Late Comment Letter 4

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August 28, 2023

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Re: Agenda Item 11E – Supplemental Comments on Duke Warehouse at Patterson Avenue and Nance Street Project – Final Environmental Impact Report (SCH No. 2022010274)

Dear Mayor Vargas, Mayor Pro Tem Nava, Councilmembers: Corona, Rabb, Rogers, Mr. Fenn, Ms. Brenes, and Mr. Phung:

On behalf of Californians Allied for a Responsible Economy ("CARE CA"), we submit these comments on Public Hearing Agenda Item 11E: Duke Warehouse at Patterson Avenue and Nance Street Project ("Project") and the Final Environmental Impact Report ("FEIR") (SCH No. 2022010274)[1], Specific Plan Amendment 21-05267, Tentative Parcel Map 21-05086 (TPM-38259), Development Plan Review 21-00005 proposed by Prologis and Duke Realty Limited Partnership (collectively, "Applicant") to facilitate construction of a 764,753 square foot industrial distribution building on 35.63-acres located on the south side of Harley Knox Boulevard between Patterson Avenue and Nevada Avenue, in the City of Perris,

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[1] City of Perris, Final Environmental Impact Report Duke Warehouse at Patterson Avenue and Nance Street Perris, California SCH No. 2022010274 (April 2023), https://www.cityofperris.org/home/showpublisheddocument/16438/638187871285500000 ("FEIR").

California 92571 Assessor Parcel Numbers (APNs) 314- 153-015 through -040, 314-153-042, 314-153-044, 314-153-046, 314-153-048, 314-160-005 through -012, and 314-160-033 within the General Industrial and Light Industrial zones of Perris Valley Commerce Center Specific Plan (PVCCSP).[2] The total construction period is expected to require approximately eleven months.

CARE CA urges the City Council to continue tonight's hearing and remand the Project to staff to revise the EIR in order to comply with the California Environmental Quality Act ("CEQA"). The environmental document that is before the Council fails to comply with the basic requirements of CEQA to disclose and mitigate the Project's environmental and public health impacts. As a result, the Council lacks the substantial evidence necessary to make the required CEQA findings and land use findings to approve the Project at this time.

CARE CA has submitted comments twice on this Project – comments regarding the Draft EIR ("DEIR") on December 19, 2022, and comments to the Planning Commission regarding the FEIR on May 17, 2023. CARE CA's DEIR comments explained that the DEIR failed to adequately disclose and mitigate the Project's potentially significant impacts on air quality, public health, greenhouse gas ("GHG") emissions, and noise and presented substantial evidence from its experts documenting significant, unmitigated impacts in each of these areas. CARE CA's comments to the Planning Commission explained that the FEIR failed to resolve the substantial errors and omissions in the City's environmental review and failed to adequately respond to CARE CA's DEIR comments and the comments of its experts on significant environmental issues, in violation of CEQA.[3]

We reviewed the City Council Staff Report, including the City's Responses to CARE CA's May 17, 2023 comments ("Responses")[4] and determined that the City still has not resolved the environmental and public health issues raised in CARE CA's comments. Although the City nominally responded to public comments, the Responses to Comments on the DEIR included in the FEIR are wholly inadequate under CEQA.[5] The City failed to adequately respond to CARE CA's comments on the DEIR, and failed to adequately analyze and mitigate a number of potentially

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[2] City of Perris, City Council, Agenda (August 29, 2023), https://perris.granicus.com/GeneratedAgendaViewer.php?view_id=4&event_id=760.
[3] *Id.*
[4] City of Perris, Response to Late Comment Letter 2 – CARE CA, https://www.cityofperris.org/home/showpublisheddocument/16950/638278790119970000 ("Responses").
[5] 14 CCR § 15088(a), (c); *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 879–882; *The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615.

significant environmental impacts of the Project, in violation of CEQA.[6] As a result, the City Council cannot approve the Project at this time.

We prepared these comments with the assistance of acoustics, noise, and vibration expert Jack Meighan of Wilson Ihrig. Mr. Meighan's Comments ("Meighan Comments") and Mr. Meighan's CV are attached hereto as **Attachment A.** CARE CA's prior comments on the DEIR and FEIR are attached hereto as **Attachment B[7] and C[8]** respectively.

CEQA requires recirculation of an EIR for public review and comment when significant new information must be added to the EIR following public review, but before certification.[9] The CEQA Guidelines clarify that new information is significant if "the []EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the Project or a feasible way to mitigate or avoid such an effect."[10] The purpose of recirculation is to give the public and other agencies an opportunity to evaluate the new data and the validity of conclusions drawn from it.[11] Here, new information supported by substantial evidence from public comments has been added to the FEIR such that the FEIR must be recirculated to allow the public a meaningful opportunity to comment on the Project's substantial adverse environmental effects.

LC4-A Cont.

CARE CA respectfully requests the City Council remand the Project to Staff to revise and recirculate a legally adequate EIR which adequately analyzes and mitigates the Project's potentially significant environmental impacts and appropriately responds to public comments. The Project must not be rescheduled for a further public hearing until all of the issues raised in these comments, in CARE CA's prior comments, and in the comments of other members of the public, have been fully addressed.

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[6] *Id.*
[7] Letter from Adams Broadwell Joseph & Cardozo to City of Perris Planning Division, Director of Development Services, Comments on Duke Warehouse at Patterson Avenue and Nance Street Project – Draft Environmental Impact Report (SCH No. 2022010274) (Dec. 19, 2022).
[8] Letter from Adams Broadwell Joseph & Cardozo to City of Perris Planning Commission, Contract Planner, Planning Manager, Director of Development Services, Agenda Item 6A - Comments on Duke Warehouse at Patterson Avenue and Nance Street Project – Final Environmental Impact Report (SCH No. 2022010274) (May 17, 2023).
[9] PRC § 21092.1.
[10] CEQA "Guidelines," 14 Cal. Code Regs. § 15088.5.
[11] *Save Our Peninsula Comm. v. Monterey City Bd. of Supervisors* (1981) 122 Cal.App.3d 813, 822.

I. STATEMENT OF INTEREST

CARECA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental impacts of the Project. The coalition includes Riverside residents Brett Sanchez, Alejandro Villalobos and Jorge Suarez, Southern California Pipe Trades District Council 16 and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the City of Perris and Riverside County.

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

LC4-B

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

II. THE PROJECT DESCRIPTION REMAINS INADEQUATE

CARE CA previously commented that the DEIR failed to include an accurate and complete Project description because the DEIR failed to identify reasonably foreseeable uses of the Project site, rendering the DEIR's impact analysis inadequate.[12] The Responses provide that "the commenter's assertion that '…the Project is being designed to be capable of supporting warehouse, distribution, and hazardous material transport uses at the Project site…' is false.."[13] But, the DEIR admitted that "[t]here is the potential for routine use, storage, or transport of other

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[12] FEIR, pdf p. 112.
[13] Responses, p. 2.

hazardous materials; however, the precise materials are not known, as the tenants of the proposed warehouses are not yet known."[14] The transport of hazardous materials may result in potentially significant impacts which must be analyzed in an EIR to comply with CEQA.

The Responses assert that "[t]here is nothing in the DEIR or on the Project's site plan to imply that hazardous material transport uses are proposed or envisioned."[15] This statement is false. The Responses disregard the DEIR's statements and CARE CA's comments which identified potentially significant impacts of the Project related to hazardous material transport which must be analyzed in the EIR's Project Description section to satisfy CEQA.

Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review.[16] Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.[17] The City cannot hide behind the Applicant's statements that they are building this Project "on spec" and thereby fail to analyze the Project's potentially significant impacts related to hazardous materials transport.

The purpose of an EIR is to reveal to the public "the basis on which its responsible officials either approve or reject environmentally significant action," so that the public, "being duly informed, can respond accordingly to action with which it disagrees."[18] Further, "[t]o be adequate, the EIR must include sufficient detail to enable those who did not participate in its preparation to understand and 'meaningfully' consider the issues raised by the proposed project."[19] The City's failure to provide an accurate project description with respect to hazardous material transport uses is a violation of CEQA. Without an accurate Project Description, the FEIR fails as an informational document under CEQA. A revised EIR must be recirculated for public review.

LC4-C Cont.

[14] DEIR, p. 5.8-15.
[15] Responses p. 2.
[16] *Id.*
[17] *Sundstrom v. County of Mendocino* ("*Sundstrom*") (1988) 202 Cal.App.3d 296, 311.
[18] *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392
[19] *California Oak Foundation v. City of Santa Clarita* 133 Cal.App.4th 1219, 1237 quoting *Santa Clarita Organization for Planning the Environment* 106 Cal.App.4th 715, 721; see also *Concerned Citizens of Costa Mesa Inc, v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929,935 ["To facilitate CEQA's informational role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions"].

III. THE DEIR FAILS TO ADEQUATELY ANALYZE OR MITIGATE THE PROJECT'S POTENTIALLY SIGNIFICANT NOISE IMPACTS

A. The City Lacks Substantial Evidence to Support the FEIR's Conclusion that Project Construction Will Not Result in Significant Noise Impacts

CEQA was enacted to promote the goal of providing Californians with "freedom from excessive noise."[20] The FEIR's construction noise modeling is not supported by substantial evidence to support its conclusion that noise impacts would be less than significant.

The FEIR relies on "additional construction noise modeling [] done for the sensitive receptors at locations R1 and R3 as shown on DEIR Figure 5.11-1 – Receptor and Monitoring Locations and documented in the Noise and Vibration Study."[21] However, the construction noise modeling does not provide any supporting evidence for the substantial reductions from the calculations in the DEIR. Mr. Meighan found that there is no evidence in the FEIR to support the conclusion that the construction noise will be reduced by half "with mufflers" alone.[22] Mr. Meighan recognizes that "[w]hile a properly functioning muffler would undoubtedly provide some reduction, 15 dBA is a fairly substantial reduction, halving the total sound created."[23] The February 2023 Noise and Vibration Study[24] conducted for the Project contains no substantial evidence to support the conclusion that adding a muffler will reduce all construction noise emissions by exactly 15 dBA.[25] The FEIR contains no substantial evidence to support the conclusion that construction noise emissions will be reduced by exactly 15 dBA with the inclusion of a muffler. The FEIR's conclusion that construction noise impacts are less than significant is therefore not supported by substantial evidence in the record.

The FEIR must be revised and recirculated to accurately characterize the construction noise emissions of the Project and provide adequate mitigation before the Project can be approved.

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[20] PRC § 21001(b).
[21] Responses, p. 15.
[22] *Id.*
[23] Meighan Comments, p. 2.
[24] Noise & Vibration Study Duke Warehouse at Patterson Avenue & Nance Street, City of Perris (February 2023), https://www.cityofperris.org/home/showpublisheddocument/16436/638187871261470000.
[25] *Id.*

IV. THE DEIR FAILS TO ADEQUATELY ANALYZE OR MITIGATE THE PROJECT'S POTENTIALLY SIGNIFICANT VALLEY FEVER IMPACTS

Valley Fever is caused by microscopic fungus known as Coccidioides immitis ("CI"), which lives in the top 2 to 12 inches of soil in many parts of the state of California.[26] When soil is disturbed by activities such as digging, grading, or driving, or is disturbed by environmental conditions such as high winds, fungal spores can become airborne and can potentially be inhaled. The infectious dose is very low, typically less than 10 spores.[27] The Centers for Disease Control determined that "as little as one spore may transmit disease."[28]

CARE CA's experts presented substantial evidence demonstrating that the Project may result in potentially significant impacts from Valley Fever. The Responses ignore this evidence and instead attempt to minimize the threat of Valley Fever with the conclusory statement that "[t]here is no evidence that Valley Fever is a significant impact or a significant health threat in the vicinity of the Project site."[29] This statement is demonstrably false. Riverside University Health System, in their Coccidioidomycosis Yearly Summary Report 2015 found that half (52.3%) of reported Valley Fever Coccidioidomycosis cases were reported among residents living in Western Riverside County.[30] And 5.6% of cases occurred in the City of Perris.[31] Instances of morbidity and mortality from Valley Fever in the City of Perris and Riverside County result in a significant impact under CEQA, where Project construction will result in the disturbance of soil and make Valley Fever spores airborne. The incidence of Valley Fever in the area is significant, but the FEIR fails to adequately analyze or mitigate the potentially significant impact of Valley Fever.

Dr. James Clark found that Project construction may result in significant fugitive dust emissions which may pose a potentially significant health risk by exposing people to Valley Fever. Dr. Clark explained that desert winds can raise significant amounts of dust, even when conventional dust control methods are used, often prompting alerts from air pollution control districts. If these winds occurred

C4-E

[26] Cal. Lab. Code § 6709(a).
[27] Jennifer McNary and Mary Deems, Preventing Valley Fever in Construction Workers, March 4, 2020, pdf 10; https://www.safetybayarea.com/media/2020-3A.pdf.
[28] Centers for Disease Control and Prevention
[29] Responses, p. 10.
[30] Riverside University Health System, Coccidioidomycosis Yearly Summary Report 2015 Riverside University Health System – Public Health Disease Control Epidemiology & Program Evaluation, https://www.ruhealth.org/sites/default/files/2020-08/Cocci_Report_for_Publish_FINAL.pdf.
[31] *Id.*

during grading, cut and fill, or soil movement, or from bare graded soil surfaces (even if periodically wetted), significant amounts of PM_{10}, $PM_{2.5}$, and associated Valley Fever spores as well as silica dust would be released.

Dr. Clark further explained that the Project is adjacent to sensitive receptors, including residential areas, schools, and parks, which may result in significant public health impacts from Valley Fever. Valley fever spores can be carried on the winds into surrounding areas which may expose workers, students at nearby schools, and residents to CI spores. Valley Fever spores, for example, have been documented to travel as much as 500 miles[32] and, thus, dust raised during construction could potentially expose a large number of people hundreds of miles away.

The Responses fail to address the substantial evidence presented by Dr. Clark on this issue, and incorrectly assert, without support, that the Project's Valley Fever impact is less than significant and need not be mitigated. In fact, Valley Fever may result in significant impacts under CEQA and the FEIR must include mitigation to reduce the risk of Valley Fever to the greatest extent feasible before the Project can be approved.

LC4-E Cont.

Dr. Clark proposed the following feasible mitigation measures to reduce impacts associated with Valley Fever from Project construction.

1. A site-specific Valley Fever Dust Management Plan should be prepared that includes a site-specific work plan (SWP) as well as a sampling and analysis plan (SAP) to measure the amount of Coccidiodes immitis present in soils at the Site prior to any soil disturbance on site. The SWP and SAP should detail the goals of the investigation(s), the collection methods, the number of samples to be collected, and the minimum detection requirements. The results of the investigation should be presented to the South Coast Air Quality Management District (SCAQMD) to ensure compliance with the goals of the SAP and approval of the investigation results.
2. Include specific requirements in the Project's Injury and Illness Prevention Program (as required by Title 8, Section 3203) regarding safeguards to prevent Valley Fever.
3. Control dust exposure:
    a. Apply chemical stabilizers at least 24-hours prior to high wind event;

[32] David Filip and Sharon Filip, Valley Fever Epidemic, Golden Phoenix Books, 2008, p. 24.

b. Apply water to all disturbed areas a minimum of three times per day. Watering frequency should be increased to a minimum of four times per day if there is any evidence of visible wind-driven fugitive dust;
c. Provide National Institute for Occupational Safety and Health (NIOSH)-approved respirators for workers with a prior history of Valley Fever.
d. Half-face respirators equipped with a minimum N-95 protection factor for use during worker collocation with surface disturbance activities. Half-face respirators equipped with N-100 or P-100 filters should be used during digging activities. Employees should wear respirators when working near earth-moving machinery.
e. Prohibit eating and smoking at the worksite, and provide separate, clean eating areas with hand-washing facilities.
f. Avoid outdoor construction operations during unusually windy conditions or in dust storms.
g. Consider limiting outdoor construction during the fall to essential jobs only, as the risk of cocci infection is higher during this season.

4. Prevent transport of cocci outside endemic areas:
   a. Thoroughly clean equipment, vehicles, and other items before they are moved off-site to other work locations.
   b. Prevent spillage or loss of bulk material from holes or other openings in the cargo compartment's floor, sides, and/or tailgate;
   c. Load all haul trucks such that the freeboard is not less than six inches when material is transported on any paved public access road and apply water to the top of the load sufficient to limit VDE to 20 percent opacity; or cover haul trucks with a tarp or other suitable cover.
   d. Provide workers with coveralls daily, lockers (or other systems for keeping work and street clothing and shoes separate), daily changing and showering facilities.
   e. Clothing should be changed after work every day, preferably at the work site.
   f. Train workers to recognize that cocci may be transported offsite on contaminated equipment, clothing, and shoes; alternatively, consider installing boot-washing.
   g. Post warnings onsite and consider limiting access to visitors, especially those without adequate training and respiratory protection.

C4-E Cont.

5. Improve medical surveillance for employees:
    a. Employees should have prompt access to medical care, including suspected work-related illnesses and injuries.
    b. Work with a medical professional to develop a protocol to medically evaluate employees who have symptoms of Valley Fever.
    c. Consider preferentially contracting with 1-2 clinics in the area and communicate with the health care providers in those clinics to ensure that providers are aware that Valley Fever has been reported in the area. This will increase the likelihood that ill workers will receive prompt, proper and consistent medical care.
    d. Respirator clearance should include medical evaluation for all new employees, annual re-evaluation for changes in medical status, and annual training, and fit-testing.
    e. Skin testing is not recommended for evaluation of Valley Fever.
    f. If an employee is diagnosed with Valley Fever, a physician must determine if the employee should be taken off work, when they may return to work, and what type of work activities they may perform.[33]

LC4-E Cont.

In order to reduce the Project's potentially significant Valley Fever impacts to the greatest extent feasible these measures must be implemented in a revised and recirculated DEIR.

Additionally, the United States Department of Labor Occupational Safety and Health Administration ("OSHA") requires that a respirator "shall be provided to each employee when such equipment is necessary to protect the health of such employee. The employer shall provide respirators which are applicable and suitable for the purpose intended. The employer shall be responsible for the establishment and maintenance of a respiratory protection program, which shall include the requirements outlined in paragraph (c) of this section. The program shall cover each employee required by this section to use a respirator."[34]

Potential exposure to Valley Fever spores is a circumstance that should trigger the use of respirators pursuant to OSAH requirements. The Project should therefore implement a respiratory protection program that requires National Institute for Occupational Safety and Health ("NIOSH")-approved respirators be provided to construction workers and worn while performing, or in the near vicinity of, construction activities that create airborne dust on the Project site. NIOSH

[33] Clark Comments, p. 6-8.
[34] 29 C.F.R. § 1910.134(a)(2) (2006).

approved respirators are necessary because "[h]ousehold materials such as washcloths, bandanas, and handkerchiefs do not protect workers from breathing in dust and spores."[35]

LC4-E Cont.

The DEIR must be revised and recirculated to adequately analyze and mitigate potentially significant impacts from Valley Fever.

V. THE CITY COUNCIL CANNOT MAKE THE REQUIRED FINDINGS TO SUPPORT APPROVAL OF THE LAND USE ENTITLEMENTS

A. The City Council Cannot Make the Required Findings to Support the Approval of the Development Plan Review

The Perris Municipal Code provides that "development plan review is required to protect the health, safety and welfare of the citizens of the city and to ensure that all development proposed within the city is consistent with the city's general plan, applicable specific plans, and zoning."[36] "The purpose of the development plan review is to protect the health, safety, and welfare of the citizens of the city; to ensure that all development proposed within the city is consistent with the city's general plan, zoning, any applicable specific plan, and city requirements to protect and enhance the built and natural environment of the city, identifying and mitigating potential impacts that could be generated by the proposed use, such as traffic, noise, smoke, dust, fumes, vibration, odors, other hazards, or community impacts."[37]

LC4-F

The Project's potentially significant, unmitigated impacts from air pollution, dust, noise, hazards and community impacts, as described above and in CARE CA's prior comments, contravene the purpose of the development plan review. The City Council cannot approve the development plan review absent substantial additional project mitigation.

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[35] CDPH Preventing Work-Related Coccidioidomycosis (Valley Fever) Preventing Valley Fever Exposure, *available at:* http://elcosh.org/document/3684/d001224/preventing+work-related+coccidioidomycosis+(valley+fever).html.
[36] City of Perris Municipal Code Sec. 19.50.010.
[37] City of Perris Municipal Code Sec. 19.54.040(f) https://library.municode.com/ca/perris/codes/code_of_ordinances?nodeId=COOR_TIT19ZO_CH19.54AUREPR_S19.54.030REAUPRPR.

B. The City Council Cannot Make the Required Findings to Support the Approval of the Tentative Parcel Map

The Perris Municipal Code provides that "No parcel map shall be considered filed until all provisions of CEQA have been complied with."[38] Given that "all provisions of CEQA" have not been complied with due to the City's failure to prepare a legally adequate EIR to analyze and mitigate the Project's potentially significant impacts, the City Council cannot make the required findings to approve the tentative parcel map at this time.

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C. The City Council Cannot Make the Required Findings to Support the Approval of the Specific Plan Amendment

The Perris Municipal Code provides that "No specific plan may be adopted or amended unless the proposed plan or amendment is consistent with the city's general plan."[39]

The Perris General Plan Noise Element provides that sound levels that exceed 40 to 45 dBA are excessive for sleeping areas within a residence.[40] The Project is anticipated to operate 24 hours a day, seven days a week. CARE CA's expert noise consultant found that Project operational noise would exceed 52 dBA assuming some shielding from the edge of the roof.[41] Mr. Meighan's comments provide substantial evidence that operation of the Project, in particular the HVAC unit will result in an exceedance of the General Plan Noise Element's threshold and results in a significant impact under CEQA.

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The Project's nonconformance with the General Plan precludes the City Council from making the necessary findings to support approval of the Specific Plan Amendment, without first revising and recirculating the EIR to adequately analyze the Project's potentially significant impacts.

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[38] City of Perris Municipal Code Sec. 18.16.020, https://library.municode.com/ca/perris/codes/code_of_ordinances?nodeId=COOR_TIT18SU_CH18.16PAMAPR_S18.16.010TEPAMA.
[39] City of Perris Municipal Code Sec. 19.49.090, https://library.municode.com/ca/perris/codes/code_of_ordinances?nodeId=COOR_TIT19ZO_CH19.49ADPRSPPL_S19.49.080AMRESPPL.
[40] General Plan Noise Element, p. 3, https://www.cityofperris.org/home/showpublisheddocument/461/637203139725000000.
[41] Meighan Comments, p. 4.

VI. CONCLUSION

CARE CA respectfully requests the City Council remand the Project to Staff to remedy the errors and omissions in the EIR before the Project can be approved.

The City must fulfill its responsibilities under CEQA by preparing a legally adequate EIR to address the significant omissions and deficiencies described in this comment letter and the attached expert comments. The EIR must be revised and recirculated to adequately inform the decision-makers and public of the Project's significant environmental impacts and feasible mitigation measures. The EIR must also be revised and recirculated to enable the City to make the necessary findings for approval of the Development Plan Review, Tentative Parcel Map, and Specific Plan Amendment. LC4-I

Thank you for your attention to these comments.

Sincerely,

Kelilah D. Federman

Attachments
KDF:acp

ATTACHMENT A

WILSON IHRIG
ACOUSTICS, NOISE & VIBRATION

CALIFORNIA
WASHINGTON
NEW YORK

WI #22-005.39

August 28, 2023

Kelilah D. Federman
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
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SUBJECT: Comments on Duke Warehouse Project Noise Analysis

Dear Ms. Federman,

Per your request, I have reviewed the subject matter document for *Duke Warehouse at Patterson Avenue & Nance Street* Environmental Impact Report (EIR) in Perris, California. The EIR's Project Description states that the proposed project involves the construction, use and maintenance of a non-refrigerated warehouse building, approximately 769,668 square feet in size with approximately 20,000 SF of supporting office space. The Noise Impact Analysis is contained in Appendix I of the EIR.

The Project is surrounded by other warehouses and vacant land, but there are 4 noise-sensitive residences near the project, two to the east and two to the west. Three of the four receivers directly border the project.

