017) is available at: *https://ww2.arb.ca.gov/sites/default/files/classic//research/apr/past/13-306.pdf*

vehicle charging, and bicycle parking, and achieve a certification of compliance with LEED green building standards.

Public Comment – Item 3.A

From: Peter Sheehan <[redacted]>
Sent: Sunday, August 13, 2023 5:58 PM
To: Web - City Clerk <CityClerk@cityoftracy.org>
Cc: Peter Sheehan [redacted]>
Subject: Tracy Alliance Project EIR City Council Meeting 8-15-23 7 PM Public Hearing Item 3A

To whom it may concern,

Attached to this email and below are public comments on behalf of Golden State Environmental Justice Alliance. The attachment contains further comments than below and is not duplicative of the below comments. These comments are submitted to the Planning Commission to be included in the record for the City Council's consideration regarding the Tracy Alliance Project EIR City Council Meeting 8-15-23 7 PM Public Hearing Item 3A

For clarification purposes, only the highlighted yellow portion of the body of this email is the public comment to be added into the record along with the attachment.

Please confirm receipt of this email.

Good evening, my name is Peter Sheehan and I'm with the Golden State Environmental Justice Alliance. We submitted a comment letter to the Draft Environmental Impact Report. Our letter identified several deficiencies with the EIR. The deficiencies include but are not limited to, project description, air quality, energy, greenhouse gas emissions, environmental setting, land use and planning, alternatives, and mandatory findings of significance.

During these turbulent times, we as citizens expect and deserve our local government's elected and appointed officials to protect us from environmental and social injustice, to aid in the preservation and rehabilitation of the environment in which we all share, and to ensure accountability and responsibility in regard to the environmental decisions they may make.

We stand by our comment letter and believe the EIR is flawed, and must be redrafted and recirculated for public review. In closing we call on this council to be a leader on the aforementioned issues and be the first line of defense for our citizenry and environment. Only by working together can we continue to be excellent stewards of our environment, outstanding stewards to our citizens and each other. Thank You.

Please confirm receipt of this email.

Thank You,

Peter Sheehan

Public Comment – Item 3A

From: Raymond Dart <[redacted]>
Sent: Tuesday, August 15, 2023 5:12 PM
To: Public Comment <publiccomment@cityoftracy.org>
Subject: Re: Council Meeting August 15, 2023, Agenda Item 3.A

Mayor, Mayor Pro Tempore, and Council Members,

I am writing this comment to OPPOSE the annexation of the 191 acres (3.4 million square feet) in the Northeast of Tracy for industrial use. The Central Valley has been known for its riches of agriculture. The City of Tracy, in particular, is known for its beauty being "The Triangle City" surrounded by agricultural land on three sides. For the past couple of decades, these agriculture parcels have been annexed one by one to build warehouses with no improvements to the infrastructure. This city has enough warehouses and there are warehouses sitting empty! The myth of "warehouses" bring jobs to Tracy is completely false! Warehouses bring jobs to the people who live outside of Tracy. They bring traffic and crimes that our city has to shoulder.

By voting for annexation this evening, you are voting to destroy the city that you took oath to protect and serve.

Sincerely,

Raymond Dart

Public Comment – Item 3.A

From: [redacted]>
Sent: Tuesday, August 15, 2023 2:22 PM
To: Public Comment <publiccomment@cityoftracy.org>
Subject: 2557 041 8822 TracyCC Tracy Alliance, Council meeting 8/15

To: whom it may concern (Tracy City Council and others)

This is regarding the property located at the northeast corner of Grantline Rd and Paridise Rd. Assessor parcel number 213-170-14, -24,-25, 26,-27, and -48.(as stated on the post card we received). We live on California Ave which is just north of this property. We are tired of losing farmland to warehouses. There are too many semi-trucks and regular traffic already on Grantline Rd. An increase in overall traffic will cause more air pollution and damage to the roads. It may benefit the City of Tracy but is not beneficial to Banta residents or the county, nor the many people who travel on Grantline Rd. I believe the negative outweighs the positive.
Also, bad enough our property backs up to I205. When they expanded the traffic lanes a sound wall was supposed to go up to reduce the traffic noise for us but that never happened.

Please keep our farmlands. It's very sad to see what is happening to the farmlands and our quiet county properties. Very sad.

Thank you for you consideration,

Ron & Fran Hedberg