Exhibit Q-3
Appeal Letter from
Adams Broadwell Joseph & Cardozo

ADAMS BROADWELL JOSEPH & CARDOZO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721
TEL: (916) 444-6201
FAX: (916) 444-6209
kcarmichael@adamsbroadwell.com

SO. SAN FRANCISCO OFFICE
601 GATEWAY BLVD., SUITE 1000
SO. SAN FRANCISCO, CA 94080
TEL: (650) 589-1660
FAX: (650) 589-5062

ARIANA ABEDIFARD
KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
RICHARD M. FRANCO
ANDREW J. GRAF
TANYA A. GULESSERIAN
DARION N. JOHNSON
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO

Of Counsel
MARC D. JOSEPH
DANIEL L. CARDOZO

October 18, 2023

Via Email and Overnight Mail

Miguel Arias, Council Member
District 3
President Tyler Maxwell
City Council Members
c/o Planning and Development
Department
City of Fresno
City Hall
2600 Fresno Street, Room 3043
Fresno, California, 93721-3604
Email:
PublicCommentsPlanning@fresno.gov

Jennifer Clark, Director
Planning & Development Department
City of Fresno
2600 Fresno Street, Room 3065
Fresno, CA 93721
Email: Jennifer.Clark@fresno.gov

Via Email Only

Steven Martinez, Planner
Email: Steven.Martinez@fresno.gov

Re: Appeal of Planning Commission Decision - 2740 West Nielsen Avenue Office/Warehouse Project (Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21-05930) (SCH 2022050265)

Dear President Maxwell, Mr. Arias, City Council Members, Ms. Clark, and Mr. Martinez:

We are writing on behalf of Fresno Residents for Responsible Development ("Residents") to appeal the City of Fresno Planning Commission's October 4, 2023 approval of the 2740 West Nielsen Avenue Office/Warehouse Project (Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21-05930; and

certification of the Final Environmental Impact Report ("FEIR")[1] (SCH 2022050265) ("Project"), proposed by Scannell Properties ("Applicant").[2] The Project proposes construction of four office/warehouse buildings that would be configured for heavy industrial uses.[3] The proposed buildings would result in a total gross floor area of approximately 901,438 square feet.[4]

The Project site is located at 2740 West Nielsen Avenue, between North Marks and North Hughes Avenues in the City and County of Fresno.[5] The 48.03-acre Project site is currently vacant but formerly consisted of an industrial warehouse that has since been demolished.[6] The Project site is bounded to the north by partially developed land, to the east by North Hughes Avenue, to the south by West Nielsen Avenue, and to the west by North Marks Avenue.[7] Regional access to the site is provided by State Route 180 ("SR-180"), which is located approximately 0.3 mile south of the project site, and State Route 99 ("SR-99"), which is located approximately 0.8 miles east of the project site.[8]

The reason for this appeal is that the Planning Commission abused its discretion and violated the California Environmental Quality Act ("CEQA") when it approved the Project's Development Permit and Tentative Parcel Map Applications and certified the FEIR for the Project.

On May 19, 2023, Residents submitted written comments on the Draft Environmental Impact Report ("DEIR") ("DEIR Comments"), including expert comments, which identified significant errors, omissions, and fatal defects in the

---

[1] City of Fresno, Final Environmental Impact Report, 2740 West Nielsen Avenue Office/Warehouse Project (Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21-05930) (hereinafter "FEIR") available at https://ceqanet.opr.ca.gov/Project/2022050265
[2] City of Fresno, Planning Commission Agenda (October 4, 2023) available at https://fresno.legistar.com/View.ashx?M=A&ID=1057020&GUID=756A2F25-13EC-44BD-9120-9A1242198A34
[3] City of Fresno, Draft Environmental Impact Report, 2740 West Nielsen Avenue Office/Warehouse Project (SCH: 2022050265) (hereinafter "DEIR") (February 2023) p. 1-3. available at https://ceqanet.opr.ca.gov/2022050265/3.
[4] DEIR, p. 1-3.
[5] DEIR, p. 2-2.
[6] DEIR, p. 3-5.
[7] DEIR, pp. 2-1 – 2-2.
[8] DEIR, p. 3-1.
6179-016j

environmental document prepared for the Project.[9] In particular, the DEIR failed to accurately disclose and mitigate the Project's potentially significant air quality, greenhouse gas ("GHG") emissions, noise, and transportation impacts. The City prepared a FEIR for the Project which includes written responses to the DEIR Comments.

On October 3, 2023, Residents submitted written comments on the FEIR and Staff Report and supporting exhibits prepared for the Planning Commission's October 4, 2023 hearing ("FEIR Comments").[10] Based upon our review of the FEIR and supporting documentation, we found that the City had not resolved the issues raised in Residents' DEIR comments, and that the FEIR still failed to comply with the requirements of the California Environmental Quality Act[11] ("CEQA"). Although the City purported to have revised its air quality and GHG analysis in response to our DEIR Comments, our comments demonstrate that the FEIR's air quality and GHG analyses remain substantially inaccurate and incomplete. The FEIR also failed to meaningfully respond to the majority of Resident's technical comments, and failed to resolve the majority of legal and evidentiary deficiencies we identified in the DEIR. As a result, the FEIR still fails to adequately disclose, analyze and mitigate the Project's potentially significant impacts related to air quality, GHG emissions, noise, and on transportation and traffic. The City lacked substantial evidence to support the FEIR's conclusions that impacts will be mitigated to less than significant levels. The FEIR also continues to rely on legally inadequate, ineffective, and unenforceable mitigation measures that fail reduce impacts to less than significant levels and fail to meet the basic mitigation requirements of CEQA.

Our October 3, 2023, comments address the outstanding deficiencies in the City's environmental analysis and proposed mitigation for the Project. Our comments are supported by substantial evidence in the form of technical comments

---

[9] **Attachment A:** Adams Broadwell Joseph & Cardozo, Letter re: Comments on Draft Environmental Impact Report for the 2740 West Nielsen Avenue Office/Warehouse Project, Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21-05930 (SCH 2022050265) (May 19, 2023)

[10] **Attachment B**: Adams Broadwell Joseph & Cardozo, Letter re: Agenda Item VIII-D: 2740 West Nielsen Avenue Office/Warehouse Project (Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21-05930) (SCH 2022050265) (October 3, 2023).

[11] Pub. Resources Code (hereinafter "PRC") §§ 21000 et seq.; 14 Cal. Code Regs (hereinafter "CEQA Guidelines") §§ 15000 et seq.

from qualified experts identifying significant, unmitigated air quality, GHG emissions, transportation, and noise impacts that the FEIR fails to adequately address.

Pursuant to Fresno City Code §15-5005(I) Residents appeal the Planning Commission's certification of the Final Environmental Impact Report for the Project. Additionally, pursuant to City Code §15-5017(A)(2) Residents request that the City Council appeal the Planning Commission's approval of the Project's entitlements. Residents' reasons for the appeal are detailed below and, in our May 19, 2023 DEIR Comments and October 3, 2023 FEIR Comments which are attached hereto and incorporated by reference.

I. REASONS FOR APPEAL

A. There is Substantial Evidence Demonstrating that the Project May Cause a Significant, Unmitigated Health Risk from Exposure to Valley Fever

Residents previously provided evidence that the FEIR failed to analyze and mitigate potential health risk to construction workers and nearby residents from exposure to *Coccidioides immitis* ("*Cocci*") fungus spores which can spread a disease known as Valley Fever. Our comments explained that the most at-risk populations are construction and agricultural workers and that 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 which measure 0.002–0.005 millimeters into nonendemic areas, potentially exposing large non-Project-related populations. The City failed to respond to substantial evidence demonstrating the known presence of Valley Fever in the Project's vicinity and the potential impacts of exposure to the fungus spores.

Additionally, as detailed in our prior comments, conventional dust control measures, such as those required under MM AIR-1, are inadequate to control the spread of C*occi* spores.

The FEIR failed to provide any information regarding the prevalence of *Cocci* fungus spores in the Project's vicinity, failed to discuss applicable construction worker Valley Fever training requirements and failed to include any Valley Fever-specific mitigation in the MMRP. The continued lack of disclosure by the City

prevented meaningful analysis and mitigation of the potential health impacts the Project will cause to onsite construction workers and other individuals in close proximity to the Project site from disturbing soils which may be contaminated with Valley Fever spores site during Project construction.

The City must prepare a revised DEIR which includes a discussion of the potential for the presence of *Cocci* fungus spores at the Project site in order to accurately analyze and mitigate the Project's potentially significant health risk impacts from Valley Fever.

B. The FEIR Failed to Accurately Disclose and Mitigate the Project's Potentially Significant Transportation Impacts

Residents previously provided evidence that the FEIR substantially underestimates the Project's transportation impacts by relying on unsupported assumptions regarding the Project's operations and failing to consider reasonably foreseeable uses of the Project.

Our comments on the DEIR explained that because the Project's future tenants have not been identified, the Project's trip generation analysis was highly uncertain. Additionally, the trip generation study relied upon in the DEIR included warehouse sites with trip rates of two to six times the rate used in the DEIR, thus inflating the baseline against which the Project's trips were analyzed. Furthermore, our comments detailed that the failure to account for the reasonably foreseeable uses of the Project resulted in a failure to accurately analyze the Project's air quality and GHG emissions impacts.

The FEIR failed to address Resident's comments and instead focused on one facet of the comments, specifically, that if the Project were to operate as an Amazon fulfillment center, the Project would result in 4.5 daily trips per 1,000 square feet, twice the rate assumed in the DEIR. The FEIR states that the Applicant has confirmed that Amazon is not a potential future tenant of the Project site and summarily dismissed the remainder of our comments.[12] However, as detailed in our comments on the DEIR, an Amazon fulfillment center is just one of many foreseeable intensive warehouse uses that would generate truck trips exceeding that which was assumed in the DEIR's transportation analysis. Therefore, even if

[12] FEIR, p. 3-236.

Amazon is not a potential future tenant, the City lacks evidentiary support to conclude that a similar logistics center would not be a reasonably foreseeable use of the Project site. Neither the MMRP nor the Project's conditions of approval included a requirement that the future use of the Project limit the truck trips to the levels analyzed in the FEIR. Therefore, the City lacked substantial evidence to conclude that the Project will not generate truck trips consistent with the high intensity high-cube warehouse uses allowed at the Project site.

C. The Project Will Result in a Significant, Unmitigated Impact from Noise

We previously provided substantial evidence demonstrating that the the FEIR failed to provide an accurate noise analysis, resulting in a failure to disclose the noise impacts from construction and operation of the Project. This remains a significant, unmitigated impact that the City has failed to disclose.

Additionally, Residents' experts determined that the Project's construction and operational noise impacts remain significant and unmitigated notwithstanding the mitigation measures proposed in the FEIR. The City failed to resolve these issues before the Planning Commission approved the Project.

D. The City Planning Commission Erred in Making the Required Findings to Approve the Project

The Project requires approval of a Development Permit and a Tentative Parcel Map by the City. In order to approve the Development Permit for the Project, the Planning Commission was required to find that the Project is consistent with the following:

1. The applicable standards and requirements of [the City] Code.
2. The [City's] General Plan and any operative plan or policies the City has adopted.
3. Any applicable design guidelines adopted by the City Council.
4. Any approved Tentative Map, Conditional Use Permit, Variance, or other planning or zoning approval that the project required.

5. Fresno County Airport Land Use Compatibility Plan (as may be amended) adopted by the Fresno County Airport Land Use Commission pursuant to California Public Utilities Code Sections 21670—21679.5.[13]

Additionally, pursuant to the Code, the Planning Commission may approve or conditionally approve a Tentative Parcel Map based on the following findings:

1. The proposed subdivision, together with the provisions for its design and improvement, is consistent with the General Plan, any applicable operative plan, adopted policies or guidelines, and the Municipal Code.
2. A subdivision for which a Tentative Map is required shall provide pursuant to the Map Act (Section 66473.1), to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision.
3. Water will be available and sufficient to serve a proposed subdivision with more than 500 dwelling units in accordance with the Map Act (Section 66473.7).
4. There exists sufficient infrastructure capacity for water, runoff, storm water, wastewater, and solid waste systems to serve the proposed subdivision. In cases where existing infrastructure is found to be deficient, plans shall show how sufficient capacity will be provided.
5. The proposed subdivision is compliant with the City of Fresno Floodplain Management Ordinance and the State of California Code of Regulations Title 23, as well as any other applicable State or federal law.[14]

The Planning Commission abused its discretion by making finding No. 2 for the Development Permit and Finding No. 1 for the Tentative Parcel Map and approving the Project despite substantial evidence showing that the Project is inconsistent with the General Plan's Noise and Safety Element. The City cannot make the necessary findings to approve the Project's entitlements until the deficiencies in the FEIR are corrected.

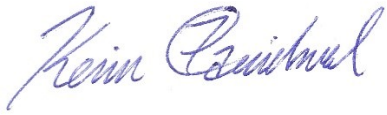
[13] FCC § 15-5206.
[14] FCC § 15-3309.

II. CONCLUSION

As a result of the deficiencies and errors identified above, and in Residents' prior comments, the Planning Commission's certification of the FEIR, and its approval of the Project's Development Permit and Tentative Parcel Map violated CEQA and must be overturned.

We urge the City Council to support an appeal of the Project and remand the Project to City Staff to prepare a legally adequate revised EIR for the Project. We reserve the right to supplement our comments at a later date, and at any later proceedings related to this Project.[15]

Sincerely,



Kevin Carmichael

KTC:ljl

[15] 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.