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Wilson, Ihrig & Associates, Acoustical Consultants, has practiced exclusively in the field of acoustics since 1966. During our 56 years of operation, we have prepared hundreds of noise studies for Environmental Impact Reports and Statements. We have one of the largest technical laboratories in the acoustical consulting industry. We also utilize industry-standard acoustical programs such as Traffic Noise Model (TNM), SoundPLAN, and CADNA. In short, we are well qualified to prepare environmental noise studies and review studies prepared by others.

Adverse Effects of Noise[1]

Although the health effects of noise are not taken as seriously in the United States as they are in other countries, they are real and, in many parts of the country, pervasive.

Noise-Induced Hearing Loss. If a person is repeatedly exposed to loud noises, he or she may experience noise-induced hearing impairment or loss. In the United States, both the Occupational Health and Safety Administration (OSHA) and the National Institute for Occupational Safety and

[1] More information on these and other adverse effects of noise may be found in *Guidelines for Community Noise*, eds B Berglund, T Lindvall, and D Schwela, World Health Organization, Geneva, Switzerland, 1999. (https://www.who.int/docstore/peh/noise/Comnoise-1.pdf)

Health (NIOSH) promote standards and regulations to protect the hearing of people exposed to high levels of industrial noise.

Speech Interference. Another common problem associated with noise is speech interference. In addition to the obvious issues that may arise from misunderstandings, speech interference also leads to problems with concentration fatigue, irritation, decreased working capacity, and automatic stress reactions. For complete speech intelligibility, the sound level of the speech should be 15 to 18 dBA higher than the background noise. Typical indoor speech levels are 45 to 50 dBA at 1 meter, so any noise above 30 dBA begins to interfere with speech intelligibility. The common reaction to higher background noise levels is to raise one's voice. If this is required persistently for long periods of time, stress reactions and irritation will likely result. The problems and irritation that are associated with speech disturbance have become more pronounced during the COVID-19 pandemic because many people find themselves and the people they live with trying to work and learn simultaneously in spaces that were not designed for speech privacy.

LC4-A-1 Cont.

Sleep Disturbance. Noise can disturb sleep by making it more difficult to fall asleep, by waking someone after they are asleep, or by altering their sleep stage, e.g., reducing the amount of rapid eye movement (REM) sleep. Noise exposure for people who are sleeping has also been linked to increased blood pressure, increased heart rate, increase in body movements, and other physiological effects. Not surprisingly, people whose sleep is disturbed by noise often experience secondary effects such as increased fatigue, depressed mood, and decreased work performance.

Cardiovascular and Physiological Effects. Human's bodily reactions to noise are rooted in the "fight or flight" response that evolved when many noises signaled imminent danger. These include increased blood pressure, elevated heart rate, and vasoconstriction. Prolonged exposure to acute noises can result in permanent effects such as hypertension and heart disease.

Impaired Cognitive Performance. Studies have established that noise exposure impairs people's abilities to perform complex tasks (tasks that require attention to detail or analytical processes) and it makes reading, paying attention, solving problems, and memorizing more difficult. This is why there are standards for classroom background noise levels and why offices and libraries are designed to provide quiet work environments.

Thresholds of Significance are Not Properly Developed

Improperly Cited Vibration Criteria

The 'Construction Noise and Vibration' section under heading 4.2 defines the criteria used for construction vibration levels. The EIR states "If short-term project-generated construction source vibration levels exceed the FTA maximum acceptable vibration standard of 80 vibration decibels (VdB) at noise-sensitive receiver locations, noise levels will exceed the vibration CEQA threshold." The FTA levels in question are from the Federal Transit Administration's Transit Noise and Vibration Impact Assessment Manual.[2] First, the EIR states that the 'noise levels will exceed the vibration CEQA threshold,' which is a statement that doesn't make sense, as these are two different kinds of phenomena. Second, the 80 VdB threshold cited is for infrequent events, under 30 per day (FTA, Page 125-126). While the 80 VdB limit could be used for construction vibration impacts, it is intended for operational impacts (train passbys in this case). The same FTA guidance explicitly provides different

LC4-A-2 Cont.

[2] https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/research-innovation/118131/transit-noise-and-vibration-impact-assessment-manual-fta-report-no-0123_0.pdf

thresholds for a construction vibration analysis that may be more appropriate to consider (FTA, Page 184) . Finally, Table 10-4 cites the reference vibration levels for a large bulldozer at 25 feet. It is cited as PPVref (VdB). This is a statement that makes no sense, as PPV -peak particle velocity- is typically defined in inches per second. The 87 VdB cited is in RMS velocity in decibels, referenced to 1 micro-in/sec, which is an entire different metric than PPV, with an entirely different source reference value (in this case .089 in/sec).

LC4-A-2 Cont.

Impact Analyses are Incomplete

Construction Noise

The construction noise analysis in the EIR uses a distance of 650 feet, which is the geometric center of the project site to the nearest residences. This methodology is not an appropriate method to determine potentially significant impacts from this particular site, due to the extremely large scale. The project site is almost a quarter of a mile across, meaning using the center of the site will substantially underestimate construction noise. For example, the closest distance between a sensitive receiver and the edge of the project is 30 feet as listed in Table 8-2 in the EIR. At these distances, the sound levels from construction could be higher by as much as 27 decibels using a distance of 30 feet (cited in Table 8-2) compared to the 650 feet distance used in the analysis. Adding 27 dBA to the levels presented in Table 10-3 would create a significant impact for all 8 scenarios modeled. The analysis shown in the EIR and Table 10-3 dramatically underestimates the construction noise,, and a more conservate method should be used to determine potentially significant impacts and comply with the CEQA requirements. The construction noise would be significant and would require mitigation. At these levels, a temporary sound wall at sections of the property that face sensitive receivers should be considered to help mitigate levels.

LC4-A-3

Construction Vibration

The damage assessment figure included in the Construction Vibration section in the Noise and Vibration Calculations Appendix in the EIR is calculated for only one receiver, R3 to the northwest. First, as is the case for the construction analysis, the analysis is conducted between the sensitive receiver and geometric center of the site. Again, the large footprint of the site means that conducting an analysis based on the distance to the center of the site could severally underestimate vibration levels. Additionally, the building footprint for receiver R3 is 160 feet away from the edge of the project site. However, the building footprint for receivers R1 and R2 to the east are around 100 feet from the project site, representing a worst-case scenario. As such, the analysis should also be conducted with these worst-case distances. A more appropriate method would be to analyze the distance between the closest footprint of the proposed building to the nearest sensitive receiver, as that is the worst-case scenario that would happen during construction. If impacts are found, buffer distances are one way to limit vibration impacts.

Traffic Noise Analysis uses Uncited Numbers

The analysis used the Federal Highway Administration's (FHWA) FHWA-RD-77-108 program. Parts of the traffic noise analysis are not cited correctly. In order to find a CNEL, there needs to be a known percentage of day, evening, and night traffic, since CNEL is a statistic that depends on time of day. While these percentages are shown in the Appendix B of the EIR Noise Appendix, there is no indication where these values come from. Without a known or accepted split, it's possible a higher percentage of traffic occurs at night, which would increase the CNEL.

LC4-A-3 Cont.

Stationary Operational Noise

Table 6-2 in the Noise Appendix cites several inputs used in the operational noise model, developed using SoundPLAN® software. The software relies on the user to provide the correct noise source inputs to propagate those sounds through the modeled environment; an input level that is low or high can provide erroneous or skewed results. The rooftop HVAC units were input with a sound pressure level of 68 dBA at 3 feet. This corresponds to a sound power level of 79 dBA. Based on our experience, this seems like an unusually low estimate. For example, a Trane air handler unit, used commonly for large spaces like a warehouse, exceeds a sound power level of 85 dBA[3]The results in Table 5 shows a project level of 48 dBA at receiver R3, leading to a 3 dBA increase over the ambient. Since the EIR defines 5 dBA as a significant impact, it is possible that a louder noise source could exceed this limit

For example, the reference distance used in the analysis between receiver R3 and the project is 30 feet, (cited in Table 8-2). If an HVAC unit with a sound power level of 85 dBA is used as noted above, a single unit would propagate to a sound pressure level of 58 dBA at the property line without any shielding, and 52 dBA assuming some shielding from the edge of the roof. The EIR shows a sound level of 48 dBA at receiver R3. If the existing ambient of 48 dBA is combined with the HVAC noise at this location of 52 dBA, the overall noise level is 54 dBA, more than 5 dBA over the ambient/limit and thus a significant impact. A parapet at the end of the building should be studied at a way to shield this rooftop noise source. Also note, this is before adding project traffic noise, which should be included in project analysis. Table 7-5 in the EIR noise Appendix cites this at 1 dBA. The total project noise should be evaluated in its entirety, not just the parts.

[3] Figure 30. https://www.trane.com/content/dam/Trane/Commercial/global/products-systems/equipment/air-handling/semi-custom/CLCH-PRC022H-EN_04102020.pdf

Response to Comments – "Response to CARE CA Late"

Comment	Response
LC2A3-4	Appendix D of the February 2023 document, *Noise and Vibration Study Duke Warehouse at Patterson Avenue & Nance Street, Perris, California,* includes the worksheets of how these construction noise levels are calculated. It appears like only 1 piece of equipment per phase was used. Section 7.34.060 of the Perris Municipal Code[4] states "Construction activity shall not exceed 80 dBA in residential zones in the city." However, when construction elements are summed together, they create higher levels than a maximum level alone, thus the analysis represents an underestimation of the noise. For the 'east' receptor, Leq levels calculated from the spreadsheet vs presented Lmax levels are as follows. Only one Concrete Pump Truck was used in the analysis, and this is pre-implementation of mufflers: ***Table 1:Comparison of Construction Leq and Lmax*** **Construction Phase** / **Leq** / **Lmax** **Grading** / 80.3 / 79.6 **Building** / 76.9 / 71.6
LC2A3-5	Appendix D of the February 2023 document, *Noise and Vibration Study Duke Warehouse at Patterson Avenue & Nance Street, Perris, California,* does include all the information needed to recreate this analysis. In the last 4 pages of this document, it appears that a 15 dB reduction was used to account for the usage of a muffler. While a properly functioning muffler would undoubtedly provide some reduction, 15 dBA is a substantial reduction, representing more than halving of the total perceived noise created[5]. There is no cited documentation or discussion in the document showing how such a dramatic reduction can be achieved.

LC4-A-4

LC4-A-5

LC4-A-6

Conclusions

There are several errors and omissions in the EIR noise analysis. Correcting these would potentially identify several significant impacts which require mitigation.
Please feel free to contact me with any questions on this information.

Very truly yours,
WILSON IHRIG

Jack Meighan
Associate

[4] https://library.municode.com/ca/perris/codes/code_of_ordinances?nodeId=COOR_TIT7HEWE_CH7.34NOCO
[5] https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/env/tens-sep2013-a11y.pdf Page 6-5

WILSON IHRIG
ACOUSTICS, NOISE & VIBRATION

JACK MEIGHAN

Associate

Jack joined Wilson Ihrig in 2021 and works out of our Los Angeles office. He is an experienced acoustical engineer with expertise in projects involving rail transit systems, highways, CEQA analysis, environmental noise reduction, mechanical drawing reviews, and construction noise and vibration mitigation. He has hands-on experience with project management, including client coordination and presentations, as well as in designing, developing, and testing MATLAB code used in acoustics applications. His expertise includes field measurements, developing test plans and specifying, purchasing, setting up and repairing acoustic measurement equipment. He has experience in using Traffic Noise Model (TNM), CadnaA, EASE, Visual Basic, LabView, and CAD software.

Education

- B.S. in Mechanical Engineering, University of Southern California, Los Angeles, CA

Project Experience

LA Metro Regional Connector, Los Angeles CA
Planned, took, and processed measurements as part of a team to determine the effectiveness of floating slab trackwork for a new subway in downtown Los Angeles that travels below the Walt Disney Concert Hall and the Colburn School of Music.

Rodeo Credit Enterprise CEQA Analysis for New Construction, Palmdale, CA
Wrote an accepted proposal and executed it for a noise study project to determine noise mitigation requirements on a new housing development. Led all aspects of the project and managed the budget during all phases of project completion. Completed five separate projects of this type for this company.

Blackhall Studios, Santa Clarita, CA
Led the vibration measurement effort for a new soundstage directly adjacent to an existing freight and commuter rail line. Tested equipment, processed data, and analyzed results to determine the vibration propagation through the soil to the proposed soundstage locations, and was part of the team that developed mitigation techniques for the office spaces directly next to the rail line.

Octavia Residential Condos CEQA Study, San Francisco, CA
Calculated the STC ratings for the proposed windows to meet Title 24 requirements, modeled the acoustic performance of floor and ceiling structures, researched noise codes, helped with a mechanical design review, and wrote a report summarizing the results for a new Condominium project being developed in San Francisco.

ARRIVE San Diego Airport Terminal 1 Replacement, CA
Conducted interior noise and vibration measurements, analyzed measurement data to help determine project criteria, modeled the existing and future terminals in CadnaA, and was part of a team that did a complete HVAC analysis of the entire terminal, as part of a CEQA analysis where a new terminal for the airport is being designed.
Five Points Apartments Noise Study, Whittier, CA

Conducted measurements, researched sound data and solutions, and recommended mitigation for a new apartment complex that was located next to an existing car wash, as part of a CEQA review.

USC Ellison Vibration Survey, Los Angeles, CA
Conducted vibration measurements as part of a survey to determine the effectiveness of vibration isolation platforms that are used to insulate cell growth in a cancer research facility. Determined the effectiveness and presented this information to the client. Researched and recommended a permanent monitoring system so the client could view data in real time.

TEN50 Condos Noise Investigation, Los Angeles, CA
Was part of a team that investigated the noise source of an unwanted popping noise in luxury condominiums in Downtown Los Angeles. Helped isolate the noise source location with accelerometers to determine where vibrations were occurring first and used an acoustic camera to determine where in the condo the noise was coming from.

2000 University Mixed-Use Building, Berkely, CA
Wrote a construction noise monitoring plan based on environmental noise calculations, as required by CEQA, wrote a report summarizing the results, and attended a client meeting to discuss options.

Bay Area Rapid Transit (BART) On-Track, CA, San Francisco Bay Area, CA*
Day to day project manager, responsible for meetings, presentations, and coordination with the client for an ongoing noise study on the BART system. Developed MATLAB code to process measurements and determine areas where high corrugation was present, contributing to excessively high in-car noise levels. Performed noise measurements inside both the right of way and the vehicle cabin, in addition to rail corrugation measurements.

California I-605/SR-60 Interchange Improvement, Los Angeles, CA*
Developed a noise model of the area that predicted sound levels for abatement design, in addition to conducting noise measurements and analysis. Led the Team in use of the FHWA Traffic Noise Model Software for the project, involving three major highways and two busy interchanges extending over 17 miles in southern California.

Sound Transit On-Track, Seattle, WA*
Took measurements, fixed equipment, and developed software in MATLAB to process Corrugation Analysis Trolley measurements as part of an ongoing noise study on the Sound Transit Link system. Tested vibration data to determine the best measurement and processing techniques to store the data in an online database for in-car measurements.

LA Metro CRRC Railcar Testing, Los Angeles, CA*
Led the effort to plan the measurements, determine measurement locations and finalize the test plan. Formulated a method to capture speed data directly from legacy train vehicles. Executed noise and vibration specification measurements for new rail cars delivered by CRRC.

City of Los Angeles, Pershing Square Station Rehabilitation Noise Monitoring, CA*
Built noise models, wrote a construction noise plan, and assisted in on-site construction noise issues as they arose for a renovation of the Pershing Square metro station in downtown Los

Angeles. Trained construction personnel in techniques for noise reduction and how to conduct noise monitoring measurements to meet project specifications.

City of Orange Metrolink Parking Garage Construction Monitoring, CA*
Wrote an adaptive management vibration monitoring plan, set up equipment to monitor live vibration levels, and generated weekly reports as part of an effort to build a new parking garage. Designed, planned, and completed measurements to predict and mitigate pile driving construction impacts at three historic building locations adjacent to the construction site. Coordinated with the client whenever an on-site problem arose.

LA Metro Westside Subway Construction, Los Angeles, CA*
Planned, organized, and processed noise measurements for the Purple Line extension construction. Implemented both long term microphones to measure noise levels and accelerometers to measure vibration levels in existing subway tunnels. Oversaw noise monitoring at sensitive construction sites for the project and worked with the contractor to find ways to reduce construction noise levels by approximately 10dB.

Montreal Réseau Express Métropolitain, Canada*
Conducted vibration propagation measurements used to create models to predict operational vibration levels for an under-construction transit line. Managed equipment, solved problems in the field, and wrote parts of the report summarizing the findings of the acoustic study.

NCHRP Research Report 882 & 886, Multiple Locations (Dayton and Columbus, OH)
Took on-highway measurements and wrote, designed, developed, and tested MATLAB code to identify specific spectrograms to use for analyses for a project evaluating barrier reflected highway traffic noise differences in the presence of a single absorptive or reflective noise barrier.

Siemens Railcar Testing for Sound Transit, Seattle, WA*
Measured in-car noise and vibration for new rail cars delivered by Siemens. Developed new internal techniques for measurements based on the written specifications. Contributed to the team that helped identify issues that new cars had in meeting the Sound Transit specifications for noise and vibration. Participated in developing the test plan and specified then acquired new equipment for the measurement.

Toronto/Ontario Eglinton Crosstown Light Rail, Final Design, Canada*
Assisted in vibration propagation measurements, analysis, and recommendations for mitigation for a 12-mile light-rail line both on and under Eglinton Avenue. Set up and ran equipment for at-grade measurements with an impact hammer for underground measurements with an impact load cell that was used during pre-construction borehole drilling.

ATTACHMENT B

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December 19, 2022

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Re: Comments on Duke Warehouse at Patterson Avenue and Nance Street Project – Draft Environmental Impact Report (SCH No. 2022010274)

Dear Ms. Blais, Ms. Brenes, and Mr. Phung:

On behalf of Californians Allied for a Responsible Economy ("CARE CA"), we submit these comments on the Draft Environmental Impact Report ("DEIR") (SCH No. 2022010274) prepared by the City of Perris for the Duke Warehouse at Patterson Avenue and Nance Street Project ("Project") pursuant to the California Environmental Quality Act ("CEQA").[1] The Project is proposed by Prologis and Duke Realty Limited Partnership (collectively, "Applicant"). The Applicant proposes to develop 769,668 square feet ("SF") of high-cube, non-refrigerated, warehouse building which includes approximately 20,000 SF of office space.[2] The

[1] Pub. Res. Code §§ 21000 et seq.
[2] City of Perris, Draft Environmental Impact Report Duke Warehouse at Patterson Avenue and Nance Street Perris, California SCH No. 2022010274 (October 2022), https://www.cityofperris.org/home/showpublisheddocument/15668/638030851862270000.

warehouse building is proposed to be constructed with no specific tenant identified at this time.[3] The building may operate 24 hours a day, seven days a week.[4]

The Applicant requests a Specific Plan Amendment Case No. 21-05267 to amend the Perris Valley Commerce Center Specific Plan ("PVCCSP") Circulation Plan to delete two planned streets: California Avenue and Nance Street between Patterson Avenue to the west and Nevada Avenue to the east; Tentative Parcel Map TPM 38259 (Case No. 21-05086) to merge thirty-eight (38) existing parcels into one parcel, and vacate all or portions of the Right of Way ("ROW") of California Avenue and Nance Street and dedicate a portion of Patterson Avenue and Nevada Avenue ROW; and Development Plan Review DPR 21-00005 to allow the development of the approximately 35.7-net-acre site with a 769,668 SF building with 749,668 SF for high-cube, non-refrigerated warehouse distribution uses and approximately 20,000 SF of supporting office space.[5]

The Project would be located at the northeastern corner of Patterson Avenue and Nance Street, in the City of Perris, California 92571 Assessor Parcel Numbers (APNs) 314- 153-015 through -040, 314-153-042, 314-153-044, 314-153-046, 314-153-048, 314-160-005 through -012, and 314-160-033.[6] The Project site is within the PVCCSP planning area, and Planning Area 1 (PA 1), North Commercial/Industrial, of the Perris General Plan 2030. The total construction period is expected to require approximately eleven months beginning no earlier than September 2022.[7]

We have reviewed the DEIR, its technical appendices, and reference documents with assistance of Commenters' expert consultants, whose comments and qualifications are attached. We prepared our comments on air quality, public health, GHG emissions, and hazardous materials with the assistance of air quality and GHG expert James Clark, whose comments ("Clark Comments") and curriculum vitae ("CV") are attached hereto as **Exhibit A.** We have prepared our comments on noise and vibration with the assistance of acoustics, noise, and vibration expert Jack Meighan of Wilson Ihrig. Mr. Meighan's Comments ("Meighan Comments") and Mr. Meighan's CV are attached hereto as **Exhibit B.**

[3] DEIR, p. 3-15.
[4] DEIR, p. 3-15.
[5] DEIR, p. 1-28.
[6] *Id.* at 1-4.
[7] *Id.* at 5.2-34.

Based upon our review of the DEIR and supporting documentation, we conclude that the DEIR fails to comply with the requirements of CEQA. As explained more fully below, the DEIR fails to provide an accurate Project description and environmental baseline upon which to measure the whole Project's reasonably foreseeable impacts. The consequences of these defects are far-reaching and require the revision of the DEIR. The DEIR does not accurately disclose potentially significant air quality, GHG, health risk, noise, and transportation impacts. As a result of its shortcomings, the DEIR lacks substantial evidence to support its conclusions and fails to properly mitigate the Project's significant environmental impacts. Further, the City cannot make the required findings to support the approval of the Development Plan Review, Tentative Parcel Map, or Specific Plan Amendment until the Project's significant environmental impacts are mitigated to the greatest extent feasible. The City cannot approve the Project until the errors and omissions in the DEIR are remedied, and a revised DEIR is recirculated for public review and comment which fully discloses and mitigates the Project's potentially significant environmental and public health impacts.

I. STATEMENT OF INTEREST

CARECA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental impacts of the Project. The coalition includes Riverside residents Brett Sanchez, Alejandro Villalobos and Jorge Suarez, Southern California Pipe Trades District Council 16 and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the City of Perris and Riverside County.

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

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

II. LEGAL BACKGROUND

CEQA has two basic purposes, neither of which the DEIR satisfies. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.[8] CEQA requires that an agency analyze potentially significant environmental impacts in an EIR.[9] The EIR should not rely on scientifically outdated information to assess the significance of impacts, and should result from "extensive research and information gathering," including consultation with state and federal agencies, local officials, and the interested public.[10] To be adequate, the EIR should evidence the lead agency's good faith effort at full disclosure.[11] The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."[12] "Thus, the EIR protects not only the environment but also informed self-government."[13]

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures.[14] The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to "identify ways that environmental damage can be avoided or significantly

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[8] CEQA Guidelines, § 15002, subd. (a)(1).
[9] *See* Pub. Resources Code, § 21000; CEQA Guidelines, § 15002.
[10] *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Comm.* ("*Berkeley Jets*") (2001) 91 Cal.App.4th 1344, 1367.; *Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal.App.3d 612, 620.
[11] CEQA Guidelines, § 15151; *see also Laurel Heights Improvement Assn. v. Regents of University of California* (*"Laurel Heights I")* (1988) 47 Cal.3d 376, 406.
[12] *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.
[13] *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (citations omitted).
[14] CEQA Guidelines, § 15002, subd. (a)(2)-(3); *Berkeley Jets, supra,* 91 Cal.App.4th at 1354.

reduced."[15] If a project has a significant effect on the environment, the agency may approve the project only upon a finding that it has "eliminated or substantially lessened all significant effects on the environment where feasible," and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns" specified in CEQA section 21081.[16]

While the courts review an EIR using an "abuse of discretion" standard, "the reviewing court is not to 'uncritically rely on every study or analysis presented by a project proponent in support of its position. *A clearly inadequate or unsupported study is entitled to no judicial deference*."[17] As the courts have explained, "a prejudicial abuse of discretion occurs "if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process."[18] "The ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail 'to enable who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.'"[19]

As these comments will demonstrate, the DEIR fails to comply with the requirements of CEQA and may not be used as the basis for approving the Project. It fails in significant aspects to perform its function as an informational document that is meant "to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment" and "to list ways in which the significant effects of such a project might be minimized."[20]

The use of inaccurate and flawed information on which the DEIR bases its conclusions results in underestimated Project impacts. This, in turn, leads to a failure to comply with CEQA's requirement that an agency mitigate "all significant environmental impacts to the greatest extent feasible, and that any remaining

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[15] CEQA Guidelines, § 15002, subd. (a)(2).
[16] *Id.*, subd. (b)(2)(A)-(B).
[17] *Berkeley Jets*, 91 Cal. App. 4th 1344, 1355 (emphasis added), *quoting, Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391 409, fn. 12.
[18] *Berkeley Jets*, 91 Cal.App.4th at 1355; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.
[19] *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, *quoting Laurel Heights*, 47 Cal.3d at 405.
[20] *Laurel Heights I, supra,* 47 Cal.3d at p. 391.

significant environmental impacts are acceptable due to overriding considerations."[21] Mitigation of impacts to the fullest extent feasible requires an agency to accurately quantify the severity of Project impacts. Because the DEIR's analyses underestimate the severity of the Project's impacts, the City has failed to comply with CEQA and thus cannot approve the Project based upon the DEIR's unsupported analyses and conclusions.

