

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.taoparts.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.