ATTACHMENT A

ADAMS BROADWELL JOSEPH & CARDOZO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721
TEL: (916) 444-6201
FAX: (916) 444-6209
kcarmichael@adamsbroadwell.com

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
RICHARD M. FRANCO
ANDREW J. GRAF
TANYA A. GULESSERIAN
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO

Of Counsel
MARC D. JOSEPH
DANIEL L. CARDOZO

SO. SAN FRANCISCO OFFICE
601 GATEWAY BLVD., SUITE 1000
SO. SAN FRANCISCO, CA 94080
TEL: (650) 589-1660
FAX: (650) 589-5062

May 19, 2023

Via Email and Overnight Mail

Steven Martinez, Planner
City of Fresno Planning and Development Department
City Hall
2600 Fresno Street, Room 3043,
Fresno, California, 93721-3604
Email: Steven.Martinez@fresno.gov

Re: **Comments on Draft Environmental Impact Report for the 2740 West Nielsen Avenue Office/Warehouse Project, Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21-05930 (SCH 2022050265)**

Dear Mr. Martinez:

We write on behalf of Fresno Residents for Responsible Development ("Fresno Residents") to provide comments on the Draft Environmental Impact Report ("DEIR") and Recirculated DEIR ("RDEIR") prepared by the City of Fresno ("City") for the 2740 West Nielsen Avenue Office/Warehouse Project, Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21 05930 (SCH 2022050265) ("Project"), proposed by Scannell Properties ("Applicant").[1]

The Project proposes construction of four office/warehouse buildings that would be configured for heavy industrial uses.[2] The proposed buildings would result in a total gross floor area of approximately 901,438 square feet.[3] The buildings' exterior height would be up to 44 feet with an interior height of up to 36 feet and designed with a total of 201 loading dock doors on the north and south

[1] City of Fresno, Draft Environmental Impact Report, 2740 West Nielsen Avenue Office/Warehouse Project (SCH: 2022050265) (hereinafter "DEIR") (February 2023); *and* Recirculated Draft Environmental Impact Report, 2740 West Nielsen Avenue Office/Warehouse Project (SCH: 2022050265) (hereinafter "RDEIR") (April 2023) available at https://ceqanet.opr.ca.gov/2022050265/3
[2] DEIR, p. 1-3.
[3] DEIR, p. 1-3.

sides of the buildings.[4] The four buildings would be comprised of the following: Building 1 would be 468,812 square feet and would provide 122 loading dock doors; Building 2 would be 248,786 square feet and would provide 46 loading dock doors; Building 3 would be 93,074 square feet and would provide 18 loading dock doors; and Building 4 would be 90,766 square feet and would provide 15 loading dock doors.[5] The Project site is located at 2740 West Nielsen Avenue, between North Marks and North Hughes Avenues in the City and County of Fresno.[6] The 48.03-acre Project site is currently vacant but formerly consisted of an industrial warehouse that has since been demolished.[7] The Project site is bounded to the north by partially developed land, to the east by North Hughes Avenue, to the south by West Nielsen Avenue, and to the west by North Marks Avenue.[8] Regional access to the site is provided by State Route 180 ("SR-180"), which is located approximately 0.3 mile south of the project site, and State Route 99 ("SR-99"), which is located approximately 0.8 miles east of the project site.[9]

The Project proposes a total of 594 on-site parking spaces for vehicles and trucks.[10] Of the 594 parking spaces, 385 spaces are allocated for passenger vehicles, 11 spaces for accessible vehicles, and 10 spaces for accessible vans. [11] The remaining 188 spaces are allocated for trailers and are proposed to be located along the eastern and western edges of the project site.[12]

The Applicant seeks the following approvals from the City in order to construct the Project: certification of the EIR; development permit; tentative parcel map; water connection permit; and sanitary sewer connection permit.[13] The Project also requires approval from Pacific Gas & Electric ("PG&E") for electrical and natural gas connections, Central Valley Regional Water Quality Control Board ("RWQCB") for a Storm Water Pollution Prevention Plan, and San Joaquin Valley Air Pollution Control District ("SJVAPCD") for a Dust Control Plan Approval letter and compliance with Rule 9510 – Indirect Source Review.[14]

---

[4] DEIR, p. 1-3.
[5] DEIR, p. 1-3.
[6] DEIR, p. 2-2.
[7] DEIR, p. 3-5.
[8] DEIR, pp. 2-1 – 2-2.
[9] DEIR, p. 3-1.
[10] DEIR, p. 1-3.
[11] DEIR, p. 1-3.
[12] DEIR, p. 1-3.
[13] DEIR, p. 3-18.
[14] DEIR, p. 3-18.

Based upon our review of the DEIR and supporting documentation, we conclude that the DEIR fails to comply with the requirements of the California Environmental Quality Act[15] ("CEQA"). The DEIR fails to adequately analyze many of the Project's significant environmental impacts and fails to propose enforceable mitigation measures that can reduce those impacts to a less than significant level, as required by CEQA.

As explained more fully below, the DEIR fails to properly analyze and mitigate the Project's transportation, air quality, health risk, GHG emissions, energy, and noise impacts. The DEIR fails to support its significant findings with substantial evidence, and fails to mitigate the Project's significant impacts to the greatest extent feasible, in violation of CEQA. The Project also conflicts with applicable land use plans and policies, resulting in land use inconsistencies as well as significant impacts under CEQA. The City may not approve the Project until the City revises the DEIR to adequately analyze the Project's significant direct, indirect and cumulative impacts, and incorporates all feasible mitigation measures to avoid or minimize these impacts to the greatest extent feasible.

We reviewed the DEIR, technical appendices, and reference documents, with the assistance of our expert consultants, including air quality and hazardous materials expert James J.J. Clark, Ph.D. of Clark and Associates, noise expert Derek Watry of Wilson Ihrig, and transportation expert Normal Marshall of Smart Mobility whose comments and qualifications are included as Attachment A, Attachment B, and Attachment C respectively.[16] Dr. Clark, Mr. Watry, and Mr. Marshall provide substantial evidence of potentially significant impacts that have not been adequately disclosed, analyzed, or mitigated. The City must address and respond to their comments separately and fully.[17]

I. STATEMENT OF INTEREST

Fresno Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential impacts associated with Project development. East Bay Residents includes the International Brotherhood of Electrical Workers Local 100, Plumbers and Pipefitters UA Local

---

[15] Pub. Resources Code (hereinafter "PRC") §§ 21000 et seq.; 14 Cal. Code Regs (hereinafter "CEQA Guidelines") §§ 15000 et seq.
[16] **Exhibit A**, James J.J. Clark, Ph.D., Clark & Associates (hereinafter "Clark Comments"); **Exhibit B**, Derek Watry, Wilson Ihrig (hereinafter "Watry Comments"); **Exhibit C**, Norman Marshall, Smart Mobility (hereinafter "Marshall Comments").
[17] CEQA Guidelines §§ 15088(a), (c).

442, Sheet Metal Workers Local 104, Sprinkler Fitters Local 669, District Council of Ironworkers their members and their families, and other individuals that live and/or work in the City of Fresno and Fresno County.

Fresno Residents support sustainable development in the City. Residents have a strong interest in enforcing the State's environmental laws that encourage sustainable development and ensure a safe working environment for its members. Large warehouse projects like this Project should avoid adverse impacts to air quality, noise levels, transportation, biological resources, and public health, and should take all feasible steps to ensure unavoidable impacts are mitigated to the maximum extent feasible. Only by maintaining the highest standards can commercial and industrial development truly be sustainable.

The individual members of Fresno Residents live, work, recreate, and raise their families in the City of Fresno and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work constructing the Project itself. They would be the first in line to be exposed to any health and safety hazards which may be present on the Project site. They each have a personal interest in protecting the Project area from unnecessary, adverse environmental and public health impacts.

In addition, Fresno Residents 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.

Finally, Fresno Residents is concerned with projects that can result in serious environmental harm without providing countervailing economic benefits. CEQA provides a balancing process whereby economic benefits are weighed against significant impacts to the environment.[18] It is in this spirit we offer these comments.

[18] PRC § 21081(a)(3); *Citizens for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.

II. LEGAL BACKGROUND

CEQA requires public agencies to analyze the potential environmental impacts of their proposed actions in an EIR.[19] "The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."[20]

CEQA has two primary purposes. First, CEQA is designed to inform decisionmakers and the public about the potential significant environmental effects of a project.[21] "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'"[22] 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."[23] As the CEQA Guidelines explain, "[t]he EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected."[24]

Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring consideration of environmentally superior alternatives and adoption of all feasible mitigation measures.[25] The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to "identify ways that environmental damage can be avoided or significantly reduced."[26] If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has

---

[19] PRC § 21100.
[20] *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal ("Laurel Heights I")* (1988) 47 Cal.3d 376, 390 (internal quotations omitted).
[21] PRC § 21061; CEQA Guidelines §§ 15002(a)(1); 15003(b)-(e); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 517 ("[T]he basic purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.").
[22] *Citizens of Goleta Valley,* 52 Cal.3d at p. 564 (quoting *Laurel Heights I*, 47 Cal.3d at 392).
[23] *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810; *see also Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs*. (2001) 91 Cal.App.4th 1344, 1354 ("*Berkeley Jets*") (purpose of EIR is to inform the public and officials of environmental consequences of their decisions *before* they are made).
[24] CEQA Guidelines § 15003(b).
[25] CEQA Guidelines § 15002(a)(2), (3); *see also Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at p. 564.
[26] CEQA Guidelines § 15002(a)(2).

"eliminated or substantially lessened all significant effects on the environment" to the greatest extent feasible and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns."[27]

While courts review an EIR using an "abuse of discretion" standard, "the reviewing court is not to 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference."[28] 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."[29] "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.'"[30]

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."[31] CEQA requires that a project be described with enough particularity that its impacts can be assessed.[32] Without a complete project description, the

---

[27] PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090(a), 15091(a), 15092(b)(2)(A), (B); *Covington v. Great Basin Unified Air Pollution Control Dist*. (2019) 43 Cal.App.5th 867, 883.

[28] *Berkeley Jets*, 91 Cal.App.4th at p. 1355 (emphasis added) (quoting *Laurel Heights I*, 47 Cal.3d at 391, 409, fn. 12).

[29] *Berkeley Jets*, 91 Cal.App.4th at p. 1355; *see also San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722 (error is prejudicial if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process); *Galante Vineyards*, 60 Cal.App.4th at p. 1117 (decision to approve a project is a nullity if based upon an EIR that does not provide decision-makers and the public with information about the project as required by CEQA); *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946 (prejudicial abuse of discretion results where agency fails to comply with information disclosure provisions of CEQA).

[30] *Sierra Club,* 6 Cal.5th at p. 516 (quoting *Laurel Heights I*, 47 Cal.3d at 405).

[31] *County of Inyo v. County of Los Angeles* (1977) 71 Cal.App.3d 185, 193.

[32] CCR § 15124; *see, Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376, 192–193.

environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review.[33] A lead agency may not hide behind its failure to obtain a complete and accurate project description.[34]

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."[35] "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.[36] 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."[37] "If 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."

A. The DEIR Fails to Identify the End Users of the Project

The Project description typically need not identify the end user for a project because CEQA is concerned with the project's environmental impacts, not who uses it.[38] However, courts have held that where the tenant, or type of business, is known and there is evidence that an impact unique to that tenant or type of business will result, an EIR must disclose that information.[39] Here, the type of end users of the Project may have significant environmental impacts depending on the truck trips that those end users will generate.

The DEIR assumes that the end users of the site will generate truck trips consistent with the average trip generation rate of 2.13 trucks per 1,000 square feet found in the Western Riverside Council of Governments ("WRCOG") Transportation Uniform Mitigation Fee ("TUMF") High-Cube Warehouse Trip Generation Study

---

[33] *Id.*

[34] *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311 ("*Sundstrom*").

[35] 14 C.C.R. 15378(a).

[36] CEQA Guidelines § 15378.

[37] *Laurel Heights*, 47 Cal.3d at p. 396 (emphasis added); *see also Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449-50.

[38] *Maintain Our Desert Env't v. Town of Apple Valley* (2004) 124 CA4th 430.

[39] *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 CA4th 1184, 1213.

("WRCOG Study").[40] However, the WRCOG Study shows that trip generation rates can vary widely depending on the end user of a project. For example, the WRCOG Study found that an Amazon facility generated 4.5 daily trips per 1,000 square feet, twice the rate assumed in the DEIR.[41] This approach is unsupported and is likely to underestimate impacts. Since the City lacks information about the type of end user that will ultimately occupy the Project warehouses after construction, the DEIR should have analyzed truck trips based on the *most intensive* reasonably foreseeable use of the site, not an average use, because the City has no evidence that Project truck trips will less intensive, or "average," when compared to other comparable facilities.

The DEIR relies on average trip generation rates for its analysis of the Project's operational air quality, health risk, GHG emissions, energy, noise, and vehicle miles traveled ("VMT") impacts. The DEIR may therefore substantially underestimate the severity of each of these impacts of a more trip-intensive use occurs at the Project site. The DEIR should be revised to calculate impacts based on the most intensive foreseeable uses at the Project site.

B. The DEIR Fails to Disclose Whether the Project Will Require Use of Backup Generators

An EIR must include an analysis of the environmental effects of a proposed future expansion or other future 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.[42] Commercial and industrial businesses commonly rely on backup generators ("BUG") to supply emergency power during project operations in order to limit downtime.

A recent study of BUG use in California ("BUG Study") found that backup generator use is sharply rising among commercial and industrial land uses, and are clustered in existing environmentally burdened communities.[43] For example, in the South Coast Air Quality Management District, BUG use significantly expanded between 2020 and 2021, growing from 12,104 in 2020 to 14,785 in 2021, a 22

[40] DEIR, 4.10-9.

[41] Marshall, p. 4.

[42] *Id.*

[43] M.Cubed, Diesel Back-Up Generator Population Grows Rapidly in the Bay Area and Southern California ("BUG Use Study") (2021) p. 7. Available at

percent increase.[44] The BUG Use Study found that forty-seven percent of generators are sited in communities classified as being in CalEnviroScreen's 80th to 100th percentile for pollution burden, with 33 percent of BUGs located in communities above the 90th percentile.[45] Backup generators commonly rely on fuels such as natural gas or diesel,[46] and thus can significantly impact air quality, GHG emissions, and public health through toxic diesel particulate ("DPM") emissions.[47] As the end users of the Project will likely not want to stop operations during power supply emergencies, it is reasonably foreseeable that the Project would use on-site BUGs. Therefore, the DEIR must disclose whether the Project will use BUGs, and, if so, analyze the effects of the Project's use of generators. The DEIR's failure to provide any information about the use of generators causes the DEIR to fail as an informational document.

C. The DEIR Fails to Disclose Whether the Project Will Require Use of Diesel Fire Pumps

The DEIR fails to analyze the diesel emissions from routine testing and operation of fire pumps at the Project site. An email from the City Fire Department to the City Planning Department sent on September 16, 2022 explains that "warehouse developments of this [Project's] size will typically have high demand fire sprinkler systems for high rack storage and fire sprinkler systems will be

---

[44] BUG Use Study, p. 8.

[45] BUG Use Study, p. 7.

[46] SCAQMD, Fact Sheet on Emergency Backup Generators, http://www.aqmd.gov/home/permits/emergency-generators ("Most of the existing emergency backup generators use diesel as fuel").

[47] California Air Resources Board, Emission Impact: Additional Generator Usage Associated with Power Outage (January 30, 2020), available at https://ww2.arb.ca.gov/resources/documents/emissions-impact-generator-usage-during-psps (showing that generators commonly rely on gasoline or diesel, and that use of generators during power outages results in excess emissions); California Air Resources Board, Use of Back-up Engines for Electricity Generation During Public Safety Power Shutoff Events (October 25, 2019), available at https://ww2.arb.ca.gov/resources/documents/use-back-engines-electricity-generation-during-public-safety-power-shutoff ("When electric utilities de-energize their electric lines, the demand for back-up power increases. This demand for reliable back-up power has health impacts of its own. Of particular concern are health effects related to emissions from diesel back-up engines. Diesel particulate matter (DPM) has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of DPM is small enough to be inhaled deep into the lungs and make them more susceptible to injury. Much of the back-up power produced during PSPS events is expected to come from engines regulated by CARB and California's 35 air pollution control and air quality management districts (air districts)").

supplemented with private fire pumps as needed."[48] However, the DEIR's CalEEMod output sheets located in Appendix C, which show the results of the DEIR's air quality impacts analysis, fail to include an output for the Project's fire pumps.[49] The DEIR's failure to provide any information about the Project's use of fire pumps causes the DEIR to fail as an informational document.