III. THE PROJECT DESCRIPTION IS INADEQUATE

The DEIR does not meet CEQA's requirements because it fails to include an accurate and complete Project description, rendering the entire analysis inadequate. California courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR."[22] CEQA requires that a project be described with enough particularity that its impacts can be assessed.[23] Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review.[24] Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.[25]

CEQA Guidelines section 15378 defines "project" to mean "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."[26] "The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term project does not mean each separate governmental approval."[27] Courts have explained that a complete description of a project must "address not only the immediate environmental consequences of going forward with the project, but also all "*reasonably foreseeable* consequence[s] of the initial project."[28] "If

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[21] CEQA Guidelines, §§ 15090, 15091.
[22] *Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 17; *Communities for a Better Environment v. City of Richmond* ("*CBE v. Richmond*") (2010) 184 Cal.App.4th 70, 85–89; *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 193.
[23] 14 CCR § 15124; *see, Laurel Heights I, supra,* 47 Cal.3d 376, 192-193.
[24] *Id.*
[25] *Sundstrom v. County of Mendocino* ("*Sundstrom*") (1988) 202 Cal.App.3d 296, 311.
[26] CEQA Guidelines § 15378.
[27] *Id.*, § 15378(c).
[28] *Laurel Heights I,* 47 Cal. 3d 376, 398 (emphasis added); *see also Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449-50.

a[n]…EIR…does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decisionmaking cannot occur under CEQA and the final EIR is inadequate as a matter of law."[29]

A. The DEIR Fails to Identify Reasonably Foreseeable Uses of the Project Site

CEQA is concerned with a project's environmental impacts, regardless of who ultimately uses or operates a project.[30] However, courts have held that where the tenant or type of business is foreseeable and there is evidence that an impact unique to that tenant or type of business will result, an EIR must disclose that information.[31] An EIR must include an analysis of the environmental effects of a proposed future use or action at a project site if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.[32] A failure to describe anticipated project operations can result in a flawed impact analysis, in violation of CEQA.[33] An EIR is required to "adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project," otherwise, informed decisionmaking is precluded and the EIR may be deemed inadequate as a matter of law.[34]

Here, the Project is being developed for unknown future tenants, but for reasonably foreseeable future uses. The DEIR admits that "[t]here is the potential for routine use, storage, or transport of other hazardous materials; however, the precise materials are not known, as the tenants of the proposed warehouses are not yet known."[35] The transport of hazardous materials may result in potentially significant impacts. Additionally, the DEIR fails to include whether the use of Transport Refrigeration Units or TRUs is anticipated for the Project. The DEIR's omission of information about the reasonably foreseeable operations at the Project site that could have significant impacts is similar to the EIR's omission of critical

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[29] *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal. App. 4th 1186, 1201.
[30] *Maintain Our Desert Env't v. Town of Apple Valley* (2004) 124 CA4th 430.
[31] *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 CA4th 1184, 1213.
[32] *Laurel Heights I,* 47 Cal. 3d 376, 396.
[33] See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722.
[34] *Id; City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454-1455.
[35] DEIR, p. 5.8-15.

operational analysis in *Bakersfield Citizens for Local Control v. City of Bakersfield*. In *Bakersfield,* the court found that an EIR's simple statement that "no stores have been identified" for the subject shopping center "without disclosing the type of retailers envisioned for the proposed project is not only misleading and inaccurate, but it hints at mendacity."[36] Since the Project is being designed to be capable of supporting warehouse, distribution, and hazardous materials transport uses at the Project site, the DEIR must be revised to include specific use information and to analyze the impacts of the most intensive reasonably foreseeable uses of the Project site. The DEIR must also include all known information about the types of future users at the Project site. The DEIR's failure to provide information about the reasonably foreseeable use causes the DEIR to fail as an informational document.

IV. THE DEIR FAILS TO ADEQUATELY ANALYZE THE PROJECT'S ENVIRONMENTAL SETTING

CEQA requires that a lead agency include a description of the physical environmental conditions in the vicinity of the Project as they exist at the time environmental review commences.[37] As numerous courts have held, the impacts of a project must be measured against the "real conditions on the ground."[38] The description of the environmental setting constitutes the baseline physical conditions by which a lead agency may assess the significance of a project's impacts.[39] Use of the proper baseline is critical to a meaningful assessment of a project's environmental impacts.[40] An agency's failure to adequately describe the existing setting contravenes the fundamental purpose of the environmental review process, which is to determine whether there is a potentially substantial, adverse change compared to the existing setting.

Baseline information on which a lead agency relies must be supported by substantial evidence.[41] The CEQA Guidelines define "substantial evidence" as

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[36] *Bakersfield Citizens for Local Control v. City of Bakersfield* ("*Bakersfield*") (2004) 124 Cal.App.4th 1184, 1213.
[37] CEQA Guidelines, § 15125, subd. (a).
[38] *Save Our Peninsula Com. v. Monterey Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 121-22; *City of Carmel-by-the Sea v. Bd. of Supervisors* (1986) 183 Cal.App.3d 229, 246.
[39] CEQA Guidelines, § 15125, subd. (a).
[40] *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Ca.4th 310, 320.
[41] *CBE v. SCAQMD, supra,* 48 Ca.4th at 321 (stating "an agency enjoys the discretion to decide […] exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence"); *see*

"enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion."[42] "Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts ... [U]nsubstantiated opinion or narrative [and] evidence which is clearly inaccurate or erroneous ... is not substantial evidence."[43]

CEQA requires that an EIR "shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans."[44] Further, "where a proposed project is compared with an adopted plan, the analysis shall examine the existing conditions at the time the notice of preparation is published, or… at the time environmental analysis is commenced."[45]

Here, the DEIR fails to discuss inconsistencies between the Project and the Perris Comprehensive General Plan 2030 ("General Plan"). First, the Project contravenes the General Plan which requires that "for all private and public projects involving new construction, substantial grading, or demolition, including infrastructure and other public service facilities, staff shall require appropriate surveys and necessary site investigations in conjunction with the earliest environmental document prepared for a project."[46] The biological resources study conducted on the Project site failed to identify the presence, in particular, of the Horned Lark (*Eremophila apestris actia),* even though the Horned Lark has been identified at or near the Project site.[47] It is clear from the City's failure to identify biological species on the Project site that the appropriate surveys and site investigations were not conducted.

Second, the Project contravenes the General Plan Noise Element, which provides that sound levels that exceed 40 to 45 dBA are excessive for sleeping areas within a residence.[48] The Project is anticipated to operate 24 hours a day, seven days a week. As discussed below, Commenters' expert noise consultant found that

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Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 435.
[42] CEQA Guidelines §15384.
[43] Pub. Resources Code § 21082.2(c).
[44] 14 CCR 15125(d).
[45] *Id.* at 15125 (e).
[46] General Plan Conservation Element p. 47, https://www.cityofperris.org/home/showpublisheddocument/449/637203139693370000.
[47] eBird, Horned Lark, https://ebird.org/species/horlar/L1333143.
[48] General Plan Noise Element, p. 3, https://www.cityofperris.org/home/showpublisheddocument/461/637203139725000000.

Project operational noise would exceed 52 dBA assuming some shielding from the edge of the roof.[49] Mr. Meighan's comments provide substantial evidence that operation of the Project, in particular the HVAC unit will result in an exceedance of the General Plan Noise Element's threshold and results in a significant impact under CEQA.

The DEIR fails to discuss these inconsistencies, as required by CEQA."[50] Therefore, the DEIR must be revised and recirculated to adequately discuss the Project's nonconformance with the General Plan.

V. THE DEIR FAILS TO ACCURATELY ANALYZE, QUANTIFY, AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS TO AIR QUALITY

An EIR must fully disclose all potentially significant impacts of a Project and implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.[51] An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.[52]

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.[53] Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.[54] In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."[55]

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[49] Meighan Comments, p. 4.
[50] 14 CCR 15125(d).
[51] 14 CCR § 15064(b).
[52] *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.
[53] *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.
[54] *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.
[55] *Id., Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.'"[56]

A. The DEIR Fails to Adequately Analyze Air Quality Impacts by Underestimating Truck Trip Lengths

The DEIR's air quality modeling relies on an average truck trip length of approximately 40 miles.[57] The 40-mile average underestimates the reasonably foreseeable truck trip lengths and results in underestimation of Project air quality impacts. One of the Project Objectives is to:

> Maximize efficient goods movement throughout the region by locating a logistics center in close proximity to the Ports of Los Angeles and Long Beach, enabling trucks servicing the site to achieve a minimum of two roundtrips per day.[58]

A one-way trip from the Project site to the Port of Los Angeles would be 77 miles[59], and a one-way trip from the Project site to the Port of Long Beach would be 76 miles.[60] These figures would be quadrupled to reach the Project Objective of a minimum of two roundtrips per day.

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[56] *Berkeley Jets*, 91 Cal.App.4th at 1355.
[57] DEIR, p. 5.2-35.
[58] DEIR, p. 1-28.
[59] Google Maps, Directions from Port of Los Angeles to W Nance St & Patterson Ave, Perris, CA 92571, https://www.google.com/maps/dir/Port+of+Los+Angeles,+Los+Angeles,+CA/Patterson+Ave+%26+Nance+St,+Perris,+CA+92571/@33.8846387,-118.3214838,9z/data=!3m1!4b1!4m14!4m13!1m5!1m1!1s0x80dd37ae652ef523:0xd88f6472b07283a5!2m2!1d-118.264982!2d33.7365401!1m5!1m1!1s0x80dca14ce72b2a69:0xb59d36b720f505c5!2m2!1d-117.2525461!2d33.8554885!3e0.
[60] Google Maps, Directions from Port of Long Beach to W Nance St & Patterson Ave, Perris, CA 92571, https://www.google.com/maps/dir/Port+of+Long+Beach,+Long+Beach,+CA/Patterson+Ave+%26+Nance+St,+Perris,+CA+92571/@33.8922137,-118.3083308,9z/data=!3m1!4b1!4m14!4m13!1m5!1m1!1s0x80dd36d0617ea633:0x4f2f123f5acab771!2m2!1d-118.216458!2d33.754185!1m5!1m1!1s0x80dca14ce72b2a69:0xb59d36b720f505c5!2m2!1d-117.2525461!2d33.8554885!3e0.

Dr. Clark estimated that using an 80-mile a day truck trip average would nearly double the daily emissions of pollutants associated with the Project, and would result in a potentially significant impact.[61] The DEIR's failure to analyze the accurate truck trip lengths results in an underestimation of Project air quality and greenhouse gas emissions. The DEIR must be revised and recirculated to accurately reflect the Project's proposed truck trips between the Port of Los Angeles and the Port of Long Beach and the warehouse and resultant emissions before the Project can be approved.

B. The DEIR Fails to Adequately Analyze and Mitigate Fugitive Dust Which Poses a Potentially Significant Risk to Human Health from Valley Fever

Valley Fever is caused by microscopic fungus known as Coccidioides immitis ("CI"), which lives in the top 2 to 12 inches of soil in many parts of the state of California.[62] When soil is disturbed by activities such as digging, grading, or driving, or is disturbed by environmental conditions such as high winds, fungal spores can become airborne and can potentially be inhaled. The infectious dose is very low, typically less than 10 spores.[63] The Centers for Disease Control determined that "as little as one spore may transmit disease."[64]

The Project may result in potentially significant impacts from Valley Fever. But the DEIR makes no mention of Valley Fever, and the Health Risk Assessment fails to analyze health risk impacts from Valley Fever. Riverside University Health System, in their Coccidioidomycosis Yearly Summary Report 2015 found that half (52.3%) of reported Valley Fever Coccidioidomycosis cases were reported among residents living in Western Riverside County.[65] And 5.6% of cases occurred in the City of Perris.[66] The incidence of Valley Fever in the area is significant, but the DEIR fails to make any mention of the potentially significant risk from Project construction and resultant disturbance of soil.

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[61] Clark Comments, p. 10.
[62] Cal. Lab. Code § 6709(a).
[63] Jennifer McNary and Mary Deems, Preventing Valley Fever in Construction Workers, March 4, 2020, pdf 10; https://www.safetybayarea.com/media/2020-3A.pdf.
[64] Centers for Disease Control and Prevention
[65] Riverside University Health System, Coccidioidomycosis Yearly Summary Report 2015 Riverside University Health System – Public Health Disease Control Epidemiology & Program Evaluation, https://www.ruhealth.org/sites/default/files/2020-08/Cocci_Report_for_Publish_FINAL.pdf.
[66] *Id.*

Dr. James Clark found that Project construction may result in significant fugitive dust emissions which may pose a potentially significant health risk by exposing people to Valley Fever. Dr. Clark concludes that desert winds can raise significant amounts of dust, even when conventional dust control methods are used, often prompting alerts from air pollution control districts. If these winds occurred during grading, cut and fill, or soil movement, or from bare graded soil surfaces (even if periodically wetted), significant amounts of PM_{10}, $PM_{2.5}$, and associated Valley Fever spores as well as silica dust would be released.

The Project is adjacent to sensitive receptors, including residential areas, schools, and parks, which may result in significant public health impacts from Valley Fever. Valley fever spores can be carried on the winds into surrounding areas which may expose workers, students at nearby schools, and residents to CI spores. Valley Fever spores, for example, have been documented to travel as much as 500 miles[67] and, thus, dust raised during construction could potentially expose a large number of people hundreds of miles away.

Dr. Clark finds that implementation of conventional dust control measures like those in MM Air 3,[68] will not provide sufficient protection for both on-site workers and the general public. Dr. Clark concludes that the conventional dust control measures proposed in MM Air 3 would not sufficiently prevent the spread of CI and are not effective at controlling Valley Fever because they largely focus on visible dust or larger dust particles, not the very fine particles where the Valley Fever spores are found.[69] Dr. Clark concludes that standard Air Quality Mitigation Measures like those proposed in MM Air 3 such as watering of soils would not provide sufficient protection to on-site workers nor would they prevent the spread of Coccidiodes immitis from the site to receptors farther away.

Dr. Clark proposes the following feasible mitigation measures to reduce impacts associated with Valley Fever from Project construction.

1. A site-specific Valley Fever Dust Management Plan should be prepared that includes a site-specific work plan (SWP) as well as a sampling and analysis plan (SAP) to measure the amount of Coccidiodes immitis present in soils at the Site prior to any soil disturbance on site. The SWP and SAP should detail the goals of the investigation(s), the

[67] David Filip and Sharon Filip, Valley Fever Epidemic, Golden Phoenix Books, 2008, p. 24.
[68] DEIR, p. 1-34.
[69] Clark Comments, p. 6.

collection methods, the number of samples to be collected, and the minimum detection requirements. The results of the investigation should be presented to the South Coast Air Quality Management District (SCAQMD) to ensure compliance with the goals of the SAP and approval of the investigation results.

2. Include specific requirements in the Project's Injury and Illness Prevention Program (as required by Title 8, Section 3203) regarding safeguards to prevent Valley Fever.
3. Control dust exposure:
   - Apply chemical stabilizers at least 24-hours prior to high wind event;
   - Apply water to all disturbed areas a minimum of three times per day. Watering frequency should be increased to a minimum of four times per day if there is any evidence of visible wind-driven fugitive dust;
   - Provide National Institute for Occupational Safety and Health (NIOSH)-approved respirators for workers with a prior history of Valley Fever.
   - Half-face respirators equipped with a minimum N-95 protection factor for use during worker collocation with surface disturbance activities. Half-face respirators equipped with N-100 or P-100 filters should be used during digging activities. Employees should wear respirators when working near earth-moving machinery.
   - Prohibit eating and smoking at the worksite, and provide separate, clean eating areas with hand-washing facilities.
   - Avoid outdoor construction operations during unusually windy conditions or in dust storms.
   - Consider limiting outdoor construction during the fall to essential jobs only, as the risk of cocci infection is higher during this season.
5. Prevent transport of cocci outside endemic areas:
   - Thoroughly clean equipment, vehicles, and other items before they are moved off-site to other work locations.
   - Prevent spillage or loss of bulk material from holes or other openings in the cargo compartment's floor, sides, and/or tailgate;
   - Load all haul trucks such that the freeboard is not less than six inches when material is transported on any paved public access road and apply water to the top of the load sufficient to limit VDE to 20 percent opacity; or cover haul trucks with a tarp or other suitable cover.

- Provide workers with coveralls daily, lockers (or other systems for keeping work and street clothing and shoes separate), daily changing and showering facilities.
- Clothing should be changed after work every day, preferably at the work site.
- Train workers to recognize that cocci may be transported offsite on contaminated equipment, clothing, and shoes; alternatively, consider installing boot-washing.
- Post warnings onsite and consider limiting access to visitors, especially those without adequate training and respiratory protection.

6. Improve medical surveillance for employees:
   - Employees should have prompt access to medical care, including suspected work-related illnesses and injuries.
   - Work with a medical professional to develop a protocol to medically evaluate employees who have symptoms of Valley Fever.
   - Consider preferentially contracting with 1-2 clinics in the area and communicate with the health care providers in those clinics to ensure that providers are aware that Valley Fever has been reported in the area. This will increase the likelihood that ill workers will receive prompt, proper and consistent medical care.
   - Respirator clearance should include medical evaluation for all new employees, annual re-evaluation for changes in medical status, and annual training, and fit-testing.
   - Skin testing is not recommended for evaluation of Valley Fever.
   - If an employee is diagnosed with Valley Fever, a physician must determine if the employee should be taken off work, when they may return to work, and what type of work activities they may perform.[70]

In order to reduce the Project's potentially significant Valley Fever impacts to the greatest extent feasible these measures must be implemented in a revised and recirculated EIR.

Additionally, the United States Department of Labor Occupational Safety and Health Administration ("OSHA") requires that a respirator "shall be provided to each employee when such equipment is necessary to protect the health of such employee. The employer shall provide respirators which are applicable and suitable for the purpose intended. The employer shall be responsible for the establishment

[70] Clark Comments, p. 6-8.

and maintenance of a respiratory protection program, which shall include the requirements outlined in paragraph (c) of this section. The program shall cover each employee required by this section to use a respirator."[71]

The Project should implement a mandatory respiratory protection program that requires National Institute for Occupational Safety and Health ("NIOSH")-approved respirators be worn while performing or in the near vicinity of job activities that create airborne dust. NIOSH approved respirators are necessary because "[h]ousehold materials such as washcloths, bandanas, and handkerchiefs do not protect workers from breathing in dust and spores."[72]

The DEIR must be revised and recirculated to adequately analyze and mitigate potentially significant impacts from Valley Fever.

C. The DEIR Fails to Analyze the Impacts Associated with TRUs

The DEIR fails to analyze the Project's impacts associated with Transport Refrigeration Units ("TRUs"). Although the Project description states that the Project will be a non-refrigerated warehouse, local zoning does not prohibit the use of TRUs onsite nor does it prohibit the use of refrigeration.[73] Therefore, without a mitigation measure prohibiting the Project from using refrigeration, the warehouse's ability to be used as a refrigerated warehouse must be analyzed.

The California Air Resources Board has stated, "[f]reight facilities, such as warehouse and distribution facilities, can result in high daily volumes of heavy-duty diesel truck traffic and operation of on-site equipment (e.g., forklifts and yard tractors) that emit toxic diesel emissions, and contribute to regional air pollution and global climate change."[74] The impacts generated by the particular operations of different users within this broad category can also result in significant impacts. The adverse impacts generated by cold storage warehouses, for example, are far more severe than those from a high-cube warehouse without cold storage.[75] Warehouses with cold storage capabilities and the ability to accommodate

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[71] 29 C.F.R. § 1910.134(a)(2) (2006).
[72] CDPH Preventing Work-Related Coccidioidomycosis (Valley Fever) Preventing Valley Fever Exposure, *available at:* http://elcosh.org/document/3684/d001224/preventing+work-related+coccidioidomycosis+(valley+fever).html.
[73] DEIR, p. 1-12.
[74] CARB Comments re: Rubidoux Commerce Park Notice of Preparation of DEIR, December 17, 2020, p. 1; CARB NOP Comments regarding the Mariposa Industrial Park DEIR.
[75] *Id.*

refrigerated trucks, or TRUs, require more truck trips per square foot and have higher energy demands due to the low temperatures required by the trucks, whose refrigeration units are most often powered by diesel internal combustion engines.[76]

Dr. Clark concludes that the DEIR's failure to analyze emissions from TRUs underestimates the health risk impacts to the community, as well as the associated GHG emissions from operation of the TRUs. The DEIR must be revised and recirculated to adequately analyze impacts from TRUs in the DEIR and in the health risk assessment before the Project can lawfully be approved.

VI. THE DEIR FAILS TO ADEQUATELY DISCLOSE AND MITIGATE THE POTENTIALLY SIGNIFICANT NOISE IMPACTS OF THE PROJECT

A. Construction of the Project Will Result in Significant Noise and Vibration Impacts

CEQA was enacted to promote the goal of providing Californians with "freedom from excessive noise."[77] The Project will result in potentially significant impacts from excessive construction noise that the DEIR fails to adequately quantify and analyze. The DEIR overestimates the distance from the source of construction noise to the nearest sensitive receptor by approximately 200 feet, resulting in an underestimation of the significance of the noise impacts. The nearest sensitive receptor R3 is 30 feet, as shown in Table 8-2 of Appendix I, below.

[76] *See, e.g.*, CARB Transport Refrigeration Unit Regulations, http://ww2.arb.ca.gov/sites/default/files/truckstop/trus/trus.html; CARB Technology Assessment for Transport Refrigerators, August 2015, https://ww2.arb.ca.gov/sites/default/files/2020-06/TRU%20Tech%20Assessment%20Report%20ada.pdf; CARB Comments on Mariposa Industrial Park DEIR, October 8, 2021.
[77] PRC § 21001(b).

Table 8-2. Project Only Operational Noise levels (dBA L_{eq}) & CNEL				
Receiver Location[1]	Distance from the Project site to receiving property line (ft)	Combined Project Only Operational Noise Level (dBA L_{eq})[3]	CNEL	60 CNEL Standard Exceeded
R1[2]	52	46	47	No
R2	52	46	47	No
R3	30	48	48	No
R4	302	43	43	No
[1] Figure 6 shows the receiver locations. [2] Identified as a potential residential land use.				

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Commenters' noise and acoustical consultant, Jack Meighan, found that if the DEIR had accurately calculated the noise impacts to R3 receptors at 30 feet, sound levels from construction could be higher by as much as 27 decibels.[79] Mr. Meighan concludes that adding 27 dBA to the levels presented in Table 10-3 below would create a significant impact for all 8 scenarios modeled.[80] At 30 feet, all 8 scenarios modeled below would exceed the Perris Municipal Code exterior noise level standards of 80 dBA Lmax daytime and 60 dBA Lmax nighttime and the Perris GP 2030 Standard of 60 CNEL.[81]

Table 10-3. Construction Noise Levels by Construction Phase				
Location	Phase	Construction Noise Level[1], dBA L_{max}		Exceeds Standard, dBA L_{max} (80)
		Daytime	Nighttime[2]	
R1(West)	Grade	68	None	No
	Build	62	57	
	Pave	63	None	
	Arch Coat	54	None	
R3 (East)	Grade	72	None	
	Build	66	61	
	Pave	67	None	
	Arch Coat	58	None	
Notes: 1. Construction noise projected from center of project site to nearest adjacent use (structure). 2. Concrete pours with cement pump trucks and mixers occur during the building construction phase at nighttime only.				

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The DEIR's conclusion that "the Project would not exceed the noise standard identified in Perris Municipal Code Section 7.34.060 and noise impacts would be less than significant" is therefore not supported by substantial evidence. The DEIR

[78] DEIR Appendix I, Table 8-2, p. 28.
[79] Meighan Comments, p. 3.
[80] Meighan Comments, p. 3.
[81] Meighan Comments, p. 3.
[82] DEIR Appendix I, Table 10-3, p. 28.

must be revised and recirculated to accurately quantify construction noise impacts to nearby sensitive receptors and to mitigate those impacts, before the Project can be approved.

The DEIR's vibration impact analysis relies on the same flawed calculations. Commenters' noise and acoustical consultant, Jack Meighan, found that the DEIR fails to accurately analyze the impacts to the nearest sensitive receptors from construction vibration. The DEIR's reliance on an inaccurate distance between the source of construction vibration and the nearest sensitive receptor results in inaccurate impact assessment. The vibration impacts from construction may be significant, if calculated correctly. The DEIR must be revised and recirculated to accurately analyze the Project's impacts from construction vibration before the Project can be approved.

B. Operation of the Project Will Result in Significant Noise Impacts

The DEIR fails to analyze the Project's significant impact associated with its generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in local general plan or noise ordinance, or applicable standards of other agencies.[83] The DEIR recognizes that the ambient noise level for single family residences that Receptor 3 ("R3") is 48.4 dBA.[84] Mr. Meighan determined that given the existing ambient noise level is 48 dBA, the increase in noise from the Project's HVAC noise at residences at R3 of 52 dBA, the overall noise level would be 54 dBA, more than 5 dBA over the ambient/limit and thus a significant impact.[85] This increase in the ambient noise level by more than 5 dBA directly contravenes Perris Municipal Code Section 7.34.050 which provides that:

> It is unlawful for any person to willfully make, cause or suffer, or permit to be made or caused, any loud excessive or offensive noises or sounds which unreasonably disturb the peace and quiet of any residential neighborhood or which are physically annoying to persons of ordinary sensitivity or which are so harsh, prolonged or unnatural or unusual in their use, time or place as to occasion physical discomfort to the inhabitants of the city, or any section thereof… ***To the extent that the noise created causes the noise level at the property line to exceed the ambient noise level by more than 1.0***

[83] DEIR, p. 1-62.
[84] DEIR, p. 5.11-26.
[85] Meighan Comments, p. 4.

decibels, it shall be presumed that the noise being created also is in violation of this section.[86]

The DEIR estimates that the Project will increase the ambient noise level by 2.8 dBA for sensitive receptors at R3 which in itself is a violation of the Municipal Code. Additionally, substantial evidence presented by Mr. Meighan shows that the increase will exceed 5 dBA for residential receptors at R3 and violate the City's Municipal Code. The DEIR's conclusion that noise impacts are less than significant is not supported by substantial evidence. In fact, substantial evidence suggests that stationary operational noise, particularly from the Project's HVAC system, results in a permanent increase in ambient noise levels in excess of the City of Perris's Municipal Code Section 7.34.050, and results in a significant impact under CEQA.

C. The City Must Include All Feasible Measures to Reduce the Project's Significant Noise and Vibration Impacts in a Revised EIR

The DEIR fails to implement all feasible mitigation to reduce noise and vibration impacts to less than significant levels. As shown above, noise impacts from construction and operation are significant, and unmitigated. The DEIR fails to include noise buffers or sound walls, as proposed by Mr. Meighan in comments, to feasibly reduce construction noise and vibration impacts. The DEIR fails to implement noise buffers even though the Environmental Justice Element of the General Plan requires that noise barriers, and sound buffers be implemented where incompatible uses cannot possibly be separated.[87] The Environmental Justice Element provides:

> Goal 3.1 A community that reduces the negative impacts of land use changes, environmental hazards and climate change on disadvantaged communities. Continue to ensure new development is compatible with the surrounding uses by collocating compatible uses and using physical barriers, geographic features, roadways or other infrastructure to separate less compatible uses. When this is not possible, impacts may be mitigated using: noise barriers, building insulation, sound buffers, traffic diversion.[88]

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[86] City of Perris Municipal Code Section 7.34.050 (a), https://library.municode.com/ca/perris/codes/code_of_ordinances?nodeId=COOR_TIT7HEWE_CH7.34NOCO_S7.34.020DE.
[87] DEIR, p. 5.10-8.
[88] Perris General Plan Environmental Justice Element, p. 39, https://www.cityofperris.org/home/showpublisheddocument/14502/637677498851330000.

The DEIR's failure to provide sufficient mitigation in the form of noise barriers and sound buffers not only violates CEQA, but violates the City's Environmental Justice Element, as well. Further, implementing the measures identified in the FTA Transit Noise and Vibration Assessment Manual could feasibly lessen the duration and magnitude of vibration. The DEIR should be revised and recirculated to provide a vibration control and monitoring plan that identifies on-site layout, truck access and speed limits for vibration control, buffer distances and other measures to reduce vibration such as phasing and scheduling.[89] This plan should also include a description of the process by which complaints will be documented and resolved.[90] Construction noise and vibration must be mitigated to a less than significant level through feasible measures, including limiting heavy trucks in the immediate vicinity of neighbors, and reducing truck and vehicle speeds.[91] A revised DEIR should include a vibration control and monitoring plan that requires specified off-site truck access routes, speed limits, and other measures to reduce vibration such as phasing and scheduling.[92] The DEIR must be revised and recirculated to adequately mitigate the Project's impacts from noise and vibration.

For these reasons, the DEIR fails to adequately identify and analyze construction and operational Project noise and vibration impacts and fails to identify and require feasible mitigation for the Project's potentially significant noise and vibration impacts.

VII. THE DEIR FAILS TO ADEQUATELY DISCLOSE AND MITIGATE THE POTENTIALLY SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES

The protection of biological resources is a fundamental policy incorporated in CEQA. CEQA provides that it is the policy of the state to "[p]revent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities."[93] A lead agency is permitted to conduct reconnaissance-level surveys of species, as long as the

[89] Meighan Comments, p. 3.
[90] *Id.*
[91] *Id.*
[92] *Id.*
[93] PRC § 21001(c).

supporting biological studies or analysis are sufficiently credible to support the EIR conclusions.[94]

A. The DEIR Fails to Adequately Analyze Project Impacts to Biological Resources

Here, the City's surveys for biological resources were not supported by substantial evidence because they failed to conduct surveys which accurately reflect conditions of biological resources on the ground. The DEIR failed to conduct adequate burrowing owl surveys, because the burrowing owl surveys occurred in July, which was after burrowing owls have finished breeding in southern California.[95] Further, the burrowing owl surveys did not meet the standards of the California Department of Fish and Wildlife's (2012) survey guidelines, for accurately determining existence of burrowing owls.[96] The biological resources study conducted on the Project site failed to identify the presence, in particular, of the Horned Lark (*Eremophila apestris actia),* even though the Horned Lark has been identified at and near the Project site.[97] The Horned Lark is not listed under the California Department of Fish and Wildlife Bird Species of Special Concern.[98] "A species that is not listed must be considered endangered if the species meets specified criteria."[99] A species is considered endangered if its survival and reproduction in the wild are in immediate jeopardy as a result of loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors.[100] The Horned lark has been referred to as a "Common bird in steep decline" due to loss of habitat due to agricultural pesticides, disturbed sites the

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[94] *Save Round Valley Alliance v. County of Inyo* (2007) 149 CA4th 645,671.
[95] DEIR Appendix C.2, Cadre Environmental, MSHCP Focused Burrowing Owl Surveys for the 35.65-Acre Duke Patterson & Nance Warehouse Project Site, City of Perris, California, July 16l, 2022; California State University Stanislaus, Endangered Species Recovery Program, Western burrowing owl *Athene cunicularia hypugaea,* https://esrp.csustan.edu/speciesprofiles/profile.php?sp=spcu. (Burrowing owl "nesting season begins in late March or April…The young leave the nest at about 44 days and begin chasing living insects when 49-56 days old.")
[96] CDFW (California Department of Fish and Wildlife), Staff report on burrowing owl mitigation. Sacramento, California (2012).
[97] eBird, Horned Lark, https://ebird.org/species/horlar/L1333143.
[98] California Department of Fish and Game, California Bird Species of Special Concern (April 10, 2008), https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=84247&inline.
[99] 14 CCR § 15380(d).
[100] 14 CCR § 15380(b)(1).

birds prefer reverting to forested lands through reforestation efforts, urbanization and human encroachment as well as collisions with wind turbines.[101]

The DEIR's failure to adequately analyze the presence of burrowing owls and Horned larks is a violation of CEQA's requirement that agencies must analyze potentially significant impacts to biological resources, and mitigate such impacts to the greatest extent feasible. The DEIR must be revised and recirculated to adequately analyze and mitigate impacts to biological resources before the Project can be approved.

B. The DEIR Fails to Adequately Mitigate Project Impacts to Biological Resources

The DEIR fails to adequately mitigate impacts to biological resources by impermissibly deferring analysis and mitigation until after project approval, in violation of CEQA. The courts have held that where an EIR improperly defers formulation of significant aspects of mitigation, the EIR fails to comply with CEQA's informational requirements. CEQA Guidelines, section 15126.4, subdivision (a)(1)(B) specifies that "[f]ormulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way."[102] Here, Mitigation Measure Bio 1 does not provide performance standards by which impacts to nesting birds will be mitigated. The measure provides vaguely that "[i]f the survey identifies the presence of active nests, then the qualified biologist shall implement avoidance measures…"[103] The DEIR neither defines avoidance measures, nor provides any performance standards by which impacts to nesting birds will be sufficiently mitigated. Mitigation Measure Bio 1 therefore constitutes impermissibly deferred mitigation.

Further, the DEIR does not provide substantial evidence that "avoidance measures" will feasibly reduce impacts to nesting birds. An EIR must describe feasible measures which could minimize significant adverse impacts and which "must be fully enforceable through permit conditions, agreements, or other legally binding instruments."[104] CEQA defines "feasible" as "capable of being accomplished

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[101] American Bird Conservancy, Horned Lark, https://abcbirds.org/bird/horned-lark/.
[102] 14 CCR § 15126.4(a)(1)(B).
[103] DEIR, p. 1-42.
[104] CEQA Guidelines, § 15126.4(a)(1), (2).

in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors."[105] The DEIR does not provide substantial evidence that Mitigation Measure Bio 1 will feasibly reduce impacts to nesting birds.

The DEIR must be revised and recirculated to adequately mitigate impacts to biological resources before the Project can be approved.

VIII. THE CITY CANNOT MAKE THE REQUIRED FINDINGS TO SUPPORT APPROVAL OF THE LAND USE ENTITLEMENTS

A. The City Cannot Make the Required Findings to Support the Approval of the Development Plan Review

The Perris Municipal Code provides that "development plan review is required to protect the health, safety and welfare of the citizens of the city and to ensure that all development proposed within the city is consistent with the city's general plan, applicable specific plans, and zoning."[106] "The purpose of the development plan review is to protect the health, safety, and welfare of the citizens of the city; to ensure that all development proposed within the city is consistent with the city's general plan, zoning, any applicable specific plan, and city requirements to protect and enhance the built and natural environment of the city, identifying and mitigating potential impacts that could be generated by the proposed use, such as traffic, noise, smoke, dust, fumes, vibration, odors, other hazards, or community impacts."[107] The Project's significant impacts from air pollution, dust, noise, hazards and community impacts, as described below, contravenes the purpose of the development plan review. The Planning Commission cannot approve the development plan review absent substantial additional mitigation.

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[105] Pub. Resources Code § 21060.1; CEQA Guidelines § 15364.
[106] City of Perris Municipal Code Sec. 19.50.010.
[107] City of Perris Municipal Code Sec. 19.54.040(f) https://library.municode.com/ca/perris/codes/code_of_ordinances?nodeId=COOR_TIT19ZO_CH19.54AUREPR_S19.54.030REAUPRPR.

B. The City Cannot Make the Required Findings to Support the Approval of the Tentative Parcel Map

The Perris Municipal Code provides that "No parcel map shall be considered filed until all provisions of CEQA have been complied with."[108] Given that "all provisions of CEQA" have not been complied with, due to the City's failure to analyze and mitigate the Project's potentially significant impacts, as shown herein, the City cannot make the required findings to approve the tentative parcel map.

C. The City Cannot Make the Required Findings to Support the Approval of the Specific Plan Amendment

The Perris Municipal Code provides that "No specific plan may be adopted or amended unless the proposed plan or amendment is consistent with the city's general plan."[109] The Project contravenes the Perris Comprehensive General Plan 2030 which requires that "[f]or all private and public projects involving new construction, substantial grading, or demolition, including infrastructure and other public service facilities, staff shall require appropriate surveys and necessary site investigations in conjunction with the earliest environmental document prepared for a project."[110] First, the biological resources study conducted on the Project site failed to identify the presence, in particular, of the Horned Lark (*Eremophila apestris actia),* even though the Horned Lark has been identified at or near the Project site.[111] It is clear from the City's failure to identify biological species on the Project site that the appropriate surveys and site investigations were not conducted.

Second, the General Plan Noise Element provides that sound levels that exceed 40 to 45 dBA are excessive for sleeping areas within a residence.[112] The Project is anticipated to operate 24 hours a day, seven days a week. Commenters' expert noise consultant found that Project operational noise would exceed 52 dBA

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[108] City of Perris Municipal Code Sec. 18.16.020, https://library.municode.com/ca/perris/codes/code_of_ordinances?nodeId=COOR_TIT18SU_CH18.16PAMAPR_S18.16.010TEPAMA.
[109] City of Perris Municipal Code Sec. 19.49.090, https://library.municode.com/ca/perris/codes/code_of_ordinances?nodeId=COOR_TIT19ZO_CH19.49ADPRSPPL_S19.49.080AMRESPPL.
[110] General Plan Conservation Element p. 47.
[111] eBird, Horned Lark, https://ebird.org/species/horlar/L1333143.
[112] General Plan Noise Element, p. 3, https://www.cityofperris.org/home/showpublisheddocument/461/637203139725000000.

assuming some shielding from the edge of the roof.[113] Mr. Meighan's comments provide substantial evidence that operation of the Project, in particular the HVAC unit will result in an exceedance of the General Plan Noise Element's threshold and results in a significant impact under CEQA. The Project's nonconformance with the General Plan precludes the City from making the necessary findings to support approval of the Specific Plan Amendment, without first revising and recirculating the DEIR to adequately analyze the Project's potentially significant impacts.

IX. CONCLUSION

For the foregoing reasons, the City must fulfill its responsibilities under CEQA by preparing a legally adequate EIR to address the significant omissions and deficiencies described in this comment letter and the attached expert comments. The DEIR must be revised and recirculated to adequately inform the decision-makers and public of the Project's significant environmental impacts and feasible mitigation measures. The DEIR must also be revised and recirculated to enable the City to make the necessary findings for approval of the Development Plan Review, Tentative Parcel Map, and Specific Plan Amendment.

Thank you for your attention to these comments.

Sincerely,

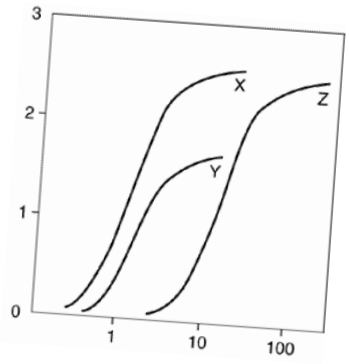
Kelilah Federman

Kelilah D. Federman

Attachments
KDF:acp

[113] Meighan Comments, p. 4.

EXHIBIT A



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December 19, 2022

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

Attn: Ms. Kelilah Federman

Subject: Comment Letter on Duke Warehouse At Patterson Avenue and Nance Street, Perris, California, Draft Environmental Impact Report SCH No. 2022010274

Dear Ms. Federman:

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

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

Project Description:

The proposed Project includes construction and operation of a high-cube, non-refrigerated warehouse building and supporting on- and off-site infrastructure. The proposed Project involves the construction and operation of a 769,668-square-foot (SF) building on the approximate 35.7-net acre Project site. The building is proposed to accommodate 749,668 SF of high-cube, non-refrigerated warehouse distribution uses with the remaining 20,000 SF for supporting office uses. The building includes 64 dock doors on the east side and 49 dock doors on the west side. The proposed Project would be constructed as a "spec" building; that is, there is not a specific tenant identified at this time. It

is anticipated that the building could operate 24 hours a day, seven days a week.

The Project will include a total of 366 automobile parking stalls, consisting of 326 standard stalls, 10 American Disabilities Act-compliant (ADA) stalls, and 30 Electric Vehicle (EV)/Clean Air/Vanpool stalls. Automobile parking is provided in three locations: one across from each office area on the northwest and southwest corners of the building and a third area along the north side of the building. ADA path of travel is provided between passenger vehicle parking areas and the office areas. Raised planter islands are proposed at the automobile parking lot entrances along Patterson Avenue and a five (5)-foot-wide landscaped curb is proposed between the automobile parking area and the truck drive aisle along the north side of the building to provide separation of the cars and trucks. The Project also includes 140 trailer parking stalls. Bike racks will also be provided at the Project site for employee use, per City standards.

The Project site is located within the northwest portion of the Perris Valley Commerce Center Specific Plan (PVCCSP) which encompasses more than five square miles and over 3,500 acres in the northern end of the City. The PVCCSP planning area is relatively flat, sloping in a southeasterly direction with elevations ranging from 1,430 to 1,500 feet above mean sea level. The Project site is located approximately 0.1 mile to the southwest of March Air Reserve Base/Inland Port Airport (MARB/IPA) and approximately 0.20 mile east of the Interstate 215 (I-215) freeway. The major road

that currently provides access to the Project site is Patterson Avenue. The freeway interchange closest to the Project site is at Harley Knox Boulevard, which is a designated truck route,

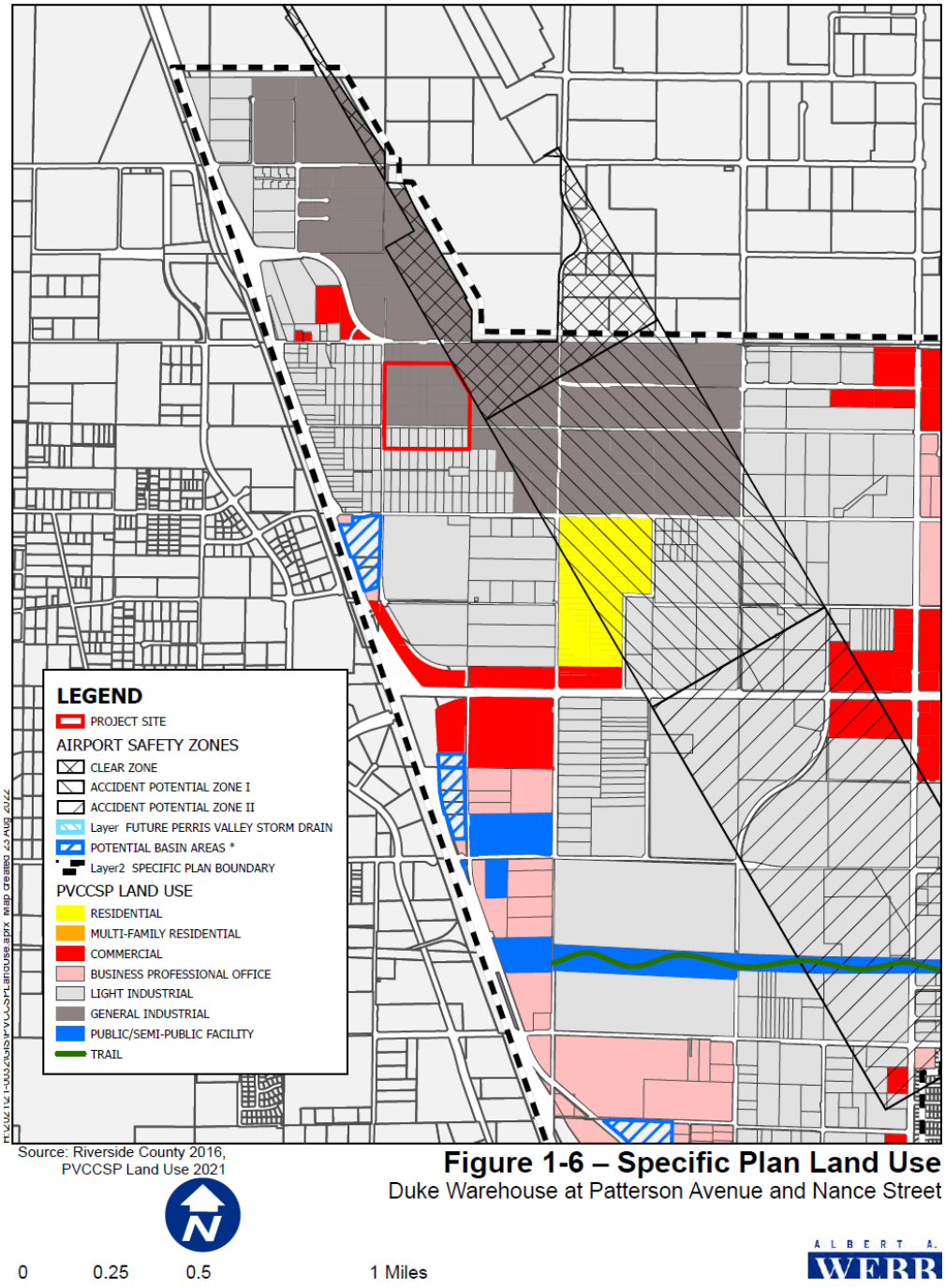


Figure 1: Project Site Location Map

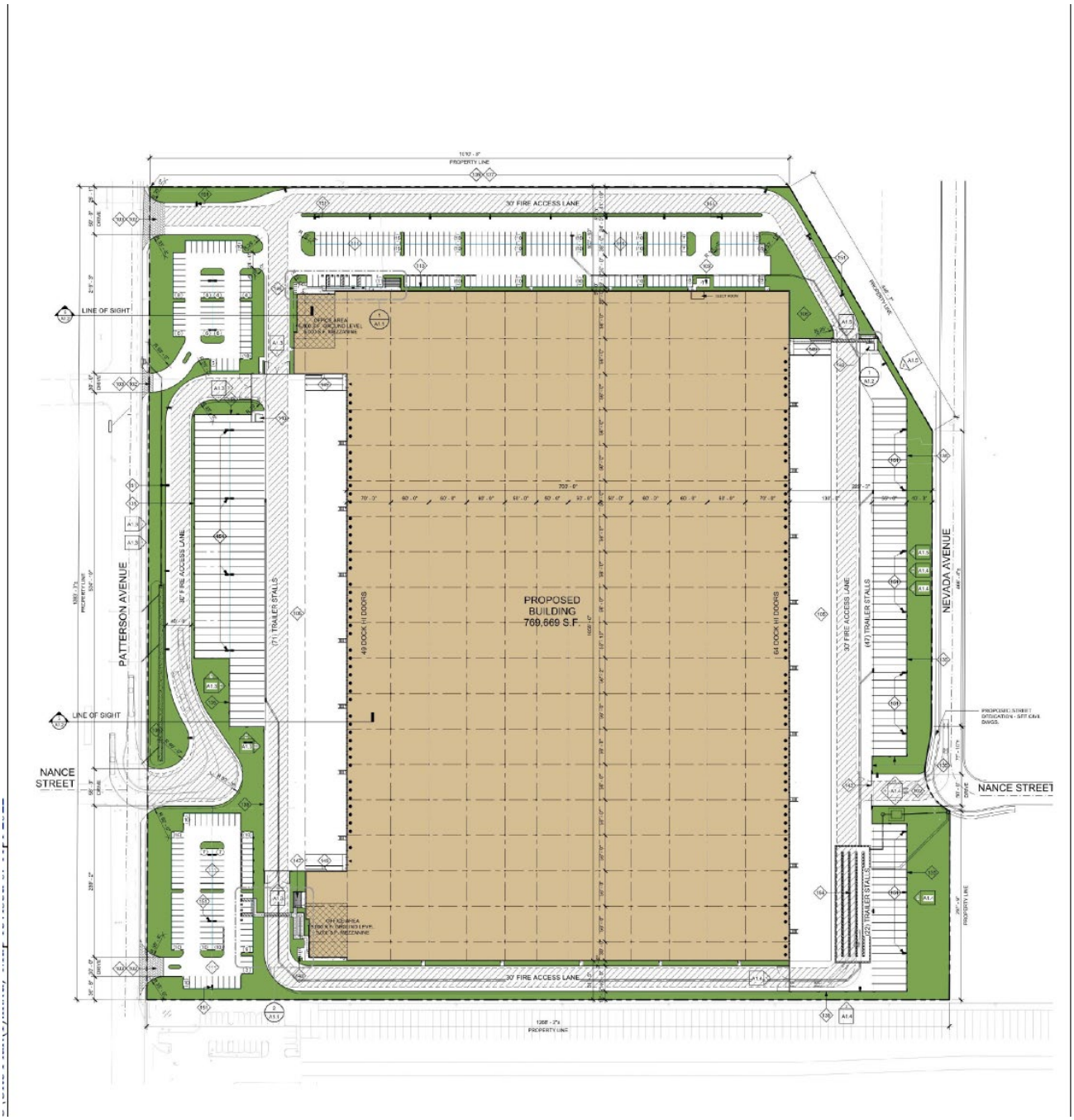


Figure 2: Project Site Plan

Specific Comments:

1. The DEIR Fails To Consider The Known Issue of *Coccidiodes Immitis* (Valley Fever Cocci) Transport From The Project Site To The Nearest Sensitive Receptor.