IV. THE DEIR FAILS TO ADEQUATELY ESTABLISH THE EXISTING BASELINE

The DEIR fails to accurately disclose the baseline environmental conditions related to the Project's health risk impacts. As a result, the DEIR lacks the necessary baseline information against which to measure the Project's environmental impacts with regard to impacts on sensitive receptors from construction.

The existing environmental setting is the starting point from which the lead agency must measure whether a proposed project may cause a significant environmental impact.[50] CEQA defines the environmental setting as the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, from both a local and regional perspective.[51] Describing the environmental setting accurately and completely for each environmental condition in the vicinity of the Project is critical to an accurate, meaningful evaluation of environmental impacts. The courts have clearly stated that,"[b]efore the impacts of a project can be assessed and mitigation measures considered, an [environmental review document] must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined."[52]

---

[48] DEIR, Appendix A: NOP Comments, pdf. p. 65. Email from Byron Beagles to Steven Martinez re Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for 2740 W. Nielsen Office/Warehouse Project (September 16, 2022)

[49] DEIR, Appendix C: CalEEMod Output Sheets, p. 34 of 34.

[50] *See, e.g., Communities for a Better Env't v. S. Coast Air Quality Mgmt. Dist.* (March 15, 2010) 48 Cal.4th 310, 316.

[51] CEQA Guidelines §15125(a) (emphasis added); *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1453 ("*Riverwatch*").

[52] *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.

A. The DEIR Fails to Adequately Establish the Existing Baseline with Respect to Valley Fever

The DEIR includes a single paragraph describing the cause of Valley Fever and its impacts on health.[53] However, the DEIR fails to explain the significance of Valley Fever with regard to the Project site, thereby failing to provide context on the environmental setting of the Project. This results in the failure to analyze the potential impacts of Valley Fever exposure to Project construction workers and nearby sensitive receptors.

Valley Fever is a disease that can spread when persons are exposed to *Coccidioides immitis* ("*Cocci*") fungus spores during ground disturbance.[54] Impacts to human health from Valley Fever can be severe, cause long lasting health problems, and can even result in death.[55] The fungus lives in the top 2 to 12 inches of soil, and when disturbed by activities such as digging, construction activities (e.g. site preparation and grading), dust storms, or during earthquakes, the fungal spores become airborne.[56] The Project will disturb up to 120 acres of soil during construction which may lead to the release of fungus spores resulting in impacts to Project workers and nearby sensitive receptors.[57]

Valley Fever is highly endemic in Fresno County.[58] According to the California Department of Public health, Fresno County had a Valley Fever case rate of 43.6 per 100,000 residents in 2020, and 39.8 per 100,000 residents in 2021.[59] The Valley Fever case rate in Fresno County was approximately double the statewide case rate averages in 2020 and 2021 of 18.2 and 20.1 respectively and the County has the fifth highest case rate among California's 58 counties.[60] For this reason, the Legislature mandates that employers at worksites in Fresno County provide effective awareness training on Valley Fever to all employees.[61]

---

[53] DEIR, pp. 4.2-5 – 4.2-6.
[54] Clark, p. 4.
[55] California Department of Public Health ("CDPH"), Valley Fever Basics (May 7, 2020), *available at* https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/ValleyFeverBasics.aspx.
[56] Clark Comments, p. 4.
[57] DEIR, Appendix C, CalEEMod Output Sheets, p. 9 of 34.
[58] Labor Code § 6709(b).
[59] California Department of Public Health, Epidemiologic Summary of Valley Fever (Coccidioidomycosis) in California, 2020-2021 (hereinafter "Valley Fever Report") (December 2022) p. 5. Available at https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CocciEpiSummary2020-2021.pdf
[60] Valley Fever Summary, p. 5.
[61] Labor Code § 6709(a)-(d).

Despite the known presence of Valley Fever in the Project's vicinity and the potential impacts posed by exposure to the fungus spores, the DEIR fails to provide any information regarding the prevalence of *Cocci* fungus spores in the Project's vicinity, fails to discuss applicable construction worker Valley Fever training requirements and fails to include any Valley Fever-specific mitigation in the MMRP. This lack of information precludes meaningful analysis and mitigation of the potential health impacts the Project will cause to onsite construction workers and other individuals in close proximity to the Project site from disturbing soils which may be contaminated with Valley Fever spores site during Project construction.

The City must prepare a revised DEIR which includes a proper discussion of the potential for the presence of *Cocci* fungus spores at the Project site in order to accurately analyze and mitigate the Project's potentially significant health risk impacts from Valley Fever.

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

An EIR must fully disclose all potentially significant impacts of a Project and implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.[62] An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.[63]

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.[64] 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.[65] In reviewing challenges to an

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

agency's approval of an EIR based on a lack of substantial evidence, the court will 'determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements.'[66]

Additionally, CEQA requires agencies to commit to all feasible mitigation measures to reduce significant environmental impacts.[67] In particular, the lead agency may not make required CEQA findings, including finding that a project impact is significant and unavoidable, unless the administrative record demonstrates that it has adopted all feasible mitigation to reduce significant environmental impacts to the greatest extent feasible.[68]

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.'"[69]

A. The DEIR Fails to Adequately Disclose, Analyze and Mitigate the Project's Significant Transportation Impacts

The DEIR concludes that the transportation impacts of the Project will be less than significant.[70] However, the transportation impacts analysis is flawed in with respect to the analysis of the Project's trip generation and the vehicle miles traveled ("VMT") impacts. In addition, the DEIR's incorrect and unsupported conclusions with respect to VMT and trip generation undermine the DEIR's analyses of the Project's air quality, health risk, energy, and GHG emissions impacts, which rely heavily on DEIR's trip generation and VMT calculations in their respective analyses.

1. The DEIR Incorrectly Calculates the Project's Operational Trip Generation and Trip Length

The DEIR's trip generation analysis is not supported by substantial evidence because it relies on unsupported assumptions which contradict assumptions made elsewhere in the DEIR.

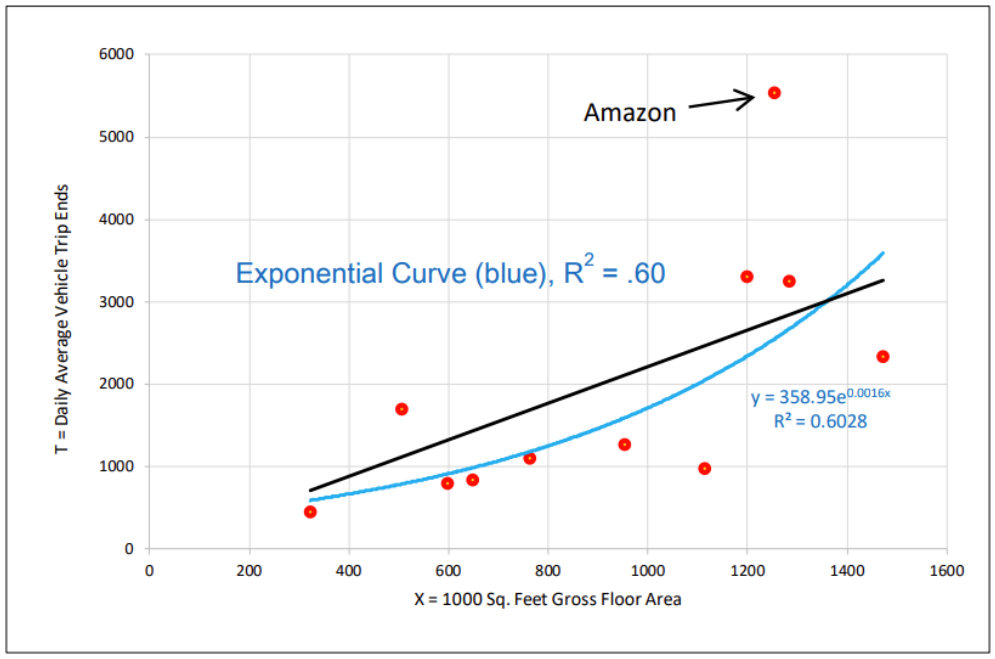
---

[66] *Id., Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.
[67] CEQA Guidelines § 15002(a)(2).
[68] PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090, 15091; *Covington v. Great Basin Unified Air Pollution Control Dist*. (2019) 43 Cal.App.5th 867, 883.
[69] *Berkeley Jets*, 91 Cal.App.4th at 1355.
[70] DEIR, p. 4.10-14.

As described above, the DEIR's transportation impacts analysis relies on the WRCOG Study to estimate the Project's trip generation.[71] The DEIR estimates that the Project would generate approximately 1,920 daily trips, with the AM and PM peak hours generating 110 and 148 trips respectively.[72]

The DEIR lacks substantial evidence to support the estimated trip generation because the DEIR unreasonably and without justification relies on the average derived from the WRCOG study. Mr. Marshall explains that data in the WRCOG Study are much more variable than the average rates suggest.[73] The WRCOG Study is based on counts at 16 warehouses, segmented between 11 fulfillment centers and 5 parcel hubs. As seen in Figure 1 below, the fulfillment center sites studied exhibited a wide range of trip generation rates, with an Amazon facility having an especially high rate.

Figure 1: WRCOG Study Facility Trip Generation Measurements[74]



Based on the results of the WRCOG Study, it is clear that information regarding the future use of the Project site is crucial in understanding the trip generation rates of the Project. The DEIR admits that the future tenants of the

[71] DEIR, p. 4.10-9.
[72] DEIR, p. 4.10-9.
[73] Marshall Comments, p. 2.
[74] Marshall Comments, p. 2.

Project site have not been identified.[75] Because the future tenants are unknown, the City lacks the justification to assume that the Project will generate the average rate determined in the WRCOG Study, and should instead analyze a more intensive trip rate to ensure that the severity of the Project's potential transportation impacts is accurately disclosed. Mr. Marshall explains that, if the Amazon trip generation rate were applied to the Project, the Project would result in a trip generation rate twice as high as estimated in the DEIR.[76] Additionally, if the parcel hub rate of approximately 14 trips per 1,000 square feet were applied, the Project would generate over six times the number of trips estimated in the DEIR.[77]

Because the City does not have information on the future tenants of the Project site, nor what the eventual use of the Project buildings will be, the City's reliance on the selected trip rates is unreasonable and unsupported. To reasonably analyze the full scope of the Project's impacts related to future tenant uses, analysis of the Projects trip generation should use the most conservative estimate and present the data in a revised and recirculated DEIR for public review.

2. The DEIR Fails to Disclose and Analyze the Project's Potentially Significant VMT Impacts

The City's CEQA Guidelines for Vehicle Miles Traveled Thresholds ("VMT Guidelines") establish the criteria for evaluating a project's VMT impacts.[78] Specifically, the VMT Guidelines state that VMT per employee is the appropriate metric against which to measure a project's impacts, and that a project would have a significant impact if it will generate 13 percent or greater employee VMT than the existing regional average for specific uses.[79] The DEIR's transportation impact analysis relies on the Fresno Council of Governments ("COG") Activity Based Model ("ABM") and the trip generation rates discussed above to calculate the Project's anticipated VMT.[80] The DEIR's transportation analysis states that the existing regional average is 25.6 VMT per employee and that the Project will generate 19.8

---

[75] DEIR, p. 1-3.
[76] Marshall Comments, p. 3.
[77] Marshall Comments, p. 3.
[78] City of Fresno, CEQA Guidelines for Vehicle Miles Traveled Thresholds (hereinafter "VMT Guidelines") (June 18, 2020) available at https://fresno.legistar.com/View.ashx?M=F&ID=8601948&GUID=9AEF1630-3BE3-45BF-9BB8-3D4BB9DB1677
[79] VMT Guidelines, p. 26.
[80] DEIR, p. 4.10-14.

VMT per employee.[81] Based on these figures, the DEIR concludes that the Project's VMT per employee rate is 22.66 percent lower than the existing regional average and therefore will not result in a significant impact.[82]

In his review, Mr. Marshall found that the Project's VMT analysis likely underestimates Project VMT. Mr. Marshall states that the DEIR estimates that 10.2% of daily trips are made by heavy trucks (5+ axles) and another 7.6% are made by medium trucks (2-4 axles) and that the average trip lengths are calculated to be 9.5 miles for work trips, and 7.3 miles for "other" trips.[83] However, these estimates are likely much lower than the actual average truck trip lengths that could be generated by the Project. Mr. Marshall notes that major intermodal facilities that would serve a warehouse distribution use at the Project site are located far away from the Project site, including:

- Rail intermodal facilities in Bakersfield 110 miles,
- Rail intermodal facilities in Stockton 120 miles,
- Port of Oakland 175 miles, and
- Port of Los Angeles 240 miles.

As explained above, without knowing what the eventual use of the Project site will be, it is impossible to fully evaluate trip lengths. However, until more is known about the facility operations the City must account for the possibility of much greater truck trip length generation by the Project. Additionally, Mr. Marshall found that the DEIR's VMT analysis fails to incorporate data regarding trips that originate from outside of the Fresno COG ABM region.[84] As discussed above, this failure to include out of region trips is particularly important to understanding truck trip lengths to intermodal facilities and ports.

A full VMT analysis should be completed for the Project, including explicit consideration of truck trip length and truck VMT, and included in a revised and recirculated DEIR for the Project.

---

[81] DEIR, p. 4.10-14.
[82] DEIR, p. 4.10-14.
[83] Marshall Comments, p. 5.
[84] Marshall Comments, p. 6.

3. The DEIR Fails to Require Mitigation Measures to Reduce the Project's Potentially Significant Impacts

As discussed above, the Project may result in significant transportation impacts. Pursuant to the City's VMT Guidelines, when a Project exceeds the threshold, the Project's environmental document must include a section that contains mitigation measures to reduce the VMT impacts.[85]

As the VMT Guidelines note, the California Air Pollution Control Officers Association ("CAPCOA") *Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity* ("Handbook")[86] includes various strategies to reduce VMT which should be considered for implementation where a project will have a significant VMT impact.[87] The Handbook includes data regarding GHG emissions and proven effective methods that a local agency can employ to reduce GHG impacts, including reduction in GHG impacts from VMT.[88]

The DEIR states that the Project may be subject to SJVAPCD Rule 9410 – Employer Based Trip Reduction, which requires employers with 100 or more eligible employees to establish employee trip reduction programs to reduce VMT, reducing emissions associated with work commutes.[89] However, compliance with this rule is not included in any mitigation measures for the Project. SJVAPCD Rules 9410 is similar to CAPCOA's measure "T-6 Implement Commute Trip Reduction Program (Mandatory Implementation and Monitoring)" which, according to CAPCOA, can result in up to 26 percent reduction in GHG emissions from VMT.[90] The Handbook states that the VMT reduction (and therefore, GHG emissions reduction) could be as great as 45 percent with the implementation of additional measures which include:

- T-7 Implement Commute Trip Reduction Marketing
- T-8 Provide Ridersharing Program
- T-9 Implement Subsidized or Discounted Transit Program

---

[85] VMT Guidelines, p. 27.
[86] California Air Pollution Control Officers Association ("CAPCOA") Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity (hereinafter "CAPCOA Handbook") (December 2021) available at https://www.airquality.org/ClimateChange/Documents/Final%20Handbook_AB434.pdf
[87] VMT Guidelines, p. 41.
[88] CAPCOA Handbook, p. 35.
[89] DEIR, p.
[90] CAPCOA Handbook, pp. 86-87.