The DEIR fails to adequately address the known presence/issue of *Coccidiodes Immitis* (Valley Fever Cocci) in the Southern California. The spores of *Coccidiodes immitis*, (*cocci*), cause Valley Fever (VF) in workers involved in soil disturbing work (i.e, grading and demolition activities) and residents downwind of those disturbed soils. Since the spores of *Coccidiodes immitis* reside in soils and are not subject to degradation, entrainment of the potentially impacted soils may cause additional issues to further development of the site.

Windblown dust from Project-disturbed soils is a particular concern at this site due to desert winds, which occur in the area. Desert winds can raise significant amounts of dust, even when conventional dust control methods are used, often prompting alerts from air pollution control districts. If these winds occurred during grading, cut and fill, or soil movement, or from bare graded soil surfaces (even if periodically wetted), significant amounts of PM_{10}, $PM_{2.5}$, and associated Valley Fever spores as well as silica dust would be released.

According to research on VF, outbreaks in populations with intense exposure to aerosolized arthroconidia are at greater risk for infection. These groups include agricultural or construction workers, or persons who participate in outdoor activities such as hunting or digging in the soil. Outbreaks of coccidioidomycosis have been linked to a variety of activities involving disturbance of impacted soils.[1,2,3]

The City must prepare a revised DEIR to disclose the impacts of the Project's ground disturbing construction activities on the closest receptors, and to incorporate effective VF mitigation for off-site receptors to ensure that public health will be protected adequately in a revised DEIR. Prior

[1] Brown. Et al. 2013. Coccidioidomycosis: epidemiology. *Clinical Epidemiology*. 5:185-197.

[2] Rafael Laniado-Laborin, Expanding Understanding of Epidemiology of Coccidioidomycosis in the Western Hemisphere, Annals of the New York Academy of Sciences, v. 111, 2007, pp. 20–22, available at https://nyaspubs.onlinelibrary.wiley.com/doi/abs/10.1196/annals.1406.004; Frederick S. Fisher, Mark

W. Bultman, Suzanne M. Johnson, Demosthenes Pappagianis, and Erik Zaborsky, Coccidioides Niches and Habitat Parameters in the Southwestern United States, a Matter of Scale, Annals of the New York Academy of Sciences, v. 111, 2007, pp. 47–72 ("All of the examined soil locations are noteworthy as generally 50% of the individuals who were exposed to the dust or were excavating dirt at the sites were infected."), available at https://nyaspubs.onlinelibrary.wiley.com/doi/abs/10.1196/annals.1406.031.

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

to any soil disturbance and well in advance of construction, the Project construction site should also be tested to determine if VF spores are present.

2. The DEIR Fails To Propose Any Mitigation Measures To Address Impacts from Exposure to *Coccidiodes Immitis* (Valley Fever Cocci) From Particulate Matter Released From Site.

Conventional dust control measures do nothing to prevent the spread of *Coccidiodes immitis*, (*cocci*) and are not effective at controlling Valley Fever[4] because they largely focus on visible dust or larger dust particles—the PM_{10} fraction—not the very fine particles where the Valley Fever spores are found. The use of PM_{10} and visible dust as a measure of the potential exposure to *Coccidiodes immitis*, (*cocci*) fails to consider the size of the spores (5 times smaller than the visible dust). The larger PM_{10} particles will settle out of the air column much quicker than the very fine spores. This fact allows the spores to spread in over a much greater area than the dust particles. Therefore standard Air Quality Mitigation Measures (e.g., those recommended in Mitigation Measure Air-3) such as watering of soils would not provide sufficient protection to on-site workers nor would they prevent the spread of *Coccidiodes immitis* from the site to receptors farther away. Compliance with SCAQMD Rule 403 (the basis of Mitigation Measure Air-3) would still fail to prevent the exposure of workers on- and off-site to *Coccidiodes immitis* impacted soils. Sampling for and removal of impacted soils is the best solution to *Coccidiodes immitis* spores. Since *Coccidiodes immitis* resides in soils and are not subject to degradation, entrainment of the potentially impacted soils may cause additional issues to further development of the site.

The City should require measures from the Proponent to actively suppress the spread of VF by:

1. A site specific Valley Fever Dust Management Plan should be prepared that includes a site-specific work plan (SWP) as well as a sampling and analysis plan (SAP) to measure the amount of *Coccidiodes immitis* present in soils at the Site prior to any soil disturbance on site. The SWP and SAP should detail the goals of the investigation(s), the collection methods, the number of samples to be collected, and the minimum detection requirements. The results of the investigation should be presented to the

[4] See, e.g., Cummings and others, 2010, p. 509; Schneider et al., 1997, p. 908 ("Primary prevention strategies (e.g., dust-control measures) for coccidioidomycosis in endemic areas have limited effectiveness.").

South Coast Air Quality Management District (SCAQMD) to ensure compliance with the goals of the SAP and approval of the investigation results.

2. Include specific requirements in the Project's Injury and Illness Prevention Program (as required by Title 8, Section 3203) regarding safeguards to prevent Valley Fever.
3. Control dust exposure:
    - Apply chemical stabilizers at least 24-hours prior to high wind event;
    - Apply water to all disturbed areas a minimum of three times per day. Watering frequency should be increased to a minimum of four times per day if there is any evidence of visible wind-driven fugitive dust;
    - Provide National Institute for Occupational Safety and Health (NIOSH)-approved respirators for workers with a prior history of Valley Fever.
    - Half-face respirators equipped with a minimum N-95 protection factor for use during worker collocation with surface disturbance activities. Half-face respirators equipped with N-100 or P-100 filters should be used during digging activities. Employees should wear respirators when working near earth-moving machinery.
    - Prohibit eating and smoking at the worksite, and provide separate, clean eating areas with hand-washing facilities.
    - Avoid outdoor construction operations during unusually windy conditions or in dust storms.
    - Consider limiting outdoor construction during the fall to essential jobs only, as the risk of cocci infection is higher during this season.
5. Prevent transport of cocci outside endemic areas:
    - Thoroughly clean equipment, vehicles, and other items before they are moved off-site to other work locations.
    - Prevent spillage or loss of bulk material from holes or other openings in the cargo compartment's floor, sides, and/or tailgate;
    - Load all haul trucks such that the freeboard is not less than six inches when material is transported on any paved public access road and apply water to the top of the load sufficient to limit VDE to 20 percent opacity; or cover haul trucks with a tarp or other suitable cover.

- Provide workers with coveralls daily, lockers (or other systems for keeping work and street clothing and shoes separate), daily changing and showering facilities.
- Clothing should be changed after work every day, preferably at the work site.
- Train workers to recognize that cocci may be transported offsite on contaminated equipment, clothing, and shoes; alternatively, consider installing boot-washing.
- Post warnings onsite and consider limiting access to visitors, especially those without adequate training and respiratory protection.

6. Improve medical surveillance for employees:
    - Employees should have prompt access to medical care, including suspected work-related illnesses and injuries.
    - Work with a medical professional to develop a protocol to medically evaluate employees who have symptoms of Valley Fever.
    - Consider preferentially contracting with 1-2 clinics in the area and communicate with the health care providers in those clinics to ensure that providers are aware that Valley Fever has been reported in the area. This will increase the likelihood that ill workers will receive prompt, proper and consistent medical care.
    - Respirator clearance should include medical evaluation for all new employees, annual re-evaluation for changes in medical status, and annual training, and fit-testing.
    - Skin testing is not recommended for evaluation of Valley Fever.[5]
    - If an employee is diagnosed with Valley Fever, a physician must determine if the employee should be taken off work, when they may return to work, and what type of work activities they may perform.

The mitigation measures identified in this comment, based on actual experience during construction of solar and wind projects in endemic areas, should be required for the Project.

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

3. The Average Truck Trip Length Of 40 Miles Used In The Air Quality Analysis Does Not Match The Length(s) Used To Support Other Duke Warehouses.

According to the operations air quality analysis of Project,[6] SCAQMD requires that truck trip length should be set to 40 miles in CalEEMod. This statement does not comport with the reality of where warehoused materials will ship from in the region. The 40-mile distance is insufficient to allow vehicles to travel to the major ports in the Southern California region – Los Angeles and Long Beach.

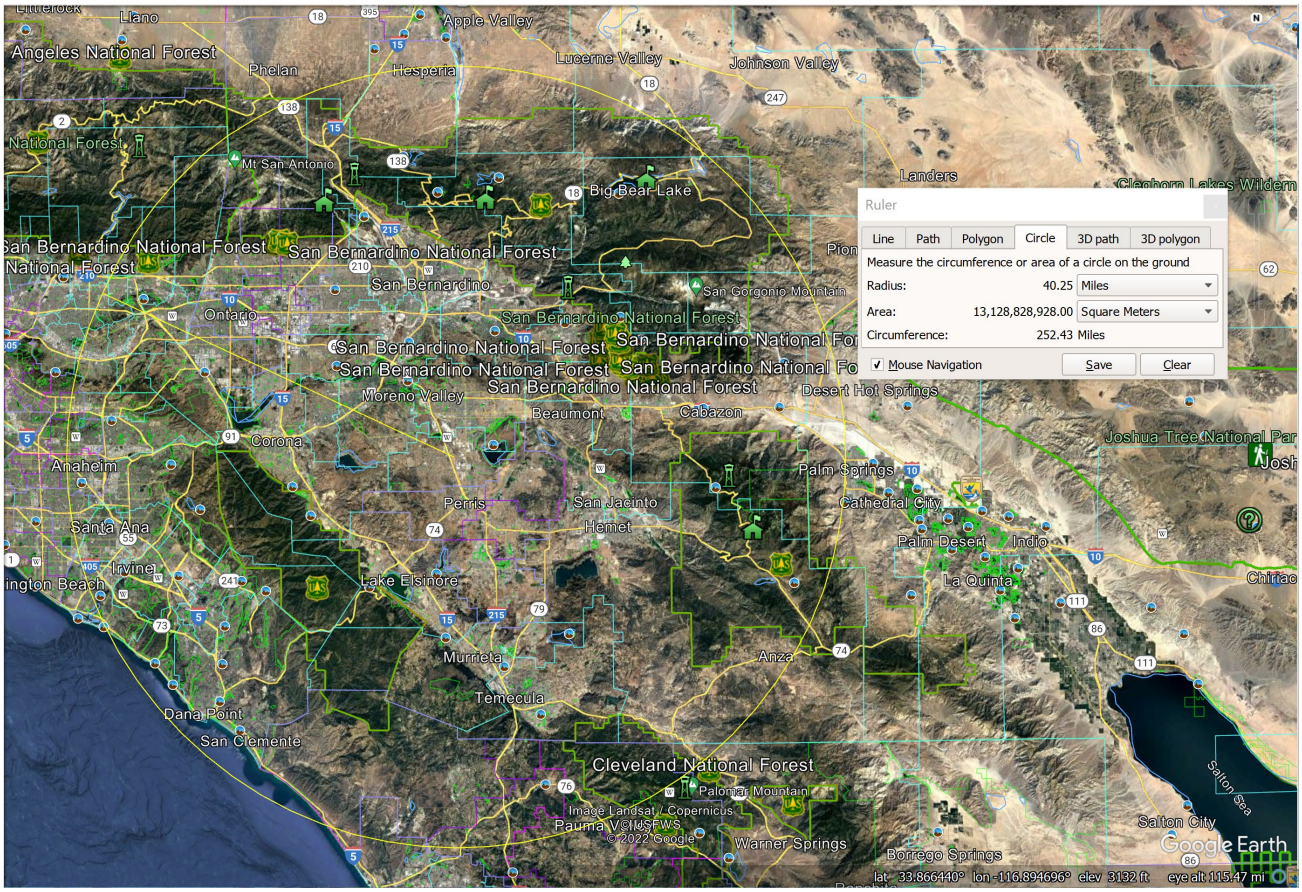


Figure 3: 40 Mile Radius From Duke Warehouse Project Site

In its 2019 DEIR of the Duke Realty Alabama and Palmetto Warehouse Project, SCH 2019029078, submitted to the County of San Bernardino, an average truck trip length of approximately

[6] Webb. 2022. Air Quality/Greenhouse Gas Analysis for Duke Warehouse at Patterson Avenue and Nance Street (DPR No. 21 00005), City of Perris. Prepared Albert A. Webb Associates for Duke Realty Corporation. Pg 4

77 miles was assumed, which is the distance to the Ports of Los Angeles/Long Beach.[7] The Alabama/Palmetto Warehouse is located approximately 15 miles north of the Nance/Patterson Project.

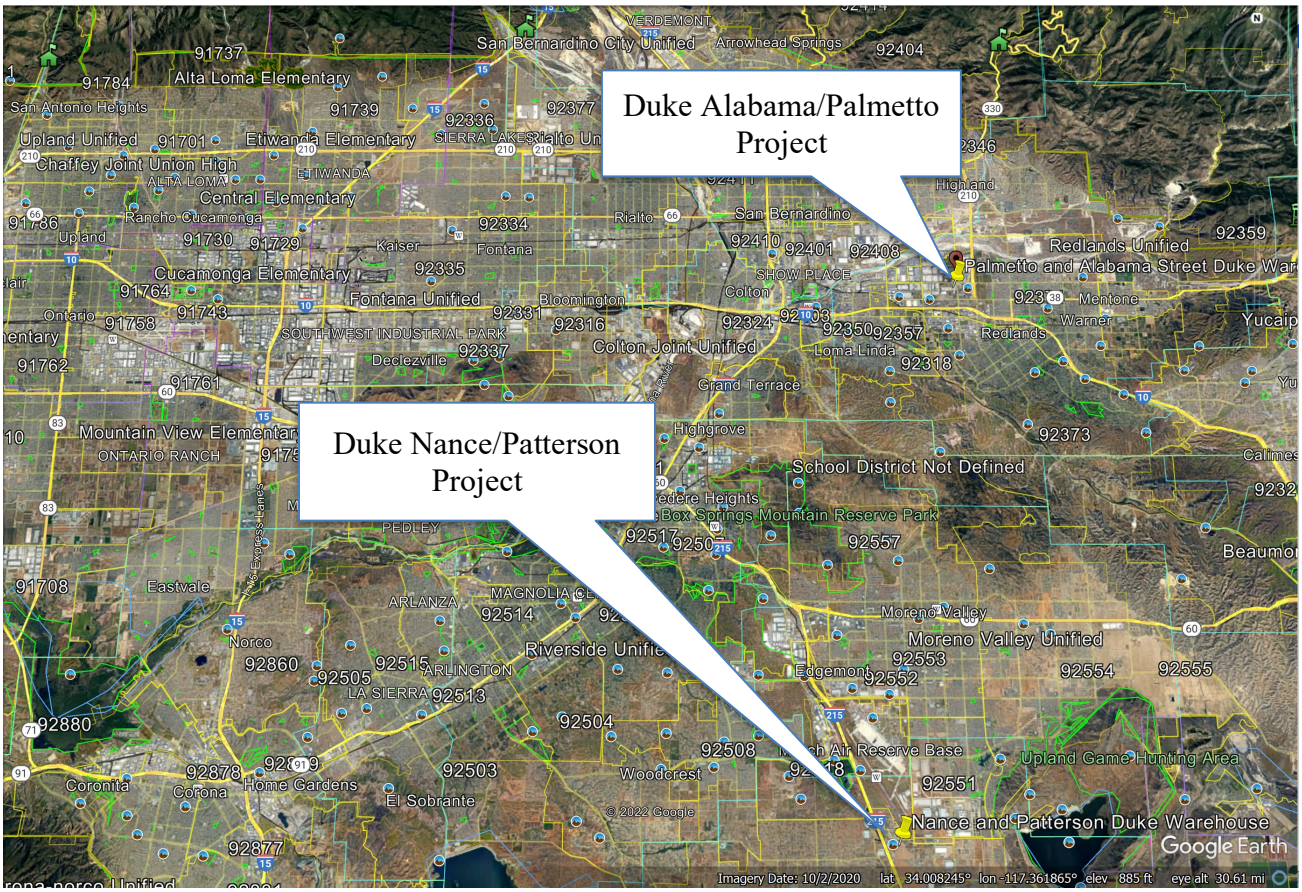


Figure 4: Locations of Duke Nance/Patterson and Alabama/Palmetto Projects

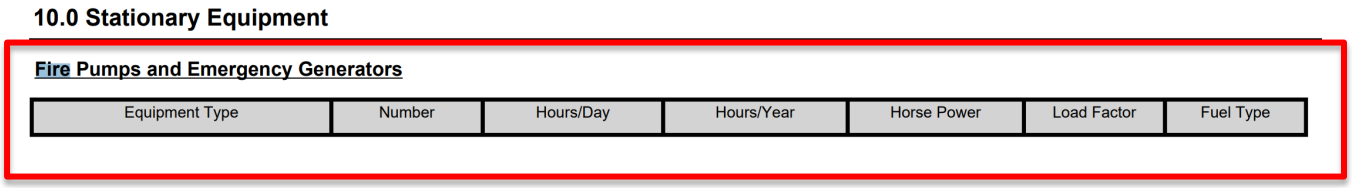
The air quality analysis of the Nance/Patterson Project must be updated to reflect the actual distance of the average daily truck trip, approximately 80 miles (the distance to the Port of Los Angeles). Using the 80-mile daily truck trip will nearly double the daily emissions of pollutants associated with the Project, increasing the Regional burden and resulting in a potentially significant impact. The City must address the impact of this issue in a revised DEIR.

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

[7] MIG. 2019. Duke Alabama and Palmetto Warehouse Draft Environmental Impact Report. Prepared for Count of San Bernardino. Appendix B Air Quality Analysis Technical Memorandum. Pg 3

According to the Air Quality Analysis prepared by Webb[8] for the Project, operational emissions were calculated using the CalEEMOD (Version 2020.4.0) software. Included in the analysis are area source emissions and mobile source emissions. Not included in the analysis are emissions from the fire flow pump system that will be installed. According to the DEIR, [9] there will be a fire flow pump for the fire flow needs.

In the CalEEMOD outputs provided in the Air Quality, Greenhouse Gas, and Energy Impact Study prepared by Webb[10], no fire pump system is included in the analyses.


10.0 Stationary Equipment

Fire Pumps and Emergency Generators

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

Figure 5: CalEEMOD Output

The City's analysis is therefore incomplete and must be corrected in an environmental impact report for the Project.

5. The City's Air Quality Analysis Fails To Include A Quantitative Health Risk Analysis Of All Of The Toxic Air Contaminants From The Construction Phase And The Operational Phase Of The Project For The Nearest Sensitive Receptor(s)

Diesel exhaust, in particular DPM, is classified by the State of California as a TAC. TACs, including DPM[11], contribute to a host of respiratory impacts and may lead to the development of

[8] Webb. 2022. Air Quality/Greenhouse Gas Analysis for Duke Warehouse at Patterson Avenue and Nance Street (DPR No. 21 00005), City of Perris. Prepared Albert A. Webb Associates for Duke Realty Corporation. Pg 4

[9] Webb. 2022. DEIR for Duke Warehouse at Patterson Avenue and Nance Street (DPR No. 21 00005), City of Perris. Prepared Albert A. Webb Associates for City of Perris.

[10] Webb. 2022. Air Quality/Greenhouse Gas Analysis for Duke Warehouse at Patterson Avenue and Nance Street (DPR No. 21 00005), City of Perris. Prepared Albert A. Webb Associates for Duke Realty Corporation. Pg 4

[11] Because DPM is a TAC, it is a different air pollutant than criteria particulate matter (PM) emissions such as PM10, PM2.5, and fugitive dust. DPM exposure causes acute health effects that are different from the effects of exposure to PM alone.

various cancers. Failing to quantify those impacts places the community at risk for unwanted adverse health impacts. *Even brief exposures to the TACs could lead to the development of adverse health impacts over the life of an individual*.

Diesel exhaust contains nearly 40 toxic substances, including TACs, and may pose a serious public health risk for residents in the vicinity of the facility. TACs are airborne substances that are capable of causing short-term (acute) and/or long-term (chronic or carcinogenic, i.e., cancer causing) adverse human health effects (i.e., injury or illness). TACs include both organic and inorganic chemical substances. The current California list of TACs includes approximately 200 compounds, including particulate emissions from diesel-fueled engines.

Diesel exhaust has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death.[12,13,14] Fine DPM is deposited deep in the lungs in the smallest airways and can result in increased respiratory symptoms and disease; decreased lung function, particularly in children and individuals with asthma; alterations in lung tissue and respiratory tract defense mechanisms; and premature death.[15] Exposure to DPM increases the risk of lung cancer. It also causes non-cancer effects including chronic bronchitis, inflammation of lung tissue, thickening of the alveolar walls, immunological allergic reactions, and airway constriction.[16] DPM is a TAC that is recognized by state and federal agencies as causing severe health risk because it contains toxic materials, unlike $PM_{2.5}$ and PM_{10}.[17]

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[12] California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998; see also California Air Resources Board, Overview: Diesel Exhaust & Health, https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health#:~:text=Diesel%20Particulate%20Matter%20and%20Health&text=In%201998%2C%20CARB%20identified%20DPM,and%20other%20adverse%20health%20effects.

[13] U.S. EPA, Health Assessment Document for Diesel Engine Exhaust, Report EPA/600/8-90/057F, May 2002.

[14] Environmental Defense Fund, Cleaner Diesel Handbook, Bring Cleaner Fuel and Diesel Retrofits into Your Neighborhood, April 2005; http://www.edf.org/documents/4941_cleanerdieselhandbook.pdf, accessed July 5, 2020.

[15] California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998.

[16] Findings of the Scientific Review Panel on The Report on Diesel Exhaust as adopted at the Panel's April 22, 1998 Meeting.

[17] Health & Safety Code § 39655(a) (defining "toxic air contaminant" as air pollutants "which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health. A substance that is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412 (b)) is a toxic air contaminant.")

The inherent toxicity of TACs requires the City to first quantify the concentration released into the environment at each of the sensitive receptor locations through air dispersion modeling, calculate the dose of each TAC at that location, and quantify the cancer risk and hazard index for each of the chemicals of concern. Following that analysis, then the City can make a determination of the relative significance of the emissions.

These receptors would be exposed to TACs released during Project construction and operation, including DPM. No effort is made in the DEIR to quantify the potential health impacts from DPM generated by construction activities or operational activities from the Project on these sensitive receptors. The City therefore lacks supporting evidence for its conclusion that the Project would not result in significant health effects. The City's failure to perform such an analysis is clearly a major flaw in the DEIR and may be placing the residents of the adjacent structures at risk from the construction phase of the Project.