- T-10 Provide End-of Trip Bike Facilities
- T-11 Provide Employer-Sponsored Vanpool
- T-12 Price Workplace Parking
- T-13 Implement Employee Parking Cash-Out[91]

Many of the individual measures included in the Handbook offer high potential reductions *even if only one measure is used*. For example, the maximum reduction produced by "T-11 Provide Employer-Sponsored Vanpool" is 20.4 percent.[92]

The DEIR fails to include any mitigation measures to reduce the Project's VMT impacts and fails to include analysis of the feasibility of the above methods, or any other methods, to reduce the Project's potentially significant impacts. The City must evaluate the feasibility and effectiveness of mitigation measures to reduce the Project's VMT impacts in a revised and recirculated DEIR for the Project.

B. The DEIR Fails to Disclose, Analyze, and Mitigate the Project's Potentially Significant Health Risk Impacts

1. The DEIR Fails to Accurately Analyze the Project's Operational Health Risk

In order to assess the impact of the Project's operational emissions, the DEIR prepared a health risk assessment ("HRA") using AERMOD, which is used to estimate exhaust concentrations based on site and source geometry, source emissions strength, distance from the source to the receptor, and meteorological data.[93] Here, AERMOD was used to calculate the ground level concentration of DPM emissions associated with the project.[94] However, Dr. Clark found that that the air dispersion model used to calculate the Project's operational emissions has a structural flaw that results in inaccurate estimates of the Project emissions within the community.[95]

Dr. Clark reviewed the City's AERMOD modeling and found that the City failed to account for the impact on emissions from building downwash, rendering the analysis incomplete. Dr. Clark explains that building downwash occurs as the wind flows over and around buildings and impacts the dispersion of pollution from

[91] CAPCOA Handbook, pp. 89-115.
[92] CAPCOA Handbook, p. 104.
[93] DEIR, p. 4.2-32.
[94] Clark Comments, p. 8.
[95] Clark Comments, p. 8.

nearby stacks.[96] A plume caught in the path of this flow is drawn into the wake, temporarily trapping it in a recirculating cavity which leads to higher ground-level concentration of chemicals emitted from sources.[97] Furthermore, the downwash effect increases as the relative difference between the release height and top of the building increases.[98] This effect is well-understood and is commonly used in emissions modeling. For example, analysis and mitigation of downwash is discussed in Section 123 of the Clean Air Act.[99]

The DEIR completely fails to account for this impact in its AERMOD modeling, nor does it provide any justification why. When a standard, accepted methodology is available to assess a significant impact, an EIR must evaluate the impact unless a reasoned basis for not doing so is provided.[100] In *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Comm'rs*, the court reviewed a DEIR's failure to analyze health risk from TAC exposure. The DEIR claimed that no methodology or standards of significance existed for assessing the health risk from TAC exposure.[101] The court determined that the lead agency abused its discretion, reasoning that the lead agency failed to consider, in good faith, comments from the public showing that it was feasible to analyze health risk from TAC exposure:[102]

> The Port has not cited us to any reasonably conscientious effort it took either to collect additional data or to make further inquiries of environmental or regulatory agencies having expertise in the matter.…At the very least, the documents submitted by the public raised substantial questions about the project's effects on the environment and the unknown health risks to the area's residents...the Port has not offered any justification why more definitive information could not have been provided.

Here, the City failed to analyze a critical dispersion factor - building downwash – which affects the rate and severity of exposure to toxic air contaminants, without explaining why. The City's failure to include this emission

---

[96] Clark Comments, p. 8.
[97] Clark Comments, p. 8.
[98] Clark Comments, p. 8.
[99] 42 U.S. Code § 7423 - Stack heights ("For purposes of this section, good engineering practice means, with respect to stack heights, the height necessary to insure that emissions from the stack do not result in excessive concentrations of any air pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies or wakes which may be created by the source itself, nearby structures or nearby terrain obstacles").
[100] *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Comm'rs* (2001) 91 CA4th 1344, 1370
[101] *Id.* at 1369.
[102] *Id.* at 1370.

factor in its health risk analysis represents a failure to accurately analyze and disclose the ground level concentration of DPM emissions generated by the Project. The DEIR fails as an informational document in this respect, and must be revised.

2. The DEIR Fails to Analyze and Mitigate Valley Fever Impacts from Project Construction

As explained above, the DEIR fails to disclose the potential presence of *Cocci* fungus spores and fails to discuss any Valley Fever employee training measures the Applicant intends to take to protect its construction workers from Valley Fever exposure. As a result, the DEIR fails to analyze the Project's threat of Valley Fever exposure to workers and sensitive receptors, and fails to include mitigation measures to reduce the health risk impacts of Valley Fever.

According to the DEIR's air quality analysis, Project construction will include 40 days of site preparation which will disturb 60 acres of soil, and 40 days of grading activities which will disturb 120 acres of soil at the Project site.[103] Dr. Clark explains that, when soil containing the spores are disturbed by construction activities, the spores become airborne, exposing construction workers and other nearby sensitive receptors to potential infection.[104] Sensitive receptors near the Project site, including workers and those who live nearby are at risk from exposure from disturbed dust during Project construction.[105]

Dr. Clark states that the most at-risk populations are construction and agricultural workers.[106] Additionally, he notes that 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 which measure 0.002–0.005 millimeters into nonendemic areas, potentially exposing large non-Project-related populations.[107] According to the DEIR, the closest sensitive receptors to the Project site include the single-family residences located approximately 110 feet south of the project site across West Nielsen Avenue.[108] These sensitive receptors are at risk of Valley Fever infection from Project construction resulting in a significant health risk impact, and are not subject to the training requirements of Labor Code 6702. Furthermore, the small fungus spore particles will not be controlled by the conventional construction dust

[103] DEIR, Appendix C, CalEEMod Output Sheets, pp. 8 and 9 of 34.
[104] Clark Comments, p. 4.
[105] Clark Comments, p. 4.
[106] Clark Comments, p. 6.
[107] Clark Comments, p. 6.
[108] DEIR, p. 4.2-31.

control mitigation measures proposed in the DEIR under Mitigation Measure ("MM") Air-1.[109] Thus, off-site sensitive receptors may have a significant risk of exposure to Valley Fever spores with no mitigation.

The DEIR must be revised and recirculated to include an analysis of the Project's significant Valley Fever impacts, and to require that any and all mitigation measures that will reduce Valley Fever risks are incorporated as binding mitigation in the Project's Mitigation Monitoring and Reporting Program ("MMRP").

3. Feasible Mitigation is Available to Reduce the Project's Significant Health Risk Impacts from Valley Fever

CEQA imposes the duty on the City to adopt all feasible mitigation measures to reduce significant health impacts from the Project. Yet here, the DEIR fails to incorporate any mitigation measures that would address Valley Fever risks to construction employees and sensitive receptors.

In his comments, Dr. Clark proposes a variety of feasible mitigation measures the DEIR should consider and adopt in a revised DEIR to reduce potential health impacts from Valley Fever.[110] The following mitigation measures identified in Dr. Clark's comments are based on actual experience during construction of projects in areas affected by the fungi that cause Valley Fever, these measures should be included in the DEIR's mitigation measures in addition to the measures required under MM Air-1:[111]

(1) Include specific requirements in the Project's Injury and Illness Prevention Program regarding safeguards to prevent Valley Fever.
(2) Control dust exposure through the following methods:

- 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

[109] Clark Comments, p. 6. *See also* DEIR, pp. 4.2-30 – 4.2-31.
[110] Clark Comments, pp. 6-8.
[111] *Id.* pp. 4-8.

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.

(3) Prevent transport of cocci outside endemic areas:

- Prevent spillage or loss of bulk material from holes or other openings in the cargo compartment's floor, sides, and/or tailgate;
- Provide workers with coveralls daily, lockers (or other systems for keeping work and street clothing and shoes separate), daily changing and showering facilities.
- Clothing should be changed after work every day, preferably at the work site.
- Train workers to recognize that cocci may be transported offsite on contaminated equipment, clothing, and shoes; alternatively, consider installing boot-washing.
- Post warnings onsite and consider limiting access to visitors, especially those without adequate training and respiratory protection.

(4) Improve medical surveillance for employees:

- Employees should have prompt access to medical care, including suspected work-related illnesses and injuries.
- Work with a medical professional to develop a protocol to medically evaluate employees who have symptoms of Valley Fever.
- Consider preferentially contracting with 1-2 clinics in the area and communicate with the health care providers in those clinics to ensure that providers are aware that Valley Fever has been reported in the area. This will increase the likelihood that ill workers will receive prompt, proper and consistent medical care.
- Respirator clearance should include medical evaluation for all new employees, annual re-evaluation for changes in medical status, and annual training, and fit-testing.

- Skin testing is not recommended for evaluation of Valley Fever.112
- 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.

Any mitigation measures must be included in the DEIR and be fully enforceable through permit conditions, agreements, or other legally binding instruments.[113] Failure to include enforceable mitigation measures is considered a failure to proceed in the manner required by CEQA.[114] In order to meet this requirement, mitigation measures must be incorporated directly into the EIR to be enforceable.[115]

The DEIR must be revised and recirculated to include mitigation measures such as the those proposed by Dr. Clark to reduce the impacts of exposure to Valley Fever causing fungus spores and mitigate impacts to sensitive receptors.

C. The DEIR Fails to Analyze the Project's Potentially Significant Air Quality Impacts

The DEIR's air quality modeling fails to account for the use of diesel fueled backup generators and fire pumps during Project operation, resulting in a failure to accurately analyze the Project's air quality impacts. Additionally, as discussed above, the Project's trip generation rates are unsupported and cannot be relied upon by the City to determine that the Project will not have significant transportation impacts. The unsupported trip generation and VMT calculations resulted in a failure to analyze the Project's GHG emissions and air quality impacts. The failure to analyze specific Project components, and the reliance on unsupported conclusions in the DEIR undermined the Project's air quality analysis and prevented the City from finding that the Project will not result in significant air quality impacts.

---

[112] 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.

[113] CEQA Guidelines §15126.4(a)(2).

[114] *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 672.

[115] *Lotus v. Dept of Transportation* (2014) 223 Cal. App. 4th 645, 651-52.

1. The DEIR Fails to Analyze Air Quality Impacts from the Operation of Backup Generators

The DEIR's air quality analysis fails to account for the operation of backup generators ("BUGs") during Project operation. Dr. Clark explains that diesel powered backup generators are commonly used in industrial warehouse Projects and would be operated during routine testing and in the event of a power failure.[116] The operation of BUGs generates diesel particulate matter ("DPM") which is identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including over forty known cancer-causing organic substances.[117]

Additionally, by omitting BUGs from the air quality analysis, the DEIR fails to analyze all uses that stem from the reasonably foreseeable increase of generator use during Public Safety Power Shutoff ("PSPS") events and extreme heat events.[118] The recent rise of Extreme Heat Events ("EHEs") in the State has increased the amount of PSPS events and thus increased the amount of time generators are used.[119]

EHEs "are defined as periods where in the temperatures throughout California exceed 100 degrees Fahrenheit."[120] In 2021, the Governor released one Executive Order regarding EHEs and one Proclamation for a State of Emergency with the intention to help avoid PSPS events.[121] CARB notes though that the number of Extreme Heat Events is likely to increase, and thereby PSPS events, with the continuing change in climate that the State is currently undergoing.[122]

According to the California Public Utilities Commission ("CPUC") de-energization report in October 2019, there were almost 806 PSPS events that impacted almost 973,000 customers (~7.5% of households in California) of which

---

[116] Clark Comments, p. 14.

[117] Clark Comments, p. 14.

[118] Clark Comments, p. 15.

[119] Clark Comments, p. 15.

[120] Governor of California. 2021. Proclamation of a state of emergency. June 17, 2021; Clark Comments p. 6.

[121] Cal. Governor Executive Order N-11-21, https://www.gov.ca.gov/wp-content/uploads/2021/07/EO-N-11-21-Extreme-Heat-Event-07.10.21.pdf; Cal. Governor Proclamation of a State of Emergency, June 16, 2021, https://www.gov.ca.gov/wp-content/uploads/2021/06/6.17.21-Extreme-Heat-proclamation.pdf.

[122] CARB 2017 Scoping Plan, p. 6, https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping_plan_2017.pdf

~854,000 of them were residential customers, and the rest were commercial, industrial, medical baseline, and other customers. [123] CARB's data also shows that on average each of these customers had about 43 hours of power outage in October 2019.[124] Dr. Clark notes that CARB concluded that PSPS events in October of 2019 alone generated 126 tons of NOx, 8.3 tons or particulate matter, and 8.3 tons of DPM.[125]

Dr. Clark concludes that every EHE and PSPS that occurs during Project operation would result in increased DPM from the reasonably foreseeable operation of BUGs at the Project.[126] While the City is not required to analyze the worst-case scenarios, there is substantial evidence demonstrating that PSPS events and EHE are reasonably foreseeable events which will require the use of BUGs at the Project site.

A detailed analysis of the emissions and noise from the hours of BUG testing and operation should be included in a revised EIR, including the extra time the BUG will need to run to account for EHEs and PSPS.

2. The DEIR Fails to Analyze Air Quality Impacts from the Project's Truck Trips

As described above, the Project's transportation impact analysis fails to accurately analyze the Project's operational truck trip generation rates and likely underestimates the Project's VMT. The Project's air quality analysis relies on the transportation impact analysis' trip generation numbers and VMT in order to calculate the Project's air emissions and analyze the Project's air quality and GHG emissions impacts.[127] The DEIR's failure to accurately calculate the Project's trip generation results in the failure to accurately calculate the emissions from truck traffic during Project operation. The Project's transportation impact analysis must be corrected to accurately analyze the Project's air quality impacts in a revised DEIR.

---

[123] https://www.cpuc.ca.gov/deenergization/ as cited in CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage.

[124] CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage.

[125] Clark Comments, p. 15.

[126] Clark Comments, p. 15.

[127] DEIR, Appendix C, CalEEMod Output Sheets, p. 1 of 34 (explaining that the vehicle trips and fleet mix used in the air quality analysis are "[b]ased on the trip generation prepared for the proposed project.")

D. The DEIR Fails to Adequately Analyze Potentially Significant Noise Impacts

The DEIR's noise analysis concludes that Project construction and operational noise is significant but will be reduced to less than significant with mitigation measures included in the DEIR.[128] Additionally, the DEIR found that the noise impacts from project-related traffic on offsite sensitive receptors would be less than significant and does not require mitigation.[129] However, the DEIR relies on a faulty methodology to analyze the Project's construction noise and improperly relies on a relative threshold of significance with regard to the Project's operational noise from traffic. The DEIR therefore fails to properly analyze and mitigate the Project's significant construction and operational noise impacts.

CEQA requires agencies to conduct noise analyses for projects that consider both the absolute noise levels expected, and the degree noise levels are expected to increase. Noise studies that rely on a single measure that excludes possible significant impacts from noise increases or noise extremes do not receive deference by reviewing courts.

In *King & Gardiner Farms, LLC v. County of Kern*, the Court of Appeal held that an agency cannot simply rely on compliance with local noise regulations to conclude there will be no significant noise impacts without considering the impacts of increases in noise.[130] The County approved an EIR for proposed zoning amendments to streamline oil and gas permitting.[131] The EIR included an analysis of noise impacts that determined significance based solely on whether the 65 decibel day-night average ("dBA DNL") threshold in the County General Plan would be exceeded.[132] The Court of Appeal reasoned that the County General Plan did not conclude that all increases in the magnitude of noise are insignificant until the 65 dBA DNL threshold is exceeded, so the General Plan "does not constitute substantial evidence that the magnitude of an increase in ambient noise is irrelevant."[133] Rather, an EIR's noise analysis should consider both the increase in noise level and the absolute noise level associated with a project in determining the

[128] DEIR, pp. 4.9-18 and 4.9-23.
[129] DEIR, p. 4.9-21.
[130] *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 894.
[131] *Id.* at 829.
[132] *Id.* at 830, 889.
[133] *Id.* at 894.

significance of the project's noise impacts.[134] The Court of Appeal concluded that an agency cannot exclusively rely on "a single cumulative DNL metric for determining the significance of the project's noise impacts" while deciding "the magnitude of the increase in ambient noise is irrelevant."[135]

In *Berkeley Jets*, the Court of Appeal invalidated the Port of Oakland's EIR for expansion of the Oakland Airport because of its reliance on an improper noise standard.[136] The EIR evaluated the significance of noise impacts based on whether the estimated level of sound would exceed 65 dB Community Noise Equivalent Level ("CNEL").[137] However, as the Court of Appeal explained, the CNEL metric—which averages noise over the course of a day—could not be the sole indicator of significant effects from noise because it does not provide a meaningful analysis of the "degree single overflights will create noise levels over and above the existing ambient noise level at a given location, and the community reaction to aircraft noise, including sleep disturbance."[138] Therefore, the Court concluded, a revised EIR with additional study of noise impacts from flights was necessary.[139]

1. The DEIR Fails to Consider the Totality of Noise Impacts

With regard to the Project's traffic noise the DEIR relies only on a relative threshold to determine that the Project will not result in a significant impact. The DEIR states: "[b]ecause noise levels would increase less than 3.0 dBA, this is consistent with General Plan Policy NS-1-j: Significance Threshold which states that an increase of 3 dBA CNEL or more is considered significant."[140] However, as Mr. Watry points out, this rationale ignores the absolute increase in the noise environment and the cumulative effects of noise on sensitive receptors.[141]

The DEIR cannot solely rely on a relative threshold of significance when looking at the sum of all noise sources against absolute criteria would reveal a significant noise impact. Indeed, as the court in *King & Gardiner Farms* held, an EIR should evaluate both the noise level increase *and* the absolute noise level associated with a Project when determining the significance of noise impacts.[142]

---

[134] *Id.*
[135] *Id.*
[136] *Berkeley Jets*, 91 Cal.App.4th at 1381–1382.
[137] *Id.* at 1373.
[138] *Id.* at 1381–1382.
[139] *Id.* at 1382.
[140] DEIR, p. 4.9-21.
[141] Watry Comments, p. 3.
[142] *King & Gardiner Farms*, 45 Cal.App.5th at 894.

Similarly, the DEIR should evaluate the total noise impacts from the Project on nearby residential receptors. CEQA Guidelines require EIRs to "analyze any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area affected."[143]

The City's General Plan Policy NS-1-a establishes "65 dBA Ldn or CNEL as the standard for the desirable maximum average exterior noise levels for defined usable exterior areas of residential and noise-sensitive uses" such as those along Nielsen Avenue, south of the Project site.[144] Based on the data provided in the DEIR, the roadway segment on Nielsen Avenue between Marks and Hughs will see an increase from the existing 64.0 dBA CNEL to 66.1 dBA CNEL with Project construction.[145] Based on the DEIR's own data, the Project will cause noise levels at nearby sensitive receptors to exceed the desirable maximum average exterior noise levels for defined usable exterior areas of residential and noise-sensitive uses of 65 dBA CNEL, resulting in a significant impact.

Mr. Watry notes that both Caltrans and the Federal Transit Administration ("FTA") recognize the need for absolute thresholds of significance in addition to relative thresholds when determining the significance of noise impacts for projects.[146] The FTA's noise impact assessment guidelines dictate that a 3 dBA Ldn increase in noise exposure at residences would only be allowed if the existing noise exposure is 55 dBA Ldn or less.[147] When the existing noise environment is above 55 dBA Ldn, the allowable increase is progressively smaller.[148] For example, under the FTA's criteria, where the existing noise exposure is 64.0 dBA CNEL, as it is at the Project site along Nielsen Avenue, the allowable increase is 1.5 dBA.[149] Under the absolute threshold established by the FTA, the Project's anticipated 2.1 dBA CNEL increase results in a significant impact.

---

[143] CEQA Guidelines § 15126.2(a).
[144] City of Fresno, General Plan, Chapter 9: Noise and Safety, p. 9-19 available at https://www.fresno.gov/darm/wp-content/uploads/sites/10/2022/12/upload_temp_Consolidated-GP-10-13-2022.pdf
[145] DEIR, p. 4.9-19, Table 4.9.L.
[146] Watry Comments, p. 3.
[147] Watry Comments, p. 4.
[148] Watry Comments, p. 4.
[149] Watry Comments, p. 4.

2. The DEIR Fails to Analyze and Mitigate Potentially Significant Construction Noise Impacts

The DEIR's construction noise analysis calculates the noise levels expected from Project construction based on the Federal Highway Administration's ("FHWA") Roadway Construction Noise Model ("RCNM").[150] The DEIR includes the equations used to calculate the composite average noise level for construction equipment which considers: the reference noise emission level, the amount of time each piece of equipment is typically used, distance, and the total amount of equipment anticipated to be used on site.[151] However, as Mr. Watry states, the DEIR erroneously relies on FTA guidance which dictates that when specific information regarding Project construction is not known, construction noise may be calculated by combining the two loudest pieces of equipment assuming they are running at full power, 100 percent of the time.[152] Here however, specific project construction information is available, and can be used to produce a detailed calculation of the Project's construction noise impacts.

Mr. Watry used the construction equipment inventory information contained in the DEIR's Appendix C: CalEEMod Output sheets to generate the list of equipment that will be used during each phase of Project construction. Using the reference noise emission levels and usage factors for the equipment from the DEIR in Table 4.9.K[153] Mr. Watry calculated the noise levels generated during each phase of construction combined with the existing ambient noise levels to determine the noise impacts on the closest residential receptors located south of the Project site.[154] Mr. Watry found that the Project's site prep phase will result in a noise level of 70.2 dBA Leq, while grading will result in noise levels of 71 dBA Leq, and building construction will result in noise levels of 69.0 dBA Leq.[155] When compared to the existing ambient noise level of 62.3 dBA Leq, Mr. Watry found that Project construction will result in noise exposure increases of 7.9, 8.7 and 6.7 dBA Leq during the Projects site prep, grading, and building phases respectively.[156] Therefore, the Project will exceed the DEIR's threshold of 5 dBA Leq during three phases of construction, resulting in a significant impact.

---

[150] DEIR, p. 4.9-16.
[151] Watry Comments, p. 5.
[152] Watry Comments, p. 5.
[153] DEIR, p. 4.9-16.
[154] Watry Comments, p. 5.
[155] Watry Comments, p. 6.
[156] Watry Comments, p. 6.

Finally, Mr. Watry notes that the requirements of MM NOI-1, which mandates the use of mufflers and the designation of a "disturbance coordinator" would not reduce the Project's significant construction noise impacts. First, Mr. Watry explains that the noise calculations use reference levels from equipment that are already equipped with mufflers, and it is unreasonable to believe that a second muffler would be added to construction equipment.[157] Second, he notes that while having a disturbance coordinator may be helpful to resolve noise issues as they arise, a noise coordinator will not reduce the noise emitted from Project construction equipment.[158]

The City must revise the construction noise analysis in a recirculated DEIR and implement feasible construction noise mitigation measures to reduce the Project's significant noise impacts.

E. The DEIR Fails to Disclose, Analyze, and Mitigate the Project's Potentially Significant Energy Resources Impacts

1. The DEIR Lacks Evidentiary Support for the Determination that the Project Would Not Result in a Significant Environmental Impact Due to Wasteful, Inefficient, or Unnecessary Consumption of Energy Resources During Project Construction and Operation

CEQA Guidelines Appendix F identifies the following means to achieve the goal of conserving energy: decreasing overall per capita energy consumption, decreasing reliance on fossil fuels, and increasing reliance on renewable energy sources.[159] In order to ensure that energy impacts are considered in project decisions, CEQA requires that EIRs include a discussion of the potential energy impacts of proposed projects and a detailed statement of mitigation measures designed to "minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy."[160]

---

[157] Watry Comments, p. 5.

[158] Watry Comments, p. 5.

[159] Appendix F at § I.

[160] PRC § 21100(b)(3); CEQA Guidelines, Appendix F, Energy Conservation ("Appendix F"), § I. Appendix F defines "Unavoidable Adverse Effects" as "wasteful, inefficient and unnecessary consumption of energy during the project construction, operation, maintenance and/or removal that cannot be feasibly mitigated."

Appendix F directs an EIR to consider the energy impacts of project operation, the effects on local and regional energy supplies, the effects on peak and base electricity demand, compliance with existing energy standards, and other effects on energy resources.[161] Further, Appendix F notes an EIR should consider whether the project involves "Unavoidable Adverse Effects" such as "wasteful, inefficient and unnecessary consumption of energy during the project construction, operation, maintenance and/or removal that cannot be feasibly mitigated."[162] Without the requisite energy analysis, the DEIR falls short of the mandates of Appendix F.

First, the DEIR fails to adequately analyze the significance of the Project's energy impacts related to the Project's use of fossil fuels consumed by Project related vehicle trips. One of the stated goals in Appendix F is to *decrease* reliance on fossil fuels.[163] The DEIR states that the Project will increase gasoline consumption in the City of Fresno by 0.11 percent and diesel consumption by 0.5 percent and concludes that the increased fuel consumption from the Project is minimal and therefore not significant.[164] However, the DEIR fails to establish a threshold for fossil fuel consumption that would be significant. Therefore, the conclusion that the increased fuel consumption resulting from Project operation would not be significant is unsupported.

The City must determine the appropriate threshold against which to measure the Project's fossil fuel consumption in order to determine whether the Project will result in a significant impact to energy resources. The analysis in the DEIR is deficient insofar as it does not assess or consider the significance of the increase in fossil fuel usage for the Project on energy resources consistent with Appendix F and does not consider mitigation to "minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy."[165]

Additionally, as detailed in the analysis of the Project's transportation impacts above, the DEIR fails to accurately account for the Project's trip generation, which Mr. Marshall found could exceed the DEIR's estimate by 100% or more. Increased trip generation would lead to increased fossil fuel use, and therefore, energy use, from Project related vehicle trips.

---

[161] Appendix F §§ I, II.C, II.D.

[162] Appendix F § II.F.

[163] *Id.*

[164] DEIR, p. 4.5-9.

[165] PRC § 21100(b)(3).

Second, another stated goal for conserving energy set forth in Appendix F is "increasing reliance on renewable energy sources."[166] Appendix F further states that "Mitigation Measures may include: … 4. Alternate fuels (particularly renewable ones) or energy systems."[167] In line with Appendix F, the Fresno 2020 Greenhouse Gas Reduction Plan Update includes a Solar Assistance Policy intended to "[i]dentify and publicize information about financial mechanisms for private solar installations and provide over-the-counter permitting for solar installations meeting specified standards, which may include maximum size (in kV) of units that can be so approved."[168]

Here, the DEIR's discussion of renewable energy generation is virtually non-existent and fails to provide a meaningful "investigation into renewable energy options that might be available or appropriate for the project."[169] In *California Clean Energy Comm. v. City of Woodland*, the court held that the city's EIRs failed to comply with the requirements of Appendix F by not discussing or analyzing renewable energy options.[170] The court determined that "the City's EIRs omit any discussion or analysis of renewable energy options for Gateway II. CEQA is violated when an EIR contains no discussion of a potentially significant environmental consideration."[171]

Here, the DEIR states that the Project would "comply with the "CALGreen Code (CCR Title 24, Part 11) and the California Energy Code (CCR Title 24, Part 6), which includes provisions related to insulation and design aimed at minimizing energy consumption."[172] However, the DEIR quickly dismisses any examination of further energy use reduction strategies by stating "[t]he California Energy Code includes solar photovoltaic system requirements for all newly constructed low-rise residential buildings; however, it currently does not include solar requirements for nonresidential buildings."[173] The DEIR must be revised to adequately analyze potential renewable energy generation for the Project and sufficiently analyze the related energy impacts.

---

[166] Appendix F § I.

[167] Appendix F § II.D.4.

[168] City of Fresno, Greenhouse Gas Reduction Plan Update (March 2020) p. 5-16. Available at https://www.fresno.gov/darm/wp-content/uploads/sites/10/2020/03/Appendix_G-GHG_Reduction_Plan_Update.pdf

[169] *California Clean Energy Comm. v. City of Woodland* (2014) 225 Cal. App. 4th 173, 213.

[170] *Id.*

[171] *Id.*

[172] DEIR, p. 4.5-11.

[173] DEIR, p. 4.5-11.

Finally, compliance with the Building Code and other energy efficiency requirements does not, by itself, constitute an adequate assessment of measures that can be taken to address the energy impacts during construction and operation of the Project. In *Ukiah Citizens for Safety First v. City of Ukiah*, the court held that the EIR inadequately described the energy impacts of a Costco project where the EIR relied on the project's compliance with energy conservation standards to conclude that energy consumption would be less than significant, and did not separately evaluate energy impacts from transportation, construction, or operation.[174] Here, the DEIR relies on the California Building Code and Title 24 energy efficiency standards, CALGreen code, green building practices, and a number of green building measures and design features, consistent with the Fresno General Plan and GHG Reduction strategy to support the less than significant determination.[175] However, as described above, additional analysis is necessary under the requirements of Appendix F to support a determination that the Project would not result in the wasteful, inefficient, and unnecessary consumption of energy during construction and operations.

Therefore, the DEIR fails to comply with Appendix F energy analysis requirements.