The City must assess the air quality impacts for all TACs that will be released during the construction and operational phases of the project. CARB[18] defines diesel exhaust as a complex mixture of inorganic and organic compounds that exists in gaseous, liquid, and solid phases. CARB and U.S. EPA identify 40 components of the exhaust as suspected human carcinogens, including formaldehyde, 1,3-butadiene, and benzo[a]pyrene. The inhalation unit risk factor identified by OEHHA for use in risk assessments is for the particulate matter (DPM) fraction of diesel exhaust and not the vapor phase components identified by CARB and U.S. EPA.

There is notable precedent requiring a quantitative analysis of TACs from diesel exhaust in CEQA documents. Moreover, the absence of this analysis renders the DEIR's Air Quality Analysis incomplete. In a 2017 Notice of Preparation of a CEQA Document For the Los Robles Apartments Project, SCAQMD[19] noted that:

"In the event that the proposed project generates or attracts vehicular trips, especially heavy-duty diesel-fueled vehicles, it is recommended that the lead agency perform a mobile source health risk assessment. Guidance for performing a mobile source health risk assessment ("Health Risk

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

[19] SCAQMD. 2017. Comment Letter To David Sanchez, Senior Planner City of Pasadena from Jillian Wong, Planning and Rules Manager, SCAQMD.

Assessment Guidance for Analyzing Cancer Risk from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis") can be found at: http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysishandbook/mobile-source-toxics-analysis. An analysis of all toxic air contaminant impacts due to the use of equipment potentially generating such air pollutants should also be included." This is a common and feasible analysis that is routinely performed for development projects like the Stoddard Wells Warehouse Project.

Here, the City's analysis ignores the presence of TACs being emitted with diesel exhaust during the construction and operational phases of the project without making any attempt to quantify all of the impacts. This omission is a continuing flaw that must be addressed by the City. The results should then be presented in a revised DEIR prior to approving any agreements with the Proponent or issuing any permits for the Project.

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

According to the DEIR, the warehouse and mezzanine areas of the building will be constructed as a "spec" building whereby tenant(s) would perform the final improvements, while the proposed project would fully build the office spaces. The analysis performed of the Project fails to consider the use of Transport Refrigeration Units (TRUs). Transport Refrigeration Units (TRU) are refrigeration systems powered by diesel internal combustion engines designed to refrigerate or heat perishable products that are transported in various containers, including truck vans, semi-truck trailers, shipping containers, and railcars. CARB[20] defines diesel exhaust as a complex mixture of inorganic and organic compounds that exists in gaseous, liquid, and solid phases. CARB and U.S. EPA identify 40 components of the exhaust as suspected human carcinogens, including formaldehyde, 1,3-butadiene, and benzo[a]pyrene. While acrolein is one of the most TAC in diesel exhaust it is not the only TAC. The inhalation unit risk factor identified by OEHHA for use in risk assessments is for the particulate matter (DPM) fraction of diesel exhaust and not the vapor phase components identified by CARB and U.S. EPA.

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

Given the lack of a clear project description of the use of the Project Site, it is therefore reasonable to conclude that TRUs are a foreseeable project component. The TRU emissions have not been quantified in the DEIR, intentionally underestimating the foreseeable health risk to the community as well as the associated GHG emissions from the operation of the TRUs. The City must assess the impacts since they are allowing for the potential future use of TRUs onsite in an EIR.

7. **The Underlying Assumptions Regarding The Number of Vehicles Associated With Each Square Foot of Building Utilized In The Air Quality Analysis Reflects Only The Low End Of The ITE Guidance On High Cube Warehouses And Does Not Reflect The Range Of Values Reported By ITE .**

The choice of the daily trip rate has a profound impact on the calculated emissions for operational associated with the Project. The City's choice for the trip rate is at the lowest end of the values reported in the literature. The ITE manual includes a variety of average daily vehicle trips for HCWs which range from a low of 1.4 per 1,000 square feet for transload and short-term storage warehouses to a high of 6.44 trips per square feet for fulfillment center warehouses.[21] An averaged value of all the warehouse HCW types reported in the ITE manual would be 3.28 trips per 1,000 square feet.

[21] Institute of Transportation Engineers (2020).

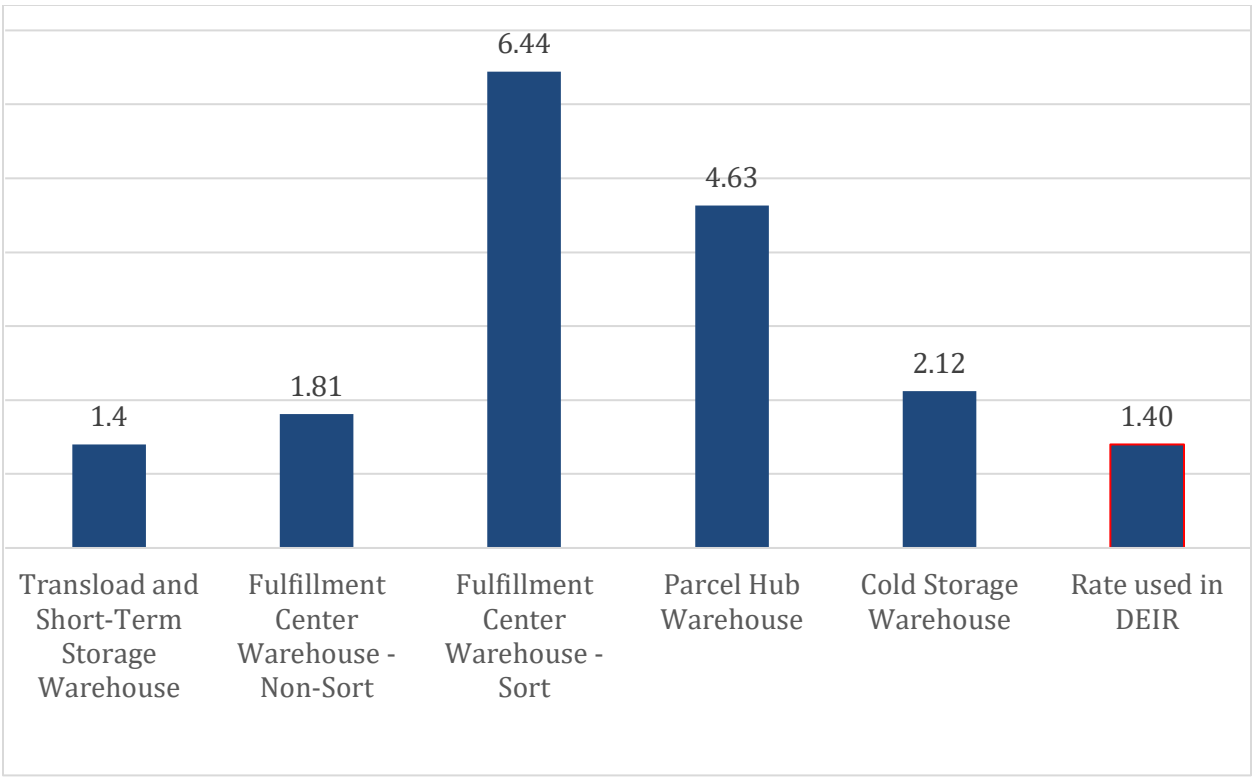

Figure 6: Trip rates per 1,000 square feet as reported in ITE manual

Using the ITE manual rates above, the proposed 749,668 square foot HCW Project could result in 1,050 to 4,828 trips daily.

In the 2016 SCAQMD study, a value of 1.432 daily vehicle trips per 1,000 GSF is calculated for Transload and Short-term Storage HCWs. The study further states that, while the dataset for Transload and Short-term Storage HCWs is larger than those for Cold Storage HCWs, Fulfillment Center HCWs, and Parcel Hub HCWs, the relationship between building gross square footage and vehicle trips for Transload and Short-term HCWs *does not produce an acceptable level of correlation to develop a fitted curve equation (emphasis added)*. In a 2019 study of warehouse trip generation performed by WSP for the Western Riverside Council of Governments (WR-COG), the average daily trip rate was substantially higher (50% higher) than the SCAQMD study. WSP performed traffic counts at 16 warehouses, segmented between 11 fulfillment centers and 5 parcel hubs. The average

daily trip rate across the 11 fulfillment centers was 2.13 per 1000 square feet.

These studies suggest that the value used to justify the number of vehicle trips per day utilized by the City are not supportable, and the DEIR lacks any supporting evidence to justify its reliance on a 1.4 daily trip rate. Based on the evidence and reasonable calculations provided in the SCAQMD and WR-COG studies, the City should, at a minimum, re-evaluate the Project's operational emissions based on the recommended SCAQMD rate (1.68) or the newer WR-COG rate (2.13) in a revised DEIR.

Conclusion

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

Sincerely,

EXHIBIT B

WILSON IHRIG
ACOUSTICS, NOISE & VIBRATION

CALIFORNIA
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WI #22-005.39

December 16, 2022

Kelilah D. Federman
Adams Broadwell Joseph & Cardozo
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SUBJECT: Comments on Duke Warehouse Project Noise Analysis

Dear Ms. Federman,

Per your request, I have reviewed the subject matter document for *Duke Warehouse at Patterson Avenue & Nance Street* Environmental Impact Report (EIR) in Perris, California. The EIR's Project Description states that the proposed project involves the construction, use and maintenance of a non-refrigerated warehouse building, approximately 769,668 square feet in size with approximately 20,000 SF of supporting office space. The Noise Impact Analysis is contained in Appendix I of the EIR.

The Project is surrounded by other warehouses and vacant land, but there are 4 noise-sensitive residences near the project, two to the east and two to the west. Three of the four receivers directly border the project.

Wilson, Ihrig & Associates, Acoustical Consultants, has practiced exclusively in the field of acoustics since 1966. During our 56 years of operation, we have prepared hundreds of noise studies for Environmental Impact Reports and Statements. We have one of the largest technical laboratories in the acoustical consulting industry. We also utilize industry-standard acoustical programs such as Traffic Noise Model (TNM), SoundPLAN, and CADNA. In short, we are well qualified to prepare environmental noise studies and review studies prepared by others.

Adverse Effects of Noise[1]

Although the health effects of noise are not taken as seriously in the United States as they are in other countries, they are real and, in many parts of the country, pervasive.

Noise-Induced Hearing Loss. If a person is repeatedly exposed to loud noises, he or she may experience noise-induced hearing impairment or loss. In the United States, both the Occupational Health and Safety Administration (OSHA) and the National Institute for Occupational Safety and

[1] More information on these and other adverse effects of noise may be found in *Guidelines for Community Noise*, eds B Berglund, T Lindvall, and D Schwela, World Health Organization, Geneva, Switzerland, 1999. (https://www.who.int/docstore/peh/noise/Comnoise-1.pdf)

Health (NIOSH) promote standards and regulations to protect the hearing of people exposed to high levels of industrial noise.

Speech Interference. Another common problem associated with noise is speech interference. In addition to the obvious issues that may arise from misunderstandings, speech interference also leads to problems with concentration fatigue, irritation, decreased working capacity, and automatic stress reactions. For complete speech intelligibility, the sound level of the speech should be 15 to 18 dBA higher than the background noise. Typical indoor speech levels are 45 to 50 dBA at 1 meter, so any noise above 30 dBA begins to interfere with speech intelligibility. The common reaction to higher background noise levels is to raise one's voice. If this is required persistently for long periods of time, stress reactions and irritation will likely result. The problems and irritation that are associated with speech disturbance have become more pronounced during the COVID-19 pandemic because many people find themselves and the people they live with trying to work and learn simultaneously in spaces that were not designed for speech privacy.

Sleep Disturbance. Noise can disturb sleep by making it more difficult to fall asleep, by waking someone after they are asleep, or by altering their sleep stage, e.g., reducing the amount of rapid eye movement (REM) sleep. Noise exposure for people who are sleeping has also been linked to increased blood pressure, increased heart rate, increase in body movements, and other physiological effects. Not surprisingly, people whose sleep is disturbed by noise often experience secondary effects such as increased fatigue, depressed mood, and decreased work performance.

Cardiovascular and Physiological Effects. Human's bodily reactions to noise are rooted in the "fight or flight" response that evolved when many noises signaled imminent danger. These include increased blood pressure, elevated heart rate, and vasoconstriction. Prolonged exposure to acute noises can result in permanent effects such as hypertension and heart disease.

Impaired Cognitive Performance. Studies have established that noise exposure impairs people's abilities to perform complex tasks (tasks that require attention to detail or analytical processes) and it makes reading, paying attention, solving problems, and memorizing more difficult. This is why there are standards for classroom background noise levels and why offices and libraries are designed to provide quiet work environments.

Thresholds of Significance are Not Properly Developed

Improperly Cited Vibration Criteria

The 'Construction Noise and Vibration' section under heading 4.2 defines the criteria used for construction vibration levels. The EIR states "If short-term project-generated construction source vibration levels exceed the FTA maximum acceptable vibration standard of 80 vibration decibels (VdB) at noise-sensitive receiver locations, noise levels will exceed the vibration CEQA threshold." The FTA levels in question are from the Federal Transit Administration's Transit Noise and Vibration Impact Assessment Manual.[2] First, the EIR states that the 'noise levels will exceed the vibration CEQA threshold,' which is a statement that doesn't make sense, as these are two different kinds of phenomena. Second, the 80 VdB threshold cited is for infrequent events, under 30 per day (FTA, Page 125-126). While the 80 VdB limit could be used for construction vibration impacts, it is intended for operational impacts (train passbys in this case). The same FTA guidance explicitly provides different

[2] https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/research-innovation/118131/transit-noise-and-vibration-impact-assessment-manual-fta-report-no-0123_0.pdf

thresholds for a construction vibration analysis that may be more appropriate to consider (FTA, Page 184) . Finally, Table 10-4 cites the reference vibration levels for a large bulldozer at 25 feet. It is cited as PPVref (VdB). This is a statement that makes no sense, as PPV -peak particle velocity- is typically defined in inches per second. The 87 VdB cited is in RMS velocity in decibels, referenced to 1 micro-in/sec, which is an entire different metric than PPV, with an entirely different source reference value (in this case .089 in/sec).

Impact Analyses are Incomplete

Construction Noise

The construction noise analysis in the EIR uses a distance of 650 feet, which is the geometric center of the project site to the nearest residences. This methodology is not an appropriate method to determine potentially significant impacts from this particular site, due to the extremely large scale. The project site is almost a quarter of a mile across, meaning using the center of the site will substantially underestimate construction noise. For example, the closest distance between a sensitive receiver and the edge of the project is 30 feet as listed in Table 8-2 in the EIR. At these distances, the sound levels from construction could be higher by as much as 27 decibels using a distance of 30 feet (cited in Table 8-2) compared to the 650 feet distance used in the analysis. Adding 27 dBA to the levels presented in Table 10-3 would create a significant impact for all 8 scenarios modeled. The analysis shown in the EIR and Table 10-3 dramatically underestimates the construction noise,, and a more conservate method should be used to determine potentially significant impacts and comply with the CEQA requirements. The construction noise would be significant and would require mitigation. At these levels, a temporary sound wall at sections of the property that face sensitive receivers should be considered to help mitigate levels.

Construction Vibration

The damage assessment figure included in the Construction Vibration section in the Noise and Vibration Calculations Appendix in the EIR is calculated for only one receiver, R3 to the northwest. First, as is the case for the construction analysis, the analysis is conducted between the sensitive receiver and geometric center of the site. Again, the large footprint of the site means that conducting an analysis based on the distance to the center of the site could severally underestimate vibration levels. Additionally, the building footprint for receiver R3 is 160 feet away from the edge of the project site. However, the building footprint for receivers R1 and R2 to the east are around 100 feet from the project site, representing a worst-case scenario. As such, the analysis should also be conducted with these worst-case distances. A more appropriate method would be to analyze the distance between the closest footprint of the proposed building to the nearest sensitive receiver, as that is the worst-case scenario that would happen during construction. If impacts are found, buffer distances are one way to limit vibration impacts.

Traffic Noise Analysis uses Uncited Numbers

The analysis used the Federal Highway Administration's (FHWA) FHWA-RD-77-108 program. Parts of the traffic noise analysis are not cited correctly. In order to find a CNEL, there needs to be a known percentage of day, evening, and night traffic, since CNEL is a statistic that depends on time of day. While these percentages are shown in the Appendix B of the EIR Noise Appendix, there is no indication where these values come from. Without a known or accepted split, it's possible a higher percentage of traffic occurs at night, which would increase the CNEL.

Stationary Operational Noise

Table 6-2 in the Noise Appendix cites several inputs used in the operational noise model, developed using SoundPLAN® software. The software relies on the user to provide the correct noise source inputs to propagate those sounds through the modeled environment; an input level that is low or high can provide erroneous or skewed results. The rooftop HVAC units were input with a sound pressure level of 68 dBA at 3 feet. This corresponds to a sound power level of 79 dBA. Based on our experience, this seems like an unusually low estimate. For example, a Trane air handler unit, used commonly for large spaces like a warehouse, exceeds a sound power level of 85 dBA[3]The results in Table 5 shows a project level of 48 dBA at receiver R3, leading to a 3 dBA increase over the ambient. Since the EIR defines 5 dBA as a significant impact, it is possible that a louder noise source could exceed this limit

For example, the reference distance used in the analysis between receiver R3 and the project is 30 feet, (cited in Table 8-2). If an HVAC unit with a sound power level of 85 dBA is used as noted above, a single unit would propagate to a sound pressure level of 58 dBA at the property line without any shielding, and 52 dBA assuming some shielding from the edge of the roof. The EIR shows a sound level of 48 dBA at receiver R3. If the existing ambient of 48 dBA is combined with the HVAC noise at this location of 52 dBA, the overall noise level is 54 dBA, more than 5 dBA over the ambient/limit and thus a significant impact. A parapet at the end of the building should be studied at a way to shield this rooftop noise source. Also note, this is before adding project traffic noise, which should be included in project analysis. Table 7-5 in the EIR noise Appendix cites this at 1 dBA. The total project noise should be evaluated in its entirety, not just the parts.

Conclusions

There are several errors and omissions in the EIR noise analysis. Correcting these would potentially identify several significant impacts which require mitigation.

Please feel free to contact me with any questions on this information.

Very truly yours,

WILSON IHRIG

Jack Meighan
Associate

DRAFT Comments on Duke Warehouse Project Noise Analysis. docx

[3] Figure 30. https://www.trane.com/content/dam/Trane/Commercial/global/products-systems/equipment/air-handling/semi-custom/CLCH-PRC022H-EN_04102020.pdf

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May 17, 2023

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Re: Agenda Item 6A - Comments on Duke Warehouse at Patterson Avenue and Nance Street Project – Final Environmental Impact Report (SCH No. 2022010274)

Dear Chairman Hammond, Vice-Chairman Shively, Honorable Planning Commissioners: Jimenez, Lopez, Gomez-Barrera, Mr. Fenn, Ms. Brenes, and Mr. Phung:

On behalf of Californians Allied for a Responsible Economy ("CARE CA"), we submit these comments on Agenda Item 6A the Duke Warehouse at Patterson Avenue and Nance Street Project ("Project") and the Final Environmental Impact Report ("FEIR") (SCH No. 2022010274)[1], Specific Plan Amendment 21-05267, Tentative Parcel Map 21-05086 (TPM-38259), Development Plan Review 21-00005 proposed by Prologis and Duke Realty Limited Partnership (collectively, "Applicant") to facilitate construction of a 764,753 square foot industrial distribution building which includes approximately 20,000 SF of office space.[2] The Project would be located at the northeastern corner of Patterson Avenue and Nance

[1] City of Perris, Final Environmental Impact Report Duke Warehouse at Patterson Avenue and Nance Street Perris, California SCH No. 2022010274 (April 2023), https://www.cityofperris.org/home/showpublisheddocument/16438/638187871285500000 ("FEIR").
[2] City of Perris, Planning Commission, Agenda and Staff Report (May 17, 2023), https://www.cityofperris.org/home/showpublisheddocument/16484/638195101995470000 ("Staff Report").

Street, in the City of Perris, California 92571 Assessor Parcel Numbers (APNs) 314-153-015 through -040, 314-153-042, 314-153-044, 314-153-046, 314-153-048, 314-160-005 through -012, and 314-160-033.[3] The Project site is within the PVCCSP planning area, and Planning Area 1 (PA 1), North Commercial/Industrial, of the Perris General Plan 2030. The total construction period is expected to require approximately eleven months.

We have reviewed the FEIR, its technical appendices, and reference documents with assistance of Commenters' expert consultants, whose comments and qualifications are attached. We prepared our comments on air quality, public health, and GHG emissions with the assistance of air quality and GHG expert James Clark, whose comments ("Clark Comments") and curriculum vitae ("CV") are attached hereto as **Attachment A.** We have prepared our comments on noise and vibration with the assistance of acoustics, noise, and vibration expert Jack Meighan of Wilson Ihrig. Mr. Meighan's Comments ("Meighan Comments") and Mr. Meighan's CV are attached hereto as **Attachment B.**

The FEIR and the Staff Report do not resolve a number of issues raised in our comments on the DEIR. Although the City nominally responded to public comments, the Responses to Comments on the DEIR which are included in the FEIR ("Responses to Comments") are wholly inadequate under CEQA.[4] The City failed to adequately respond to CARE CA's DEIR comments, and the comments of its experts, on significant environmental issues, in violation of CEQA.[5] As a result, it is premature to recommend that the City Council take action on the Project.

We urge the Planning Commission to decline to make any recommendation to the City Council at this time. Instead, the Commission should remand the Project to Staff to revise and recirculate a legally adequate EIR which adequately analyzes and mitigates Project impacts and appropriately responds to public comments. The Project must not be rescheduled for a further public hearing before the Commission until all of the issues raised in these comments, and in the comments of other members of the public, have been fully addressed. We reserve the right to supplement these comments at a later date, and at any later proceedings related to this Project.[6]

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[3] *Id.* at 1-4.
[4] 14 CCR § 15088(a), (c); *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 879–882; *The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615.
[5] *Id.*
[6] Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* ("*Bakersfield*") (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

I. STATEMENT OF INTEREST

CARECA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental impacts of the Project. The coalition includes Riverside residents Brett Sanchez, Alejandro Villalobos and Jorge Suarez, Southern California Pipe Trades District Council 16 and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the City of Perris and Riverside County.

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

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

II. THE PROJECT DESCRIPTION REMAINS INADEQUATE

CARE CA previously commented that the DEIR failed to include an accurate and complete Project description because the DEIR failed to identify reasonably foreseeable uses of the Project site, rendering the DEIR's impact analysis inadequate. The FEIR fails to correct this omission, and the Staff Report perpetuates it, by failing to clarify specific end user tenants.

The Project is being constructed to support warehouse, distribution, and cold storage uses, which as pointed out by CARB, can result in highly significant environmental impacts: "Freight facilities, such as warehouse and distribution

facilities, can result in high daily volumes of heavy-duty diesel truck traffic and operation of on-site equipment (e.g., forklifts and yard tractors) that emit toxic diesel emissions, and contribute to regional air pollution and global climate change."[7] The impacts generated by the particular operations of different users within this broad category can also result in significant impacts. The FEIR's ongoing omission of information about the reasonably foreseeable operations at the Project site that could have significant impacts is a violation of CEQA.

CEQA requires that an EIR "set forth a project description that is sufficient to allow an adequate evaluation and review of the environmental impact."[8] An accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity.[9] "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR."[10] Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.[11]

"Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal ... and weigh other alternatives in the balance."[12] As articulated by the court in *County of Inyo v. City of Los Angeles*, "a curtailed, enigmatic or unstable project description draws a red herring across the path of public input."[13] Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review.[14]

The purpose of an EIR is to reveal to the public "the basis on which its responsible officials either approve or reject environmentally significant action," so that the public, "being duly informed, can respond accordingly to action with which it disagrees."[15] Further, "[t]o be adequate, the EIR must include sufficient detail to enable those who did not participate in its preparation to understand and

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[7] CARB Comments re: Rubidoux Commerce Park Notice of Preparation of DEIR, December 17, 2020, p. 1; CARB NOP Comments regarding the Mariposa Industrial Park DEIR.
[8] *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654 (citing 14 C.C.R. § 15124).
[9] McQueen v. Board of Directors (1988) 202 Cal. App. 3d 1136, 1143.
[10] *Santiago County Water Dist. v. County of Orange* 118 Cal. App. 3d 818, 829-830.
[11] *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311 ("*Sundstrom*").
[12] *Santiago County Water Dist. v. County of Orange* 118 Cal. App. 3d 818, 829-830.
[13] *Id.* at 197-198.
[14] *See, e.g., Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376.
[15] *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392

'meaningfully' consider the issues raised by the proposed project."[16] The City's failure to provide the square footage breakdown between high-cube logistics and e-commerce uses is a violation of CEQA. Without an accurate Project Description, the FEIR fails as an informational document under CEQA. A revised EIR must be recirculated for public review.