F. The DEIR Fails to Disclose the Project's Inconsistencies with Land Use and Planning Laws and Regulations

Pursuant to Appendix G of the CEQA Guidelines, a project will have a significant adverse environmental impact on land use and planning if it will cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.[176] Here, the DEIR fails to disclose inconsistency with the City's General Plan which result in a significant adverse environmental impact on land use and planning.

1. The DEIR Fails to Disclose the Project's Inconsistencies with the Noise Element of the City's General Plan

Under California law, a general plan serves as a "charter for future development"[177] and embodies "fundamental land use decisions that guide the

---

[174] *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal. App. 4th 256, 263-266.
[175] DEIR, p. 4.5-11.
[176] CEQA Guidelines, Appendix G §X(b).
[177] *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 54.

future growth and development of cities and counties."[178] The general plan has been aptly described as "the constitution for all future developments" within a city or county.[179] Further, the "propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements."[180] The consistency doctrine has been described as the "linchpin of California's land use and development laws; it is the principle which infuses the concept of planned growth with the force of law."[181]

The City of Fresno's General Plan Noise Element includes objectives and policies that work to protect the citizens of the City from the harmful and annoying effects of exposure to excessive noise. The Noise Element includes the following policy to guide development:

> **NS-1-a** Desirable and Generally Acceptable Exterior Noise Environment. Establish 65 dBA Ldn or CNEL as the standard for the desirable maximum average exterior noise levels for defined usable exterior areas of residential and noise sensitive uses for noise, but designate 60 dBA Ldn or CNEL (measured at the property line) for noise generated by stationary sources impinging upon residential and noise sensitive uses. Maintain 65 dBA Ldn or CNEL as the maximum average exterior noise levels for non-sensitive commercial land uses, and maintain 70 dBA Ldn or CNEL as maximum average exterior noise level for industrial land uses, both to be measured at the property line of parcels where noise is generated which may impinge on neighboring properties.[182]

As demonstrated above, the Project will result in significant noise impacts during Project operation that will violate Policy NS-1-a. Mr. Watry provides substantial evidence that the Project will exceed the desirable and generally acceptable noise thresholds established in Policy NS-1-a, and as a result, the DEIR fails to demonstrate consistency with the General Plan.

---

[178] *City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521, 532.
[179] *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors of El Dorado County* (1998) 62 Cal.App.4th 1334, 1335.
[180] *Citizens of Goleta Valley v. Board of Supervisors of County of Santa Barbara* (1990) 52 Cal.3d 553, 570.
[181] *Corona-Norco Unified School District v. City of Corona* (1993) 17 Cal.App.4th 985, 994.
[182] City of Fresno, General Plan, Chapter 9: Noise and Safety, p. 9-19 available at https://www.fresno.gov/darm/wp-content/uploads/sites/10/2022/12/upload_temp_Consolidated-GP-10-13-2022.pdf

VI. THE DEIR FAILS TO CONSIDER THE OFFICE OF THE ATTORNEY GENERAL'S BEST PRACTICES AND MITIGATION MEASURES FOR WAREHOUSE PROJECTS

In September 2022, the California Office of the Attorney General ("OAG") released an updated version of its guidance document titled "*Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act*" ("Best Practices").[183] The Best Practices were developed to aid local agencies to achieve CEQA compliance, and promote environmentally-just development when they are considering warehouse project proposals.[184] The OAG developed the Best Practices based on knowledge gained from monitoring, providing comments on, and litigating, warehouse development projects in California.[185] The Best Practices state that while CEQA analysis is necessarily project-specific, the document provides feasible best practices and mitigation measures which were adapted from actual warehouse projects in California.[186] The purpose of the Attorney General's guidance is to ensure that warehouse projects reduce their individual and cumulative impacts on the communities in which they are located to the greatest extent feasible.

The Best Practices provides examples of environmentally superior methods of developing warehouse projects and offers sample mitigation measures that a local agency should consider when faced with a project such as the Project proposed here. For example, the Best Practices encourage local governing bodies to proactively plan for logistics projects by establishing industrial districts near major highway and rail corridors but away from sensitive receptors in order to help attract investment while avoiding conflicts between warehouse facilities and residential communities.[187]

Here, the proposed Project defies many of the recommendations in the Best Practices. For example:

- Per CARB guidance, siting warehouse facilities so that their property lines are at least 1,000 feet from the property lines of the nearest sensitive receptors.

---

[183] California Office of the Attorney General, Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act (hereinafter "Best Practices") (September 2022) available at https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf
[184] Best Practices, p. 1.
[185] Best Practices, p. 1
[186] Best Practices, p. 1.
[187] Best Practices, p. 3.

- Placing facility entry and exit points from the public street away from sensitive receptors, e.g., placing these points on the north side of the facility if sensitive receptors are adjacent to the south side of the facility.[188]

As noted above, the closest receptor is 110 feet to the south of the project site, considerably closer than what is recommended by the Best Practices. Additionally, the entry and exit point to the Project site on Nielsen Avenue faces the sensitive receptors to the south, increasing the likelihood of causing significant impacts to those receptors.

The Best Practices also recommend that local jurisdictions take care when considering potential impacts from air quality and GHG emissions from project construction and operation. The DEIR does not comply with many of the recommendations and fails to include mitigation measures that conform with the Best Practices, which for construction include:

- Requiring off-road construction equipment to be zero-emission, where available, and all diesel-fueled off-road construction equipment, to be equipped with CARB Tier IV-compliant engines or better, and including this requirement in applicable bid documents, purchase orders, and contracts, with successful contractors demonstrating the ability to supply the compliant construction equipment for use prior to any ground-disturbing and construction activities.
- Prohibiting grading on days with an Air Quality Index forecast of greater than 100 for particulates or ozone for the project area.
- Limiting the amount of daily grading disturbance area.
- Providing electrical hook ups to the power grid, rather than use of diesel-fueled generators, for electric construction tools, such as saws, drills and compressors, and using electric tools whenever feasible.[189]

For operational air quality and GHG emissions impacts, the Best Practices recommend:

- Requiring all heavy-duty vehicles entering or operated on the project site to be zero-emission beginning in 2030.
- Requiring on-site equipment, such as forklifts and yard trucks, to be electric with the necessary electrical charging stations provided.

[188] Best Practices, p. 6.
[189] Best Practices, p. 8.

- Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations.
- Forbidding trucks from idling for more than two minutes and requiring operators to turn off engines when not in use.

The DEIR fails to demonstrate conformance with any of the above recommendations. The Best Practices also include several recommendations and suggested mitigation measures regarding warehouse noise and transportation impacts that the DEIR fails to take into account.

The City must consider all of the recommendations of the OAG and incorporate any feasible measures recommended in the Best Practices as mitigation measures in the DEIR to further reduce the Project's potentially significant air quality, GHG emissions, transportation, energy, and noise impacts.

VII. THE CITY CANNOT MAKE THE FINDINGS REQUIRED FOR PROJECT APPROVAL

The Project requires approval of a Development Permit and a Tentative Parcel Map by the City. Pursuant to the Fresno City Code ("Code") the City Planning Director ("Director") has the authority to approve, conditionally approve, or deny the Project's applications based on specific sets of findings applicable to each permit.[190] In order to approve the Development Permit for the Project, the Director must find that the Project is consistent with the following:

1. The applicable standards and requirements of [the City] Code.
2. The [City's] General Plan and any operative plan or policies the City has adopted.
3. Any applicable design guidelines adopted by the City Council.
4. Any approved Tentative Map, Conditional Use Permit, Variance, or other planning or zoning approval that the project required.
5. Fresno County Airport Land Use Compatibility Plan (as may be amended) adopted by the Fresno County Airport Land Use Commission pursuant to California Public Utilities Code Sections 21670—21679.5.[191]

[190] Fresno City Code ("FCC") § 15-5203 (Development Permit); *see also* FCC § 15-3308 (Tentative Parcel Map).
[191] FCC § 15-5206.

Additionally, pursuant to the Code, the Director may approve or conditionally approve a Tentative Parcel Map based on the following findings:

1. The proposed subdivision, together with the provisions for its design and improvement, is consistent with the General Plan, any applicable operative plan, adopted policies or guidelines, and the Municipal Code.
2. A subdivision for which a Tentative Map is required shall provide pursuant to the Map Act (Section 66473.1), to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision.
3. Water will be available and sufficient to serve a proposed subdivision with more than 500 dwelling units in accordance with the Map Act (Section 66473.7).
4. There exists sufficient infrastructure capacity for water, runoff, storm water, wastewater, and solid waste systems to serve the proposed subdivision. In cases where existing infrastructure is found to be deficient, plans shall show how sufficient capacity will be provided.
5. The proposed subdivision is compliant with the City of Fresno Floodplain Management Ordinance and the State of California Code of Regulations Title 23, as well as any other applicable State or federal law.[192]

The City cannot make all of the above findings for the Project, thereby precluding approval of the Project's land use permits. As demonstrated in the foregoing comments, the Project is inconsistent with the General Plan's Noise and Safety Element. Therefore, the Director cannot find that the Project is consistent with the General Plan, precluding finding No. 2 for the Development Permit and Finding No. 1 of the Tentative Parcel Map and cannot make the necessary findings to approve the Project's entitlements until the deficiencies in the DEIR are corrected.

VIII. THE PROJECT FAILS TO COMPLY WITH THE SUBDIVISION MAP ACT

As explained above, the Project requires the approval of a Tentative Parcel Map to subdivide the existing two parcels into four parcels.[193]

[192] FCC § 15-3309.
[193] DEIR, pg. 3-13.

The DEIR fails to analyze this component of the Project. The DEIR therefore lacks substantial evidence to support the Map Act's required factual findings to approve the Tentative Parcel Map, which require the City to find that a proposed subdivision is consistent with the general plan/specific plan, and does not have any detrimental environmental or public health effects.[194] In addition, as discussed above, there is substantial evidence demonstrating that the Project is likely to have, potentially significant impacts related to transportation, air quality, health risk, GHG emissions, noise, energy, and land use and planning. These impacts are not adequately mitigated in the DEIR. As a result of these unmitigated impacts, the Project fails to comply with mandatory Map Act requirements and the City cannot make the requisite findings to approve the Project's Tentative Parcel Map.

The purpose of the Map Act is to regulate and control design and improvement of subdivisions with proper consideration for their relation to adjoining areas, to require subdividers to install streets and other improvements, to prevent fraud and exploitation, and to protect both the public and purchasers of subdivided lands.[195] Before approving a tentative map, the Map Act requires the agency's legislative body to make findings that the proposed subdivision map, together with the provisions for its design and improvement, is consistent with the general plan and any specific plan.[196] The Map Act also requires the agency's legislative body to deny a proposed subdivision map in any of the following circumstances:[197]

a) The proposed map is ***not consistent with applicable general and specific plans*** as specified in Section 65451.
b) The design or improvement of the proposed subdivision is ***not consistent with applicable general and specific plans***.
c) The site is not physically suitable for this type of development.
d) The site is not physically suitable for the proposed density of development.
e) The ***design of the subdivision or the proposed improvements are likely to cause substantial environmental damage*** or substantially and avoidably injure fish or wildlife or their habitat.
f) The ***design of the subdivision or type of improvements is likely to cause serious public health problems***.

[194] Gov Code §§66473.5, 66474.
[195] *Pratt v. Adams* (1964) 229 Cal.App.2d 602.
[196] Gov Code § 66473.5.
[197] Gov. Code § 66474 (emphasis added).

g) The design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision.

Residents' experts provide substantial evidence demonstrating that the Project is likely to have significant, unmitigated impacts to public health from exposure to Valley Fever causing fungus spores; on the environment and public health from construction and operational noise; and on the climate from excess GHG emissions and energy consumption. These impacts demonstrate that the Project, as analyzed in the DEIR, fails to comply with the General Plan, is "likely to cause substantial environmental damage," and "is likely to cause serious public health problems."[198] These unmitigated impacts render the Project inconsistent with Map Act requirements. The Map Act therefore requires the City to deny the Project's Tentative Parcel Map pursuant to Government Code Sections 66473.5 and 66474(a), (b), (e), and (f).

IX. CONCLUSION

For the foregoing reasons, we urge the City to fulfill its responsibilities under CEQA by preparing a legally adequate EIR that sufficiently addresses the potentially significant impacts described in this comment letter and the attached expert comments. A revised EIR is necessary to ensure that the Project's significant environmental impacts are mitigated to less than significant levels.

Thank you for your attention to these comments.

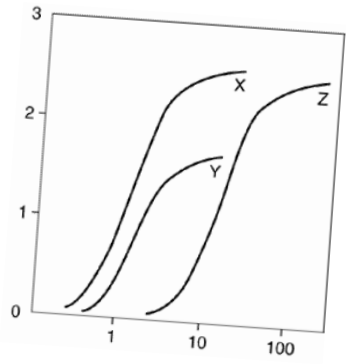
Sincerely,

Kevin Carmichael

KTC:ljl

[198] Gov. Code §§ 66474(a), (b), (e), and (f).

ATTACHMENT A



Clark & Associates
Environmental Consulting, Inc.

OFFICE
12405 Venice Blvd
Suite 331
Los Angeles, CA 90066

PHONE
310-907-6165

FAX
310-398-7626

EMAIL
jclark.assoc@gmail.com

May 19, 2023

Adams Broadwell Joseph & Cardozo
520 Capitol Mall, Suite 350
Sacramento, CA 95814

Attn: Mr. Kevin T. Carmichael

Subject: Comments On Draft Environmental Impact Report (DEIR) For Development Permit Application No. P21-02699 & Tentative Parcel Map No. P21-05930

Dear Mr. Carmichael:

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the February 2023 City of Fresno (the City) DEIR for the above referenced project.

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

Project Description:

According to the City's DEIR, Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21-05930 was filed by Scannell Properties. The applicant proposes to construct four office/warehouse buildings with a total area of 901,438 square feet, as well as associated circulation, parking, and infrastructure improvements.

The buildings' exterior would be up to 44 feet high with an interior height of up to 36 feet and designed with a total of 201 loading dock doors on the north and south sides of the buildings. The four buildings would be comprised of the following: Building 1 would be 468,812 square feet and would provide 122 loading dock doors; Building 2 would be 248,786 square feet and would provide 46 loading

dock doors; Building 3 would be 93,074 square feet and would provide 18 loading dock doors; and Building 4 would be 90,766 square feet and would provide 15 loading dock doors. The proposed project would also subdivide the project site into four separate parcels and would consist of each proposed building on a separate parcel. A total of 594 on-site parking spaces would be provided for vehicles and trucks. Of the 594 parking spaces, 385 spaces would be dedicated for standard vehicles, 11 spaces would be dedicated for accessible standard vehicles, and 10 spaces would be dedicated for accessible vans. The remaining 188 spaces would be dedicated for trailers and would be located along the eastern and western edges of the project site and would be located behind two 8-foot-tall gates, which would be installed to separate the general parking area from the truck storage and dock loading area.

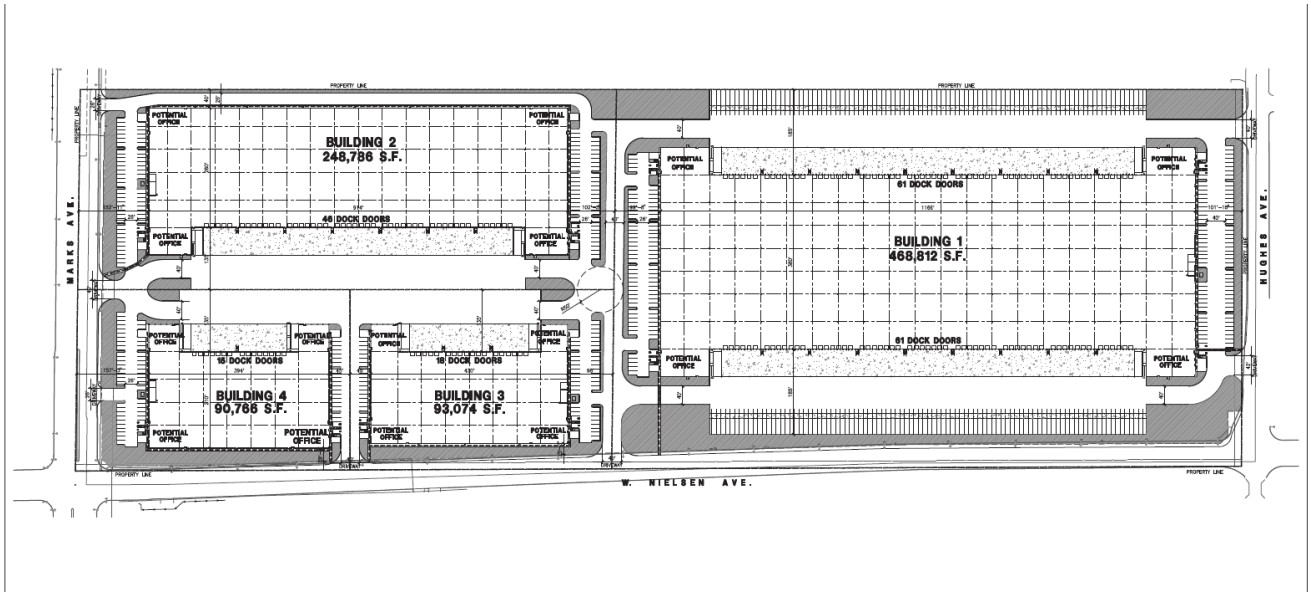


Figure 1: Project Site Plan

The 48.03-acre project site is currently vacant but formerly consisted of an industrial warehouse that has since been demolished. The project site is bounded to the north by partially developed land, to the east by North Hughes Avenue, to the south by West Nielsen Avenue, and to the west by North Marks Avenue. Regional access to the site is provided by State Route 180 (SR-180), which is located approximately 0.3 mile south of the project site, and State Route 99 (SR-99), which is located approximately 0.8 miles east of the project site.

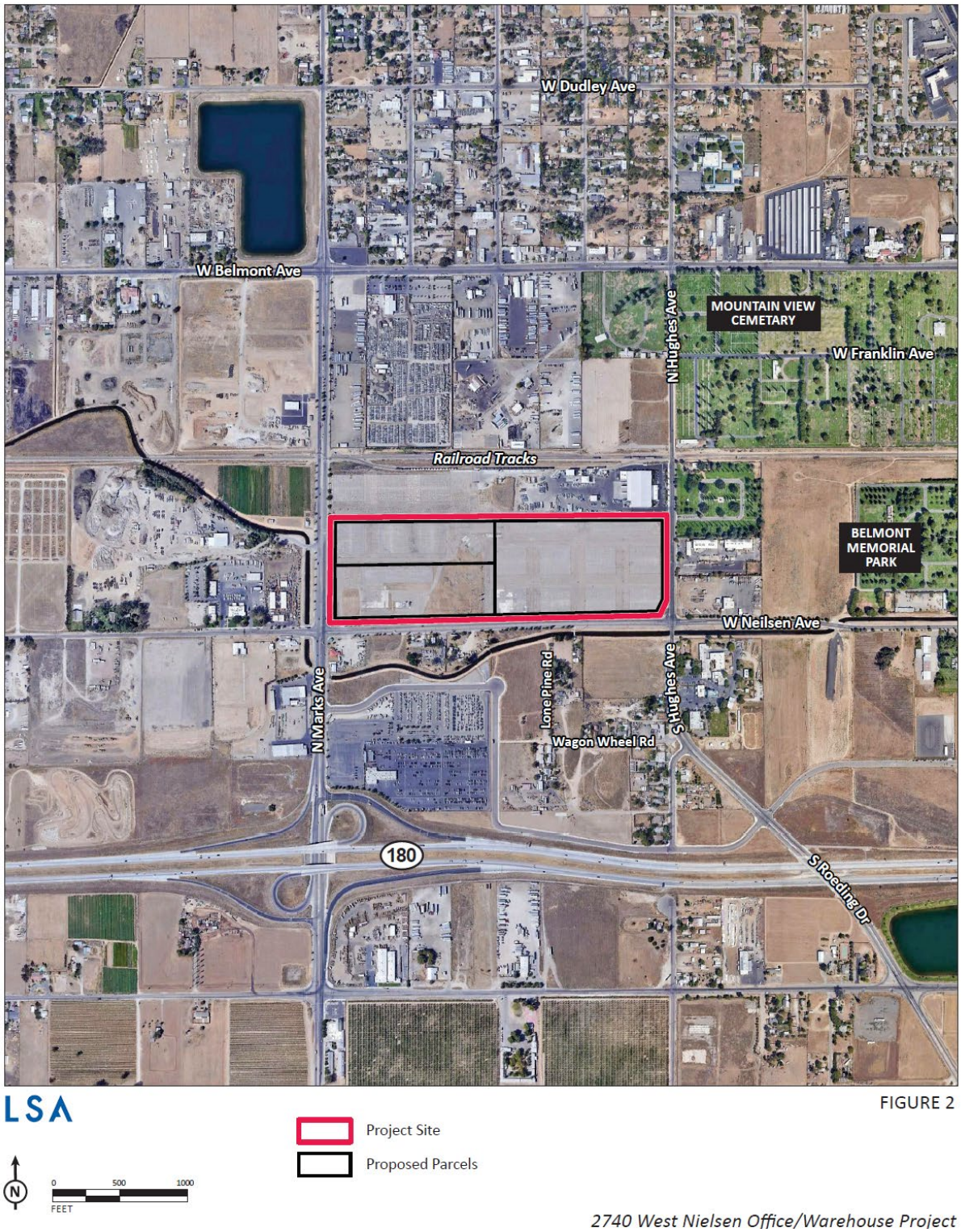


Figure 2: Site Vicinity Map

The City's analysis assumes that the proposed project would be operational 24 hours per day, 7 days per week. A total of 594 on-site parking spaces would be provided for vehicles and trucks. Of

the 594 parking spaces, 385 spaces would be dedicated for standard vehicles, 11 spaces would be dedicated for accessible standard vehicles, and 10 spaces would be dedicated for accessible vans. The remaining 188 spaces would be dedicated for trailers and would be located along the eastern and western edges of the project site and would be located behind two 8-foot-tall gates, which would be installed to separate the general parking area from the truck storage and dock loading area.

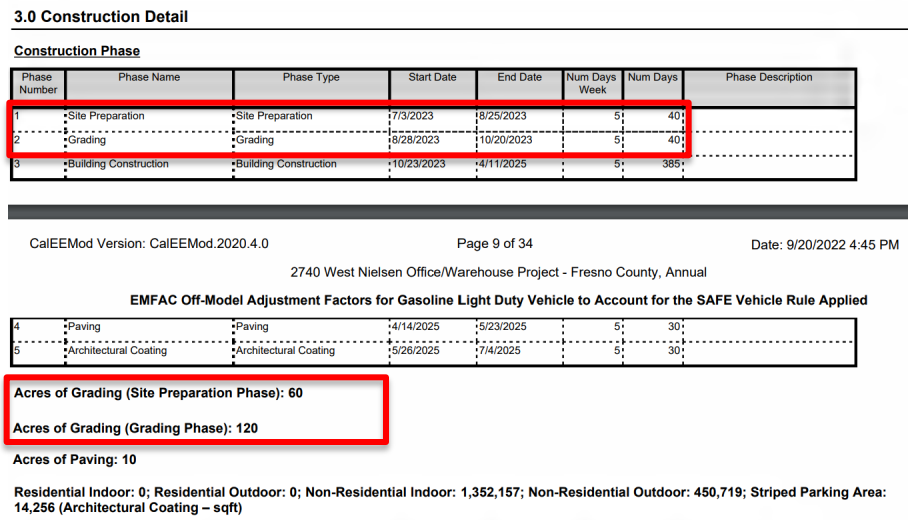
According to the conclusions of the DEIR, the proposed project is not expected to result in any significant unavoidable adverse impacts. The conclusion from the City that there will not be significant air quality impacts is not supported by the facts of the Project. There are substantial impacts that are not addressed in the City's analysis that must be addressed in a revised draft environmental impact report (RDEIR).

Specific Comments:

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

The DEIR fails to adequately address the known presence/issue of *Coccidiodes Immitis* (Valley Fever Cocci) in the Fresno, California area. Dust exposure is one of the primary risk factors for contracting Valley Fever (via *Coccidiodes imimitis (cocci)* exposure). When soil containing the *cocci* spores are disturbed by construction activities, the fungal spores become airborne, exposing construction workers and other nearby sensitive receptors.

The fungus lives in the top 2 to 12 inches of soil. When soil containing this fungus is disturbed by activities such as digging, vehicles, construction activities, dust storms, or during earthquakes, the fungal spores become airborne. According to the Air Quality Analysis of the DEIR (Appendix C), the project will involve 40 days of site preparation which will disturb 60 acres of soil and 40 days of grading activities which will disturb 120 acres of soil.



3.0 Construction Detail

Construction Phase

Phase Number	Phase Name	Phase Type	Start Date	End Date	Num Days Week	Num Days	Phase Description
1	Site Preparation	Site Preparation	7/3/2023	8/25/2023	5	40	
2	Grading	Grading	8/28/2023	10/20/2023	5	40	
3	Building Construction	Building Construction	10/23/2023	4/11/2025	5	385	

CalEEMod Version: CalEEMod.2020.4.0 Page 9 of 34 Date: 9/20/2022 4:45 PM

2740 West Nielsen Office/Warehouse Project - Fresno County, Annual

EMFAC Off-Model Adjustment Factors for Gasoline Light Duty Vehicle to Account for the SAFE Vehicle Rule Applied

4	Paving	Paving	4/14/2025	5/23/2025	5	30	
5	Architectural Coating	Architectural Coating	5/26/2025	7/4/2025	5	30	

Acres of Grading (Site Preparation Phase): 60

Acres of Grading (Grading Phase): 120

Acres of Paving: 10

Residential Indoor: 0; Residential Outdoor: 0; Non-Residential Indoor: 1,352,157; Non-Residential Outdoor: 450,719; Striped Parking Area: 14,256 (Architectural Coating – sqft)

Figure 3: Details From CalEEMOD Analysis of Project

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

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

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

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

[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).

Since 2014, the number of cases of Valley Fever in Fresno County has increased from 161 in 2014 to 828 in 2017, as reported by the California Department of Public Health (CDPH).[5] In 2022, 450 cases were recorded in Fresno County,[6] almost three times (2.8 times exactly) as many as the amounts reported in 2014. In the first quarter of 2023, Fresno County reported 83 cases.

2. The DEIR Fails To Include Adequate Mitigation Measures And Medical Monitoring Information To Prevent Exposure to *Coccidiodes Immitis* (Valley Fever Cocci) From Disturbed Soils On Site.

Standard fugitive dust mitigation measures are not adequate to protect construction workers and nearby sensitive receptors from this risk. In addition to the mitigation measures required under the DEIR's Mitigation Measure Air-1, the City should require the following measures from the Proponent to actively suppress the spread of VF by:

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

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

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

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

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

3. Prevent transport of cocci outside endemic areas:
    - Prevent spillage or loss of bulk material from holes or other openings in the cargo compartment's floor, sides, and/or tailgate;
    - Provide workers with coveralls daily, lockers (or other systems for keeping work and street clothing and shoes separate), daily changing and showering facilities.
    - Clothing should be changed after work every day, preferably at the work site.
    - Train workers to recognize that cocci may be transported offsite on contaminated equipment, clothing, and shoes; alternatively, consider installing boot-washing.
    - Post warnings onsite and consider limiting access to visitors, especially those without adequate training and respiratory protection.
4. Improve medical surveillance for employees:
    - Employees should have prompt access to medical care, including suspected work-related illnesses and injuries.
    - Work with a medical professional to develop a protocol to medically evaluate employees who have symptoms of Valley Fever.
    - Consider preferentially contracting with 1-2 clinics in the area and communicate with the health care providers in those clinics to ensure that providers are aware that Valley Fever has been reported in the area. This will increase the likelihood that ill workers will receive prompt, proper and consistent medical care.
    - Respirator clearance should include medical evaluation for all new employees, annual re-evaluation for changes in medical status, and annual training, and fit-testing.

- Skin testing is not recommended for evaluation of Valley Fever.[7]
- If an employee is diagnosed with Valley Fever, a physician must determine if the employee should be taken off work, when they may return to work, and what type of work activities they may perform.

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

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

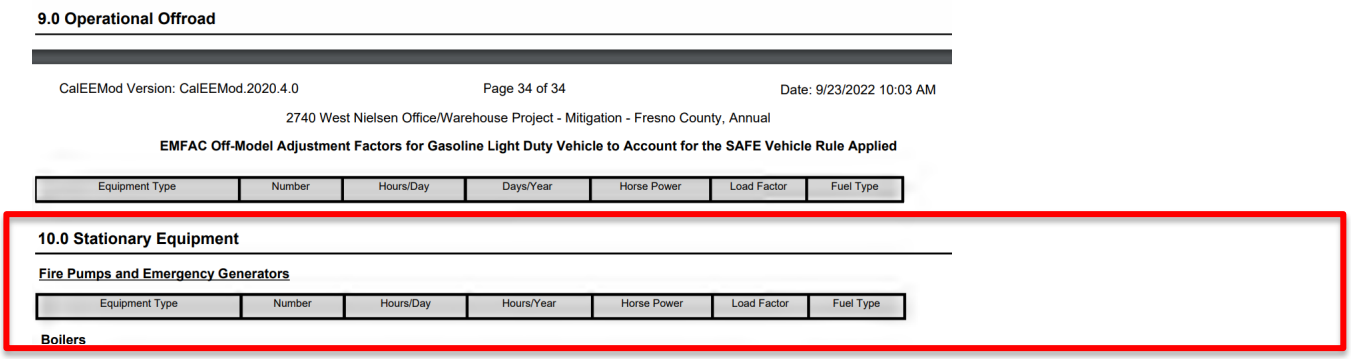
According to the Air Quality Analysis prepared by LSA[8] for the Project, operational emissions were calculated using the CalEEMOD (Version 2020.4.0) software. Included in the analysis are area source emissions and mobile source emissions. Not included in the analysis are emissions from the fire flow pump system that will need to be installed for the buildings to be compliant with the California Fire Code (CFC) and local fire authority requirements.