Here, the Project is being developed for unknown future tenants, but for reasonably foreseeable future uses. The DEIR admits that "[t]here is the potential for routine use, storage, or transport of other hazardous materials; however, the precise materials are not known, as the tenants of the proposed warehouses are not yet known."[17] The transport of hazardous materials may result in potentially significant impacts.

The DEIR's omission of information about the reasonably foreseeable operations at the Project site that could have significant impacts is similar to the EIR's omission of critical operational analysis in *Bakersfield Citizens for Local Control v. City of Bakersfield*. In *Bakersfield,* the court found that an EIR's simple statement that "no stores have been identified" for the subject shopping center "without disclosing the type of retailers envisioned for the proposed project is not only misleading and inaccurate, but it hints at mendacity."[18] Since the Project is being designed to be capable of supporting warehouse, distribution, and hazardous materials transport uses at the Project site, the FEIR must be revised to include specific use information and to analyze the impacts of the most intensive reasonably foreseeable uses of the Project site. The FEIR must also include all known information about the types of future users at the Project site. The FEIR's failure to provide information about the reasonably foreseeable use causes the FEIR to fail as an informational document. The FEIR must be revised and recirculated to comply with CEQA.

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[16] *California Oak Foundation v. City of Santa Clarita* 133 Cal.App.4th 1219, 1237 quoting *Santa Clarita Organization for Planning the Environment* 106 Cal.App.4th 715, 721; see also *Concerned Citizens of Costa Mesa Inc, v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929,935 ["To facilitate CEQA's informational role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions"].
[17] DEIR, p. 5.8-15.
[18] *Bakersfield Citizens for Local Control v. City of Bakersfield* ("*Bakersfield*") (2004) 124 Cal.App.4th 1184, 1213.

III. THE FEIR STILL FAILS TO ADEQUATELY ANALYZE AIR QUALITY, GHG, AND ENERGY IMPACTS AND FAILS TO INCORPORATE ALL FEASIBLE MITIGATION MEASURES AND ALTERNATIVES AS REQUIRED BY CEQA

A. The FEIR Does Not Include All Feasible Mitigation to Reduce Public Health Impacts from Human Exposure to Valley Fever Spores to the Greatest Extent Feasible

CARE CA previously commented that the DEIR failed to adequately mitigate the Project's construction and operational air quality impacts, and suggested significant mitigation measures which could feasibly reduce Project impacts. The Staff Report neglects to include CARE CA's proposed feasible mitigation, and instead attacks the substantial evidence proffered by CARE CA's expert consultant.

The Staff Report incorrectly asserts that CARE CA failed to provide any evidence that conventional dust control methods are not effective to reduce Valley Fever impacts. The Staff Report asserts that CARE CA's expert concluded, without citing any literature, that conventional dust control measures do not prevent the spread of Valley Fever. This is incorrect, and demonstrates that the City did not consider the evidence cited in Dr. Clark's comments on the DEIR. The DEIR provides no analysis regarding potential Valley Fever and the FEIR makes the conclusory statement that Valley Fever impacts are speculative. In fact, Dr. Clark presented substantial evidence that Valley Fever may pose a significant risk to workers onsite, but this impact was not adequately mitigated in the EIR.

As Dr. Clark explains, conventional dust control measures, such as in MM Air 3, are not effective at controlling Valley Fever[19] because they largely focus on visible dust or larger dust particles—the PM10 fraction—not the very fine particles where the Valley Fever spores are found. While dust exposure is one of the primary risk factors for contracting Valley Fever and dust-control measures are an important defense against infection, it is important to note that PM10 and visible dust, the targets of conventional dust control mitigation, are only indicators that *Coccidioides ssp.* spores may be airborne in a given area.[20] Freshly generated dust clouds usually contain a larger proportion of the more visible coarse particles, PM10 (</=0.01 mm), compared to cocci spores (0.002 mm). However, these larger particles

[19] Clark Comments, p. 2.
[20] Clark Comments, p. 3.

settle more rapidly and the remaining fine respirable particles may be difficult to see and are not controlled by conventional dust control measures.[21]

Spores of *Coccidioides ssp.* have slow settling rates in air due to their small size (0.002 mm), low terminal velocity, and possibly also due to their buoyancy, barrel shape, and commonly attached empty hyphae cell fragments.[22] Thus spores, whose size is well below the limits of human vision, may be present in air that appears relatively clear and dust free. Such ambient, airborne spores with their low settling rates can remain aloft for long periods and be carried hundreds of miles from their point of origin. Thus, implementation of conventional dust control measures will not provide sufficient protection for both on-site workers and the general public.

Further, infections by *Coccidioides ssp.* frequently have a seasonal pattern with infection rates that generally spike in the first few weeks of hot dry weather that follow extended milder rainy periods. In California, infection rates are generally higher during the hot summer months, especially if weather patterns bring the usual winter rains between November and April.[23] The majority of cases of Valley Fever accordingly occur during the months of June through December, which are typically periods of peak construction activity.

The harmful effects of construction worker exposure to Valley Fever spores is well-documented, as is the ineffectiveness of standard dust control measures to limit exposure. For example, at two photovoltaic solar energy projects in San Luis Obispo County, Topaz Solar Farm[24] and California Valley Solar Ranch,[25] 44 construction workers contracted Valley Fever, including 13 electricians/linemen/wiremen; 11 equipment operators; 6 laborers; 5 carpenters/ironworkers/millwrights/mechanics; 4 managers/superintendents, and 3 others. Of these, 39% visited an emergency room, 20% were hospitalized, and 77%

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[21] *Id.*

[22] Fisher et al. 2007.

[23] Ibid.

[24] U.S. Department of Energy, Final Environmental Impact Statement, Volume 1, Loan Guarantee to Royal Bank of Scotland for Construction and Startup of the Topaz Solar Farm, San Luis Obispo County, California, August 2011; https://www.energy.gov/sites/prod/files/Topaz-FEIS-Volume-I-PDF-Version.pdf.

[25] U.S. Department of Energy, Final Environmental Assessment, Volume 1, Loan Guarantee to High Plains II, LLC for the California Valley Solar Ranch Project in San Luis Obispo County and Kern County, California, August 2011; California Valley Solar Ranch; https://www.energy.gov/sites/prod/files/EA-1840-FEA-vol1-2011.pdf.

missed work.[26,27] Exposures included "performing soil-disruptive work, such as digging trenches, and working in a trench. In addition, workers reported working in a dust cloud or dust storm, and operating heavy equipment without enclosed cabs, closed windows, and air-conditioned with high-efficiency particle (HEPA) filtration."[28]

Both of the EISs for these projects recognized Valley Fever impacts and included mitigation[29] that was much more comprehensive than the conventional PM10 dust mitigation in the EIR and MM Air 3. The EISs for these projects contained no Valley Fever construction mitigation, recommending only conventional fugitive dust control measures. The Topaz Farm EIS, for example, recommended only to "reduce fugitive dust,"[30] concluding (as for the Project) with no analysis at all, that implementation of conventional dust control measures would reduce Valley Fever impacts to less than significant.[31] The California Valley Solar Ranch EIS only required "dust control measures" and provided no information on Valley Fever to workers and nearby residents.[32] These omissions resulted in significant morbidities among construction workers on those projects. Here, the City must do more to ensure worker safety by providing more Valley Fever protections.

As shown in these comments, and those of CARE CA's expert consultant, the EIR's Mitigation Measure MM-3 will not significantly control Valley Fever spores, which are orders of magnitude small than conventional construction dust. Conventional dust control measures will not be effective at reducing the risk of Valley Fever to the greatest extent feasible. The City must recirculate the EIR to include adequate Valley Fever mitigation before the Project can lawfully be approved.

Dr. Clark proposed the following mitigation measures to feasibly reduce impacts from Valley Fever, but the FEIR fails to include them: The City should require measures from the Proponent to actively suppress the spread of VF by:

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[26] McNary and Deems, 2020, pdf 22.
[27] Julie Cart, Officials Study Valley Fever Outbreak at Solar Power Projects, Los Angeles Times, April 30, 2013; https://www.latimes.com/local/la-xpm-2013-apr-30-la-me-solar-fever-20130501-story.html.
[28] de Perio et al., 2019, p. S-43.
[29] Topaz EIS, pp. 2-65/66, MM AQ-1.3 and California Valley Solar Ranch FEIR,, p. 3-126, 3-128 ("Dust control measures and the integration of San Luis Obispo Health Agency Interim Valley Fever Recommendations for Workers into construction operations would reduce exposure to Valley Fever. Therefore, effects on public or occupational health related to disease vectors would be negligible and not significant.").
[30] Topaz EIS, Volume I, March 2011, Table ES-4, AQ-1.3.
[31] Ibid., p. ES-16.
[32] Table 2-1, pdf 34 and 217.

1. A site specific Valley Fever Dust Management Plan should be prepared that includes a site-specific work plan (SWP) as well as a sampling and analysis plan (SAP) to measure the amount of *Coccidiodes immitis* present in soils at the Site prior to any soil disturbance on site. The SWP and SAP should detail the goals of the investigation(s), the collection methods, the number of samples to be collected, and the minimum detection requirements. The results of the investigation should be presented to the South Coast Air Quality Management District (SCAQMD) to ensure compliance with the goals of the SAP and approval of the investigation results.
2. Include specific requirements in the Project's Injury and Illness Prevention Program (as required by Title 8, Section 3203) regarding safeguards to prevent Valley Fever.
3. Control dust exposure:
   - Apply chemical stabilizers at least 24-hours prior to high wind event;
   - Apply water to all disturbed areas a minimum of three times per day. Watering frequency should be increased to a minimum of four times per day if there is any evidence of visible wind-driven fugitive dust;
   - Provide National Institute for Occupational Safety and Health (NIOSH)-approved respirators for workers with a prior history of Valley Fever.
   - Half-face respirators equipped with a minimum N-95 protection factor for use during worker collocation with surface disturbance activities. Half-face respirators equipped with N-100 or P-100 filters should be used during digging activities. Employees should wear respirators when working near earth-moving machinery.
   - Prohibit eating and smoking at the worksite, and provide separate, clean eating areas with hand-washing facilities.
   - Avoid outdoor construction operations during unusually windy conditions or in dust storms.
   - Consider limiting outdoor construction during the fall to essential jobs only, as the risk of cocci infection is higher during this season.
5. Prevent transport of cocci outside endemic areas:
   - Thoroughly clean equipment, vehicles, and other items before they are moved off-site to other work locations.
   - Prevent spillage or loss of bulk material from holes or other openings in the cargo compartment's floor, sides, and/or tailgate;
   - Load all haul trucks such that the freeboard is not less than six inches when material is transported on any paved public access

road and apply water to the top of the load sufficient to limit VDE to 20 percent opacity; or cover haul trucks with a tarp or other suitable cover.
- Provide workers with coveralls daily, lockers (or other systems for keeping work and street clothing and shoes separate), daily changing and showering facilities.
- Clothing should be changed after work every day, preferably at the work site.
- Train workers to recognize that cocci may be transported offsite on contaminated equipment, clothing, and shoes; alternatively, consider installing boot-washing.
- Post warnings onsite and consider limiting access to visitors, especially those without adequate training and respiratory protection.

6. Improve medical surveillance for employees:
    - Employees should have prompt access to medical care, including suspected work-related illnesses and injuries.
    - Work with a medical professional to develop a protocol to medically evaluate employees who have symptoms of Valley Fever.
    - Consider preferentially contracting with 1-2 clinics in the area and communicate with the health care providers in those clinics to ensure that providers are aware that Valley Fever has been reported in the area. This will increase the likelihood that ill workers will receive prompt, proper and consistent medical care.
    - Respirator clearance should include medical evaluation for all new employees, annual re-evaluation for changes in medical status, and annual training, and fit-testing.
    - Skin testing is not recommended for evaluation of Valley Fever.
    - If an employee is diagnosed with Valley Fever, a physician must determine if the employee should be taken off work, when they may return to work, and what type of work activities they may perform.

Dr. Clark proposed the foregoing mitigation measures, based on substantial evidence supported by fact, and undergirded by actual experience during construction of solar and wind projects in endemic areas. These measures should be included in a Mitigation Monitoring and Reporting Program in a revised and recirculated EIR for the Project, before the Project can lawfully be approved.

B. The FEIR's Air Quality, GHG, and Energy Impacts Analysis is Not Supported by Substantial Evidence

The DEIR did not include any analysis of the Project's emissions associated with the diesel-powered fire flow pump, an energy consuming source of GHG and other air emissions. The FEIR was revised to mention the diesel-powered fire flow pump, but concludes, absent quantitative evidence, that "emissions would be negligible."[33] James Clark comments provided that the CalEEMOD outputs provided in the Air Quality, Greenhouse Gas, and Energy Impact Study prepared by Webb[34], no fire pump system is included in the analyses. Dr. Clark therefore concludes that the Air Quality, Greenhouse Gas Emissions, and Energy sections of the EIR are not supported by substantial evidence, for failing to analyze a large source of Project emissions. The EIR must be revised and recirculated to accurately reflect the Project's emissions associated with the diesel-powered fire flow pump before the Project can be approved.

Moreover, the FEIR's health risk analysis ("HRA") still fails to analyze the emissions from passenger vehicles, which make up a majority of the vehicle miles traveled ("VMT") associated with the site during construction and operation. This results in an inaccurate analysis of the Project's health risks.[35] Dr. Clark provides substantial evidence in his comments, that the FEIR's construction Health Risk Assessment fails to analyze the tailpipe emissions of air toxins and total organic gases emitted from vehicles utilizing the Project site.[36] Dr. Clark cites to the California Air Resources' analysis of tailpipe emissions which shows that in addition to simple alkane hydrocarbons, tailpipe emissions also contain benzene (human carcinogen), 1,3-butadiene (human carcinogen), ethylbenzene (human carcinogen), toluene (neurotoxin), acetaldehyde (respiratory irritant), and formaldehyde (human carcinogen), and other air toxins.[37] These air toxins make up approximately 22% of the total organic gases (TOGs) emitted from vehicles.[38] The EIR fails to analyze the Project's potentially significant health risk impacts associated with tailpipe emissions from the substantial passenger vehicle trips to the Project site during construction and operation. This omission must be remedied in a revised and recirculated EIR to comply with CEQA.

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[33] FEIR, p. 2-99.
[34] Webb, Air Quality/Greenhouse Gas Analysis for Duke Warehouse at Patterson Avenue and Nance Street (DPR No. 21 00005), City of Perris, prepared Albert A. Webb Associates for Duke Realty Corporation, (2022) p. 4
[35] Clark Comments, p. 3.
[36] *Id.* at 4.
[37] Clark Comments, p. 4.
[38] *Id.*

Commenters proposed substantial mitigation which would feasibly reduce Project air pollution and greenhouse gas emissions, including:

- Installing solar photovoltaic systems on the project site of a specified electrical generation capacity that is equal to or greater than the building's projected energy needs, including all electrical chargers.
- Designing all project building roofs to accommodate the maximum future coverage of solar panels and installing the maximum solar power generation capacity feasible.

But the FEIR fails to require solar panels as a condition of approval. The Conditions of Approval provide that "[t]he project does not propose rooftop solar panels at this time."[39] Solar panels should be included as binding mitigation in a mitigation monitoring and reporting program in a revised and recirculated EIR.

IV. THE FEIR STILL FAILS TO ADEQUATELY ANALYZE NOISE AND VIBRATION IMPACTS AND INCORPORATE ALL FEASIBLE MITIGATION MEASURES AND ALTERNATIVES AS REQUIRED BY CEQA

The FEIR still fails to adequately analyze the Project's potentially significant and unmitigated noise and vibration impacts. The FEIR provides that "since there are no mechanical engineering plans available, the Project's noise analysis used a reference sound level of 68 dBA at 3 feet" for the HVAC equipment.[40] The failure to conduct an analysis of the HVAC noise emissions, reflective of the Project's actual conditions constitutes impermissibly deferred analysis, in violation of CEQA. CEQA Guidelines § 15126.4(a)(1)(B) provide that formulation of mitigation measures shall not be deferred until some future time.[41] "By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process."[42]

The Project's increase in the ambient noise level of 2.8 dBA directly contravenes Perris Municipal Code Section 7.34.050 which provides that:

> It is unlawful for any person to willfully make, cause or suffer, or permit to be made or caused, any loud excessive or offensive noises or sounds which

[39] Staff Report, Attachment 1, Conditions of Approval, p. 2.
[40]
[41] 14 CCR 15126.4(a)(1)(B).
[42] *Sundstrom* (1998) 202 Cal.App.3d 296, 305.

> unreasonably disturb the peace and quiet of any residential neighborhood or which are physically annoying to persons of ordinary sensitivity or which are so harsh, prolonged or unnatural or unusual in their use, time or place as to occasion physical discomfort to the inhabitants of the city, or any section thereof… ***To the extent that the noise created causes the noise level at the property line to exceed the ambient noise level by more than 1.0 decibels, it shall be presumed that the noise being created also is in violation of this section.***[43]

The FEIR estimates that the Project will increase the ambient noise levels by 2.8 dBA for sensitive receptors at R3, which in itself is a violation of the Municipal Code.[44] Additionally, substantial evidence presented by Mr. Meighan shows that the increase will exceed 5 dBA for residential receptors at R3 and violate the City's Municipal Code. The FEIR's conclusion that noise impacts are less than significant is not supported by substantial evidence. In fact, substantial evidence suggests that stationary operational noise, particularly from the Project's HVAC system, results in a permanent increase in ambient noise levels in excess of the City of Perris' Municipal Code Section 7.34.050, and results in a significant impact under CEQA.

The FEIR still fails to implement all feasible mitigation to reduce noise and vibration impacts to less than significant levels. As shown above, noise impacts from construction and operation are significant, and unmitigated. The FEIR fails to include noise buffers or sound walls, as proposed by Mr. Meighan, to feasibly reduce construction noise and vibration impacts. The FEIR fails to implement noise buffers, even though the Environmental Justice Element of the General Plan requires that noise barriers and sound buffers be implemented where incompatible uses cannot possibly be separated.[45] The Environmental Justice Element provides:

> Goal 3.1 A community that reduces the negative impacts of land use changes, environmental hazards and climate change on disadvantaged communities. Continue to ensure new development is compatible with the surrounding uses by collocating compatible uses and using physical barriers, geographic features, roadways or other infrastructure to separate less compatible uses. When this is not possible, impacts may be mitigated using: noise barriers, building insulation, sound buffers, traffic diversion.[46]

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[43] City of Perris Municipal Code Section 7.34.050 (a), https://library.municode.com/ca/perris/codes/code_of_ordinances?nodeId=COOR_TIT7HEWE_CH7.34NOCO_S7.34.020DE.
[44] FEIR, p. 2-170.
[45] DEIR, p. 5.10-8.
[46] Perris General Plan Environmental Justice Element, p. 39, https://www.cityofperris.org/home/showpublisheddocument/14502/637677498851330000.

The FEIR's failure to provide sufficient mitigation in the form of noise barriers and sound buffers not only violates CEQA, but violates the City's Environmental Justice Element. Implementing the measures identified in the FTA Transit Noise and Vibration Assessment Manual could feasibly lessen the duration and magnitude of vibration, resulting in increased compliance with CEQA and the General Plan.

For these reasons, and those provided in CARE CA's prior comments and those of our expert consultants, the FEIR fails to adequately identify and analyze construction and operational Project noise and vibration impacts and fails to identify and require feasible mitigation for the Project's potentially significant noise and vibration impacts. The FEIR should be revised and recirculated to provide a vibration control and monitoring plan that identifies on-site layout, truck access and speed limits for vibration control, buffer distances and other measures to reduce vibration such as phasing and scheduling. [47] This plan should also include a description of the process by which complaints will be documented and resolved. [48] Construction noise and vibration must be mitigated to a less than significant level through feasible measures, including limiting heavy trucks in the immediate vicinity of neighbors, and reducing truck and vehicle speeds. [49] A revised EIR should include a vibration control and monitoring plan that requires specified off-site truck access routes, speed limits, and other measures to reduce vibration such as phasing and scheduling. [50]

V. THE CITY STILL CANNOT MAKE THE REQUIRED FINDINGS TO SUPPORT APPROVAL OF THE LAND USE ENTITLEMENTS

A. The City Cannot Make the Required Findings to Support the Approval of the Development Plan Review

The Perris Municipal Code provides that "development plan review is required to protect the health, safety and welfare of the citizens of the city and to ensure that all development proposed within the city is consistent with the city's general plan, applicable specific plans, and zoning." [51] "The purpose of the development plan review is to protect the health, safety, and welfare of the citizens of the city; to ensure that all development proposed within the city is consistent

[47] Meighan Comments, p. 3.
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] City of Perris Municipal Code Sec. 19.50.010.

with the city's general plan, zoning, any applicable specific plan, and city requirements to protect and enhance the built and natural environment of the city, identifying and mitigating potential impacts that could be generated by the proposed use, such as traffic, noise, smoke, dust, fumes, vibration, odors, other hazards, or community impacts."[52]

The Project's significant impacts from air pollution, dust, noise, hazards and community impacts, as described below, contravene the purpose of the development plan review. The Planning Commission cannot approve the development plan review absent substantial additional project mitigation.

B. The City Cannot Make the Required Findings to Support the Approval of the Tentative Parcel Map

The Perris Municipal Code provides that "No parcel map shall be considered filed until all provisions of CEQA have been complied with."[53] Given that "all provisions of CEQA" have not been complied with, due to the City's failure to analyze and mitigate the Project's potentially significant impacts, as shown herein, and in CARE CA's prior comments and those of CARE CA's expert consultants, the City cannot make the required findings to approve the tentative parcel map.

C. The City Cannot Make the Required Findings to Support the Approval of the Specific Plan Amendment

The Perris General Plan Noise Element provides that sound levels that exceed 40 to 45 dBA are excessive for sleeping areas within a residence.[54] The Project is anticipated to operate 24 hours a day, seven days a week. Commenters' expert noise consultant found that Project operational noise would exceed 52 dBA assuming some shielding from the edge of the roof.[55] Mr. Meighan's comments provide substantial evidence that operation of the Project, in particular the HVAC unit will result in an exceedance of the General Plan Noise Element's threshold and results in a significant impact under CEQA.

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[52] City of Perris Municipal Code Sec. 19.54.040(f) https://library.municode.com/ca/perris/codes/code_of_ordinances?nodeId=COOR_TIT19ZO_CH19.54AUREPR_S19.54.030REAUPRPR.
[53] City of Perris Municipal Code Sec. 18.16.020, https://library.municode.com/ca/perris/codes/code_of_ordinances?nodeId=COOR_TIT18SU_CH18.16PAMAPR_S18.16.010TEPAMA.
[54] General Plan Noise Element, p. 3, https://www.cityofperris.org/home/showpublisheddocument/461/637203139725000000.
[55] Meighan Comments, p. 4.

The Project's nonconformance with the General Plan precludes the City from making the necessary findings to support approval of the Specific Plan Amendment, without first revising and recirculating the EIR to adequately analyze the Project's potentially significant impacts.

VI. CONCLUSION

For the foregoing reasons, CARE CA respectfully requests the Planning Commission remand the Project to Staff to remedy the errors and omissions in the EIR before the Project can be recommended for approval. The City must fulfill its responsibilities under CEQA by preparing a legally adequate EIR to address the significant omissions and deficiencies described in this comment letter and the attached expert comments. The EIR must be revised and recirculated to adequately inform the decision-makers and public of the Project's significant environmental impacts and feasible mitigation measures. The EIR must also be revised and recirculated to enable the City to make the necessary findings for approval of the Development Plan Review, Tentative Parcel Map, and Specific Plan Amendment.

Thank you for your attention to these comments.

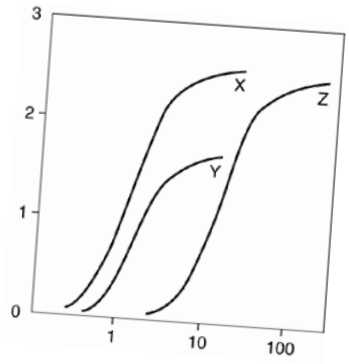
Sincerely,

Kelilah Federman

Kelilah D. Federman

Attachments
KDF:acp

ATTACHMENT A



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May 15, 2023

Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
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Attn: Ms. Kelilah Federman

Subject: Response To City's Staff Report and Replies To Comment Letter on Duke Warehouse At Patterson Avenue and Nance Street, Perris, California, Draft Environmental Impact Report SCH No. 2022010274

Dear Ms. Federman:

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

Specific Comments:

1. The City's Response Regarding *Coccidiodes Immitis* (Valley Fever Cocci) Transport From The Project Site To The Nearest Sensitive Receptor Is Not Consistent With The Facts Regarding Valley Fever Rates In Riverside County.

The City's response that Valley Fever (VF) is not an issue in Perris is not consistent with the known facts regarding VF incident rates in Riverside County. The most at-risk populations are construction and agricultural workers.[1] Construction workers are the very population that would be most directly exposed by the Project. A refereed journal article on occupational exposures notes that "[l]abor groups where occupation involves close contact with the soil

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

are at greater risk, especially if the work involves dusty digging operations."[2]

The potentially exposed population in surrounding areas is much larger than construction workers because the nonselective raising of dust during Project construction will carry the very small spores, 0.002–0.005 millimeters ("mm"), into nonendemic areas, potentially exposing large non-Project-related populations.[3],[4] These very small particles are not controlled by conventional construction dust control mitigation measures.

Since 2015, the number of cases of Valley Fever in Riverside County has increased from 57 in 2015 to 455 in 2019, as reported by the California Department of Public Health (CDPH).[5] This nearly 800 percent (800%) increase is significant by any public health measure. In 2021, 114 cases were recorded in Riverside County,[6] twice as many as the amounts reported in 2015. In the first quarter of 2023, San Bernardino County reported 94 cases. It is clear from the data provided by the California Department of Public Health Surveillance and Statistics Section that Valley Fever is a significant unaddressed issue in the FEIR. The City must revise the EIR to include the detailed mitigation measures outlined in my previous comment letter to ensure worker safety and the safety of other receptors near the Project site do the vast quantity of soils that will disturbed during the construction phase of the Project. Without adequate mitigation measures to reduce the risk of exposure to Valley Fever spores, the City cannot conclude that Valley Fever impacts would be less than significant.

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

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

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

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

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

2. The FEIR Fails To Address the Comment that The Average Truck Trip Length Of 40 Miles Used In The Air Quality Analysis Does Not Match The Length(s) Used To Support Other Similar Duke Warehouses.

Like the DEIR, the FEIR still underestimates the average truck trip length for warehouse shipments and lacks support for its assumption that trucks will travel just 40 miles to and from the Project site to deliver warehouse goods.

The FEIR fails to address where the trucks associated with the Project will be starting their journey to and from the Project Site. Instead, the FEIR assumes a standard 40-mile trip length, consistent with SCAQMD guidance.[7] However, as with all analyses of this type, specificity of the information (e.g., expected trip length) is a critical step in the analysis. The FEIR's reliance on a 40-mile trip length is not supported by any evidence of actual anticipated trip lengths. According to a recent report in the Times of San Diego[8] and the Los Angeles Times,[9] the Ports of Los Angeles and Long Beach account for 40% of all goods shipped to the United States via water, making it reasonably foreseeable that a percentage of Project shipments will arrive through those ports. Since the FEIR fails to state where the trucks will be coming from and going to, it is incumbent on the City to analyze the most likely scenarios.

Other comparable Duke Realty warehouse projects incorporate the distance to the Ports of Los Angeles and Long Beach as the primary trip length for trucks. As was pointed out in my initial comment letter, in its 2019 DEIR of the Duke Realty Alabama and Palmetto Warehouse Project, SCH 2019029078, submitted to the County of San Bernardino, an average truck trip length of approximately 77 miles was assumed, which is the distance to the Ports of Los Angeles/Long Beach.[10] The Alabama/Palmetto Warehouse is located approximately 15 miles north of the Nance/Patterson Project,

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[7] Webb. 2022. Air Quality/Greenhouse Gas Analysis for Duke Warehouse at Patterson Avenue and Nance Street (DPR No. 21 00005), City of Perris. Prepared Albert A. Webb Associates for Duke Realty Corporation. Pg 4

[8] https://timesofsandiego.com/business/2021/11/06/container-lots-truck-drivers-rules-california-eyes-fixes-for-shipping-backlog/

[9] https://www.latimes.com/business/story/2022-02-09/port-of-long-beach-supply-chain

[10] MIG. 2019. Duke Alabama and Palmetto Warehouse Draft Environmental Impact Report, p. 4.3-16. Prepared for Count of San Bernardino. Appendix B Air Quality Analysis Technical Memorandum. Pg 3; available at https://ceqanet.opr.ca.gov/2019029078/2/Attachment/VK0ZFL.

and the Ports are located to the west of both project sites. By contrast, the FEIR does not provide any information about what, if any, sources of goods shipments are located within the assumed 40 miles of the Project site. This is contrary to recent California Attorney General guidance on warehouse projects which explains that "full public disclosure of a project's anticipated truck trips [] entails calculating truck trip length based on likely truck trip destinations, rather than the distance from the facility to the edge of the air basin, local jurisdiction, or other truncated endpoint."[11]

It is reasonable to anticipate that Project shipments will arrive from the Port of Los Angeles and/or the Port of Long Beach. Using the associated 80-mile daily truck trip length to those Ports will nearly double the daily emissions of pollutants associated with the Project, increasing the Regional burden and resulting in a potentially significant impact. The City must address this impact in a revised DEIR.

4. The City's Air Quality Analysis Fails To Include A Quantitative Health Risk Analysis Of All Of The Toxic Air Contaminants From Light Duty Vehicles That Will Be Utilized During The Construction Phase And The Operational Phase Of The Project For The Nearest Sensitive Receptor(s)

While the City has updated the FEIR to include a construction phase HRA, it still fails to assess all of the air toxins emitted from the Project. The HRA completely ignores the emissions from passenger vehicles which make up the majority of the VMT associated with the site (84% of VMT from passenger vehicles and light duty trucks).

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Duke Warehouse at Patterson Ave and Nance St - Riverside-South Coast County, Summer

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

4.4 Fleet Mix

Land Use	LDA	LDT1	LDT2	MDV	LHD1	LHD2	MHD	HHD	OBUS	UBUS	MCY	SBUS	MH
Other Asphalt Surfaces	0.534849	0.056022	0.172639	0.141007	0.026597	0.007310	0.011327	0.018693	0.000616	0.000315	0.024057	0.001100	0.005468
Other Non-Asphalt Surfaces	0.534849	0.056022	0.172639	0.141007	0.026597	0.007310	0.011327	0.018693	0.000616	0.000315	0.024057	0.001100	0.005468
Unrefrigerated Warehouse-No Rail	0.567150	0.059410	0.183070	0.000000	0.000000	0.026000	0.032500	0.098420	0.000650	0.000330	0.025500	0.001170	0.005800

[11] California Attorney General, Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act, p. 7, available at https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf.

CARB's analysis of tailpipe emissions shows that in addition to simple alkane hydrocarbons, the emissions also contain benzene (human carcinogen), 1,3-butadiene (human carcinogen), ethylbenzene (human carcinogen), toluene (neurotoxin), acetaldehyde (respiratory irritant), and formaldehyde (human carcinogen), and other air toxins. These air toxins make up approximately 22% of the total organic gases (TOGs) emitted from vehicles.

CARB TOG Speciation Profile Run Exhaust[12]		
CAS#	**Chemical Name**	**Fraction**
75070	Acetaldehyde	0.0028
107028	Acrolein	0.0013
71432	Benzene	0.0247
106990	1,3-Butadiene	0.0055
100414	Ethylbenzene	0.0105
50000	Formaldehyde	0.0158
110543	Hexane	0.0160
67561	Methanol	0.0012
78933	Methyl Ethyl Ketone	0.0002
91203	Naphthalene	0.0005
115071	Propylene	0.0306
100425	Styrene	0.0012
108883	Toluene	0.0576
1330207	Xylenes	0.0480

Clearly the majority of emissions of these compounds from the Project site will be associated with passenger vehicles.

By choosing to focus on one toxic air contaminant, diesel exhaust, the City is focusing on a limited component of the toxicity of the emissions. There is notable precedent requiring a quantitative analysis of all TACs from diesel exhaust in CEQA documents. Moreover, the absence of this analysis renders the IS/MND's Air Quality Analysis incomplete. In a 2017 Notice of Preparation of a CEQA Document For the Los Robles Apartments Project, SCAQMD[13] noted that:

"In the event that the proposed project generates or attracts vehicular trips, especially heavy-duty diesel-fueled vehicles, it is recommended that the lead agency perform a mobile source health

[12] https://ww2.arb.ca.gov/speciation-profiles-used-carb-modeling

[13] SCAQMD. 2017. Comment Letter To David Sanchez, Senior Planner City of Pasadena from Jillian Wong, Planning and Rules Manager, SCAQMD.

risk assessment. Guidance for performing a mobile source health risk assessment ("Health Risk Assessment Guidance for Analyzing Cancer Risk from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis") can be found at: http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysishandbook/mobile-source-toxics-analysis. An analysis of all toxic air contaminant impacts due to the use of equipment potentially generating such air pollutants should also be included." This is a common and feasible analysis that is routinely performed for development projects like the Duke Warehouse Project.

Here, the City's analysis ignores the presence of other TACs being emitted during the construction and operational phases of the project without making any attempt to quantify all the impacts. This omission is a continuing flaw that must be addressed by the City. The results should then be presented in a revised FEIR.

Conclusion

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

Sincerely,

ATTACHMENT B

WILSON IHRIG
ACOUSTICS, NOISE & VIBRATION

CALIFORNIA
WASHINGTON
NEW YORK

WI #22-005.39

May 16, 2023

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

SUBJECT: Response to Comments on Duke Warehouse Project Noise Analysis Letter D Attachment 3

The following page includes a response to comments for the Duke Warehouse at Patterson Avenue and Nance Street FEIR

Very truly yours,

WILSON IHRIG

Jack Meighan
Associate

Response to Comments on Duke Warehouse Project Noise Analysis Letter D Attachment 3. docx

Comment	Response
DIII-4 Paragraph 1	The comment pertains to information present in the 'Noise and Vibration Study Duke Warehouse at Patterson Avenue & Nance Street, Perris, California' document.
DIII-4 Paragraph 3	PPV is a peak value, while VdB is based off the root mean square, fundamentally different ways of measuring wave amplitude. In the cited Table 7-4 of the Federal Transit Administration (FTA) Transit Noise and Vibration Impact Assessment Manual, the middle column is in only PPV, while the right column is in only VdB. These numbers can be equivalent with an accepted crest factor conversion.
DIII-5 Paragraph 1	The methodology cited in the comment is not consistent with the FTA Transit Noise and Vibration Impact Assessment Manual. While the general assessment states "Assume that all equipment operates at the center of the project" it is also stated to "Assume a usage factor of 1" which was not done in the DEIR. This underestimates sound levels by as much as 6 decibels during the paving phase.
DIII-5 Paragraph 2+	How the use of mufflers is included in the noise model, such as a measured reference level or set noise attenuation, should be noted so that the model can be recreated to verify that the method used is reasonable.
DIII-8 Paragraph 1	There is no citation of HVAC equipment in Appendix D of the Noise and Vibration Study. While 68 dBA at 3 feet is a reasonable value for an HVAC system, it still doesn't represent a realistic worst-case for the analysis, where large HVAC systems can be much louder at the source. While it is true that no parapet in the model represents a conservative analysis based on the fact it is required in the design, a more accurate modeling method would be to use a louder HVAC source modeled with a parapet. Absent this data, the Noise and Vibration Study is not supported by substantial evidence.

Response to Late Comment Letter 4 – CARE CA, Received August 29, 2023

Adams Broadwell Joseph & Cardozo, attorneys at law, previously submitted timely comments regarding the Draft EIR (DEIR) on behalf of Californians Allied for a Responsible Economy (CARE CA) in December 2022. Those comments and the responses thereto are included in the Final EIR (FEIR) as Comment Letter D, Comment Letter D Attachment 1, Comment Letter D Attachment 3 and Response to Comment Letter D, Response to Comment Letter D Attachment 1, and Response to Comment Letter D Attachment 3, respectively.

Adams Broadwell Joseph & Cardozo also submitted written comments on behalf of CARE CA prior to the May 17, 2023 Planning Commission meeting. That letter was submitted after the public review period for the DEIR and is identified as Late Comment Letter 2. Late Comment Letter 2 and its attachments substantially duplicate the same issues as those raised in Comment Letter D and its attachments, which are included in the FEIR. The responses to those comments are identified as Response to Late Comment LC2-A through Response to Late Comment Letter 2, Attachment 4.

Adams Broadwell Joseph & Cardozo then submitted written comments on behalf of CARE CA at approximately 4:00 P.M. prior to the scheduled August 29, 2023, 6:30 P.M. City Council meeting. That letter was also submitted after the public review period for the DEIR and is identified as Late Comment Letter 4. The responses to those comments are identified herein as Response to Late Comment LC4-A through Response to Late Comment Letter 4, Attachment B. Late Comment Letter 4 is substantially similar to Response to Comment Letter D and Late Comment Letter 2. Refer to Responses to Late Comment LC4-A through Response to Late Comment Letter 4, Attachment B, herein.

Response to Late Comment LC4-A:

This late comment is similar to Late Comments LC2-A through LC2-D.

The summary of the Project presented in Late Comment 4-A is consistent with the Project as described in the DEIR and the City Council Staff Report.

This late comment alleges that the FEIR and Staff Report do not resolve all of the issues raised in Comment Letter D and Late Comment Letter 2; and claims that the City Council therefore cannot take action on the proposed Project. Responses to the specifically identified concerns in this subsequent late comment letter are provided herein. Refer also to Response to Comment Letter D and Response to Late Comment Letter 2.

As recommended in the comment, the Project was continued from the August 29, 2023 meeting to allow sufficient time to review and respond to these late comments. As outlined herein, no new environmental issues are raised by this late comment. No additional analysis or revisions to the DEIR, FEIR, or Staff Report are required.

Response to Late Comment LC4-B:

This late comment is identical to Comment D-4 and LC2-E. As with Comment D-4 and LC2-E, this late comment introduces CARE CA and its representative members and asserts CARE CA's interest in enforcing environmental laws.

This late comment does not question the content or conclusions of the DEIR or FEIR.

Response to Late Comment LC4-C:

This late comment is similar to Comment D-7 and Comment D-8 and LC2-F through LC2-H in regard to the adequacy of the Project description and the evaluation of potential impacts from the potential transport of hazardous materials. As stated in prior responses, the City disagrees with the assertion that the DEIR does not include an accurate and complete Project description simply because the DEIR does not identify a specific tenant for the Project. Furthermore, CEQA does not require listing a project end user in the project description. (*Maintain Our Desert Environment v. Town of Apple Valley* (2004) 124 Cal.App.4th 430, 441) As with prior comments, this late comment contains no specific examples to support the commenters assertions. Refer to Response to Comment D-7, Response to Comment D-8 and Response to Comment LC2-F through LC2-H.

No new environmental issues are raised by this late comment. No additional analysis or revisions to the DEIR, FEIR, or Staff Report are required.

Response to Late Comment LC4-D:

This late comment summarizes the comment letter from Wilson Ihrig in Attachment A. Refer to Response to late Comment LC4-A-1 through Response to late Comment LC4-A-6, herein, for detailed responses to the applicable comments. However, the statement that the FEIR concludes “construction noise will be reduced by half ”with mufflers”” is unclear because no such statement is included in the FEIR and, as acknowledged in the comment, a 15 dBA reduction was utilized.

No new environmental issues are raised by this late comment. No additional analysis or revisions to the DEIR, FEIR, or Staff Report are required.

Response to Late Comment LC4-E:

This late comment is similar to Comment LC2-I through LC2-K as well Comment D-16, D-18, and D-19 in regard to Valley Fever .As stated in Response to Late Comment LC2-I through Response to Late Comment LC2-J, this late comment is similar to Comment D-16, D-18, and D-19 in that it contains no evidence that Valley Fever poses a significant risk to construction workers in the Project area. As stated in Response to Comment D-18, “The latest CDPH data does not include Riverside County as an area with high rates of Valley Fever. Therefore, in accordance with the State CEQA Guidelines, it is appropriate for the City not to focus the DEIR’s analysis on this speculative issue. CEQA also does not require mitigation where there is no significant impact. (State CEQA Guidelines 15126.4(a)(3)).” Because there is no potentially significant impact, there is no legal nexus to require the City to analyze the feasibility of the commenter’s proposed mitigation.

No new environmental issues are raised by this late comment. No additional analysis or revisions to the DEIR, FEIR, or Staff Report are required.

Response to Late Comment LC4-F:

This late comment is essentially identical to Comment D-34 and Comment LC2-R. As stated in Response to Comment D-34,

> No new environmental issues are raised by this comment. The analysis in the DEIR is complete and thorough, and as demonstrated in the responses herein, environmental impacts including, but not limited to, air pollution, noise, and hazards have been appropriately evaluated and effective mitigation measures identified where applicable. (FEIR, p. 2-173.)

No new environmental issues are raised by this late comment. No additional analysis or revisions to the DEIR, FEIR, or Staff Report are required.

Response to Late Comment LC4-G:

This late comment is essentially identical to Comment D-34 and LC2-S. No new environmental issues are raised by this comment. As stated in Response to late Comment LC2-S, the analysis in the DEIR, as amplified and clarified by the FEIR, is complete and thorough, and as demonstrated in the FEIR and the responses to late comments, environmental impacts including, but not limited to, air pollution, noise, and hazards have been appropriately evaluated and effective mitigation measures identified where applicable.

The fact that CARE CA and their consultants do not agree with the analysis and conclusions in the DEIR and FEIR does not mean that the City has not complied with CEQA. As provided by State CEQA Guidelines Section 15151, “An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. ***Disagreement among experts does not make an EIR inadequate***, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." (Emphasis added). By including the commenter’s comments and providing the City responses to each of these comments, the FEIR is addressing the potential disagreement among experts. In addition, by responding to the late comments provided by CARE CA, the City has exceeded the requirements for complying with CEQA.

No new environmental issues are raised by this late comment. No additional analysis or revisions to the DEIR, FEIR, or Staff Report are required.

Response to Late Comment LC4-H:

This late comment is identical to Comment D-37 and LC2-T; as with the original comments, this comment does not provide substantial evidence that the Project’s noise levels will exceed 40 to 45 dBA or that the Project is not in conformance with the General Plan. The CARE CA consultant’s anecdotal opinion that that the noise from the Project’s HVAC unit would result in an increase in ambient noise of more than 5 dBA does not constitute substantial evidence. In fact, the CARE CA consultant acknowledges the use of 68 dBA as a reasonable value for an HVAC system in Late Comment LC2A3-6. Refer to the Response to Late Comment LC2A3-6 for additional information. The *Noise and Vibration Study Duke Warehouse at Patterson Avenue & Nance Street, Perris, California*, February 2023, is supported by, and constitutes substantial evidence that noise impacts will be less than significant.

No new environmental issues are raised by this late comment. No additional analysis or revisions to the DEIR, FEIR, or Staff Report are required.

Response to Late Comment LC4-I:

As demonstrated in the responses to late comments herein, Response to Comment D-1 through Response to Comment D-38, and Response to late Comment LC2-A through Response to Late Comment Letter 2, Attachment 4, no significant omissions or deficiencies were identified in the DEIR or FEIR. As recommended in the comment, the Project was continued from the August 29, 2023 City Council meeting to allow sufficient time to review and respond to these late comments.

As outlined above, no new environmental issues are raised by this late comment. No additional analysis or revisions to the DEIR, FEIR, or Staff Report are required.

Response to Late Comment Letter 4, Attachment A – Wilson Ihrig

Response to Late Comment LC4-A-1

This comment is essentially identical to Comment DIII-1 through DIII-3, providing an introduction and summary of the adverse effects of noise. As with Response to Comment DIII-1 through Response to Comment DIII-3, this late comment does not question the content or conclusions of the DEIR or FEIR.

Response to Late Comment LC4-A-2

This comment is identical to Comment DIII-4. Refer to Response to Comment DIII-4.

No new environmental issues are raised by this late comment.

Response to Late Comment LC4-A-3

This comment is identical to Comment DIII-5 through Comment DIII-8. Refer to Response to Comment DIII-4 through Response to Comment DIII-8.

No new environmental issues are raised by this late comment.

Response to Late Comment LC4-A-4

This comment is in response to Response to Late Comment LC2A3-4 and states that it appears that only one piece of equipment was used to model construction noise from each phase. According to Appendix D of the *Noise and Vibration Study Duke Warehouse at Patterson Avenue & Nance Street, Perris, California*, February 2023, hereinafter referred to as the *Noise and Vibration Study* (included as Attachment D to the FEIR), it is correct that only one piece of heavy-duty construction equipment was modeled during the grading phase. That is because the FEIR's *Noise and Vibration Study* evaluated the construction noise from activities occurring in close proximity to the Project's property boundary, to amplify the analysis in the DEIR. The number of pieces of construction equipment that can operate at one time near the Project's property boundary in the same location and the same distance from nearby receptors is limited because the physical space is physically constrained. However, for the concrete pouring activities, Appendix D of the FEIR's *Noise and Vibration Study* indicates that ten concrete pump trucks were evaluated during the building construction and paving phases. Ten concrete pump trucks were modeled to be operating at one time in the same location so as not to underestimate potential construction noise.

As such, no new environmental issues are raised by this late comment. No additional analysis or revisions to the DEIR, FEIR, or Staff Report are required.

Response to Late Comment LC4-A-5

This comment states that no citation was provided for the 15 decibel (dBA) reduction applied for muffler usage. Multiple sources were used to establish the noise reduction from muffler usage. For example, Innovative Exhaust Solutions, Inc., dB Noise Reduction®, and TAOP Parts provide the types of mufflers that are manufactured to reach at least a 15 dBA reduction.[1] Depending on the type of muffler, some manufacturers state a higher reduction. As such, the noise reduction estimated from muffler usage required by PVCCSP EIR mitigation measure **MM Noise 1** is feasible and appropriate.

[1] https://www.inexhaust.com/products-2/exhaust-silencer-900c/; https://www.dbnoisereduction.com/industrial_mufflers/engine_mufflers.php; https://www.taopparts.com/en/muffler/64432-komatsu-muffler-hm400-2-articulateddump-truck.html

No new environmental issues are raised by this late comment. No additional analysis or revisions to the DEIR, FEIR, or Staff Report are required.

Response to Late Comment LC4-A-6

This late comment is identical to Comment DIII-9. As identified in Response to Comment DIII-9 and the late responses herein, no new environmental issues are raised by this late comment. No additional analysis or revisions to the DEIR, FEIR, or Staff Report are required.

Per Section 15151 of the State CEQA Guidelines, disagreement among experts does not make an EIR inadequate. Thus, by extension, disagreement among experts regarding a technical study does not (i) render a technical study inadequate; (ii) deem a technical study inaccurate; or (iii) mean a technical study is not supported by substantial evidence. By including the commenter's comments and providing the City responses to each of these comments, the City is addressing the potential disagreement among experts.

Response to Late Comment Letter 4, Attachment B

Response to Late Comment Letter 4, Attachment B

This attachment contains the December 19, 2022 comment letter submitted by Adams Broadwell Joseph & Cardozo on behalf of CARE CA (with attachments), followed by the Adams Broadwell Joseph & Cardozo comment letter submitted to the City on behalf of CARE CA on May 17, 2023, and, as such, this attachment does not raise any new environmental issues.