In the CalEEMOD outputs provided in the Appendix C to the DEIR prepared by LSA[9], no fire pump system is included in the analyses.

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

[8] LSA. 2023. Public Review Draft Environmental Impact Report Technical Appendices – Volume I – Appendices A-I. 2740 West Nielsen Avenue Office/Warehouse Project, Fresno, California.

[9] LSA. 2023. Public Review Draft Environmental Impact Report Technical Appendices – Volume I – Appendices A-I. 2740 West Nielsen Avenue Office/Warehouse Project, Fresno, California.



9.0 Operational Offroad

CalEEMod Version: CalEEMod.2020.4.0 Page 34 of 34 Date: 9/23/2022 10:03 AM

2740 West Nielsen Office/Warehouse Project - Mitigation - Fresno County, Annual

EMFAC Off-Model Adjustment Factors for Gasoline Light Duty Vehicle to Account for the SAFE Vehicle Rule Applied

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

10.0 Stationary Equipment

Fire Pumps and Emergency Generators

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

Boilers

Figure 4: CalEEMOD Output For Annual Operational Phase

The City's analysis is therefore incomplete and must be corrected in a revised DEIR for the Project.

4. The Project's Air Quality Analysis Is Incomplete And Fails To Adequately Consider The Use of Refrigeration Units and TRU's Onsite

According to the DEIR, the proposed project would result in the construction of four office/warehouse buildings that would be configured for heavy industrial uses by tenants that have not been identified. The project is being built as a "spec" building whereby tenant(s) would perform the final improvements, while the proposed project would fully build the office spaces. The description provided does not preclude the use of the buildings as refrigerated/cold storage warehouses. Given the vague description of the Project end use, the City should include an analysis of the Project assuming that the buildings could be used for cold storage and should also include the use of Transport Refrigeration Units (TRUs) on site in the air quality analysis.

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[10] 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

[10] 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.

of diesel exhaust and not the vapor phase components identified by CARB and U.S. EPA.

Given the lack of a clear project description of the use of the Project Site, it is therefore reasonable to conclude that refrigeration units and TRUs are a foreseeable project component. The refrigeration units and 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 refrigeration units and TRUs. The City must assess the impacts since they are allowing for the potential future use of these sources of pollution onsite in a revised DEIR.

5. The DEIR's Emission Estimates For Passenger Vehicles Is Different Than The Value Included In The Technical Appendices.

According to the DEIR, the proposed Project would result in a total of 1,920 vehicle trips per day. Of the 1,920 trips, there would be 1,578 car trips daily. The remaining 342 trips would be associated with trucks using the Project Site.

Table 4.10.A: Project Trip Generation

Trip Generation[1]	Average Daily Trips	Weekday AM Peak Hour[2]			Weekday PM Peak Hour[2]		
		In	Out	Total	In	Out	Total
Trip Generation							
Trip Generation (Cars)	1,578	75	18	93	105	24	129
Trip Generation (2–4 Axle Trucks)	146	5	2	7	8	2	10
Trip Generation (5+ Axle Trucks)	196	8	2	10	7	2	9
Trip Generation (Total Trucks)	342	13	4	17	15	4	19
Trip Generation (Total)	**1,920**	**88**	**22**	**110**	**120**	**28**	**148**
PCE Trip Generation							
Trip Generation (Cars)	1,578	75	18	93	105	24	129
PCE Trip Generation (2–4 Axle Trucks)[3]	292	10	4	14	16	4	20
PCE Trip Generation (5+ Axle Trucks)[3]	588	24	6	30	21	6	27
PCE Trip Generation (Total Trucks)	880	34	10	44	37	10	47
PCE Trip Generation (Total)	**2,458**	**109**	**28**	**137**	**142**	**34**	**176**

Source: LSA (2021).

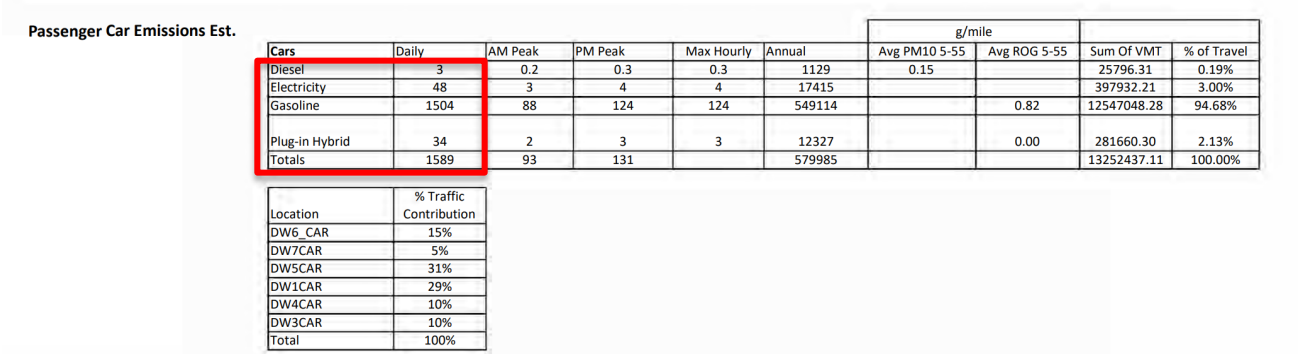
[1] Rates from the Western Riverside Council of Governments (WRCOG) *TUMF High-Cube Warehouse Trip Generation Study*, January 2019, prepared by WSP.

[2] The WRCOG study does not provide in/out splits for the peak hour trip generation. Therefore, in/out splits from Institute of Transportation Engineers (ITE) Trip Generation Manual (10th Edition) supplement Land Use 155 - "High-Cube Fulfilment Center Warehouse" have been used for obtaining in/out traffic.

[3] A Passenger Car Equivalent (PCE) factor 2.0 has been taken for 2-4 axle trucks based on Highway Capacity Manual (HCM) recommendations. Further, as a conservative approach, a PCE factor of 3.0 is taken, for 5+ axle trucks, consistent with latest practices in numerous California jurisdictions.

Figure 5: Daily Trip Estimation

A review of the underlying tables in Appendix C of the technical appendices shows that LSA assumed a different rate of trip generation. On page 227 of the pdf, the table for passenger vehicles shows a value of 1,589 passenger vehicles per day. [11]



Passenger Car Emissions Est.

						g/mile			
Cars	Daily	AM Peak	PM Peak	Max Hourly	Annual	Avg PM10 5-55	Avg ROG 5-55	Sum Of VMT	% of Travel
Diesel	3	0.2	0.3	0.3	1129	0.15		25796.31	0.19%
Electricity	48	3	4	4	17415			397932.21	3.00%
Gasoline	1504	88	124	124	549114		0.82	12547048.28	94.68%
Plug-in Hybrid	34	2	3	3	12327		0.00	281660.30	2.13%
Totals	1589	93	131		579985			13252437.11	100.00%

Location	% Traffic Contribution
DW6_CAR	15%
DW7CAR	5%
DW5CAR	31%
DW1CAR	29%
DW4CAR	10%
DW3CAR	10%
Total	100%

Figure 6: Passenger Vehicle Estimates From Technical Appendices

The City must correct the numbers within the technical appendices and the DEIR to ensure there is consistency in the whole report. The City should provide those corrected results in a revised DEIR.

5. **The Underlying Assumptions Regarding The Number of Vehicles Associated With Each Square Foot of Building Utilized In The Air Quality Analysis Under Estimates The Number of Daily Trips 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.[12] An averaged value of all the warehouse HCW types reported in the ITE manual would be 3.28 trips per 1,000 square

[11] LSA. 2023. Public Review Draft Environmental Impact Report Technical Appendices – Volume I – Appendices A-I. 2740 West Nielsen Avenue Office/Warehouse Project, Fresno, California.

[12] Institute of Transportation Engineers (2020).

feet. The 2019 study of warehouse trip generation performed by WSP for the Western Riverside Council of Governments (WR-COG) cited in the DEIR, calculates an average daily trip rate across the 11 fulfillment centers of 2.13 per 1000 square feet, well below the average value for the ITE studies. The value reported in the WR-COG study is significantly lower than the average of the ITE studies (35% lower than the ITE average).

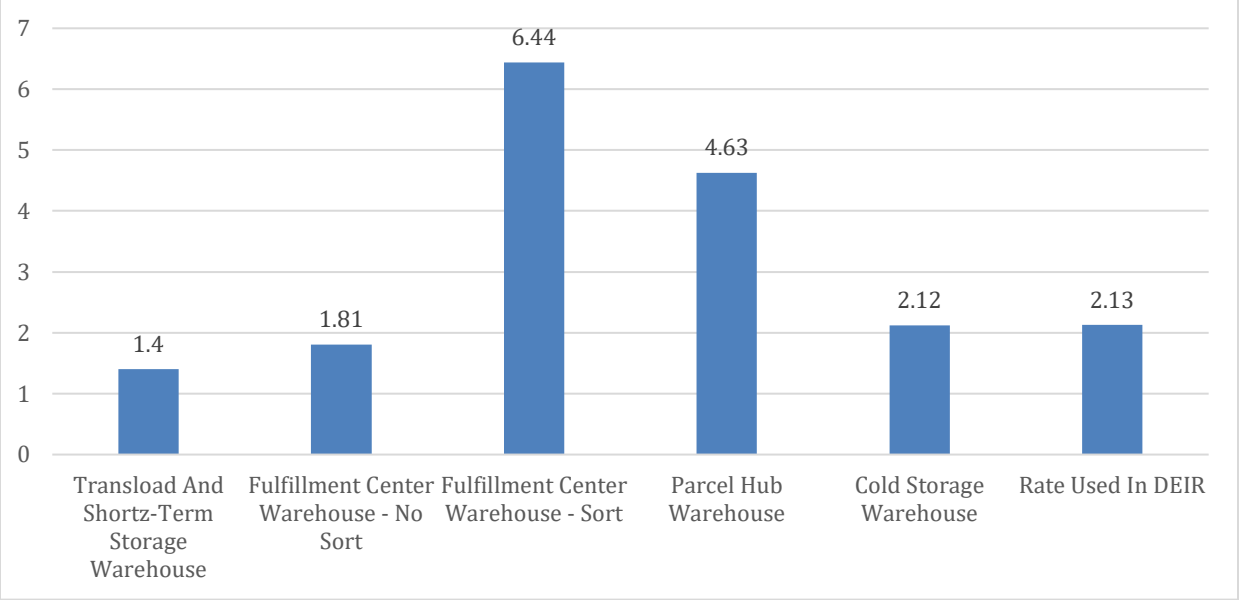


Figure 7: Trip rates per 1,000 square feet as reported in ITE manual

1.0 Project Characteristics

1.1 Land Usage

Land Uses	Size	Metric	Lot Acreage	Floor Surface Area	Population
Unrefrigerated Warehouse-No Rail	901.44	1000sqft	38.03	901,438.00	0
Parking Lot	594.00	Space	10.00	237,600.00	0

1.2 Other Project Characteristics

Figure 8: Project Description in CalEEMOD

Using the ITE manual rates above, the proposed 901,440 square foot HCW Project could result in 1,262.0 to 5,805.27 daily trips. The averaged value of the daily trips (assuming 3.28 trips per thousand feet on average) is 2,956.72 trips, nearly 1,000 more trips per day than those assumed in the DEIR.

The ITE 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 2.13 daily trip rate. Based on the evidence and reasonable calculations provided in the ITE studies, the City should, at a minimum, re-evaluate the Project's operational emissions based on the average value reported by ITE (3.28) in a revised DEIR.

6. The Air Dispersion Model Used For The Health Risk Assessment For Operational Phases Of The Project Has A Structural Flaw That Result In Inaccurate Estimates Of The Project Emissions Within The Community

The modeling approach has a significant flaw - the model does not account for the impact on emissions from building downwash. If the building downwash were included in the model, then the Proponent would be reasonably expected to call that out in the text summary of the model. The AERMOD model calculates the ground-level concentration of DPM emission associated with the project.

Building downwash occurs as the wind flows over and around buildings and impacts the dispersion of pollution from nearby stacks. A plume caught in the path of this flow is drawn into the wake, temporarily trapping it in a recirculating cavity. This downwash effect leads to higher ground-level concentration of chemicals emitted from sources. The downwash effect increases as the relative difference between the release height and top of the building increases.[13] For the closest receptors to the site, the residences to the east of the Project, this difference will create an additional air quality impact that is not accounted for in the City's analysis. Guidance from authoritative bodies in California regarding the preparation of health risk assessments of mobile sources of diesel emissions[14] requires the inclusion of building heights and dimensions for building downwash calculations.

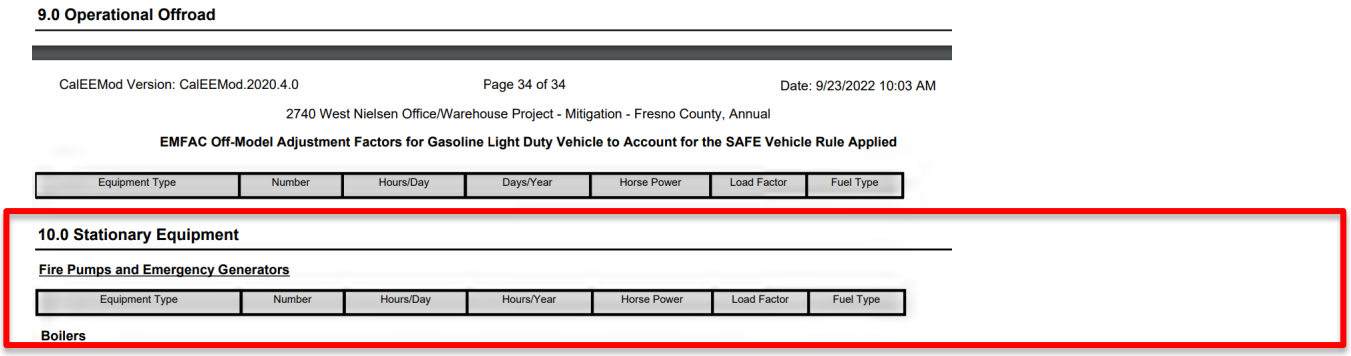
[13] The so-called good engineering practice height (GEP) of the source. The GEP is defined in Section 123 of the Clean Air Act as "the height necessary to ensure that emissions from a stack do not result in excessive concentrations of any air pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies or wakes which may be created by the source itself, nearby structures or nearby terrain obstacles."

[14] SCAQMD. 2003. Health Risk Assessment Guidance For Analyzing Cancer Risks From Mobile Source Diesel Emissions. August, 2003. Page 2.

Omission of the building downwash effect underestimates the exposure point concentrations for receptors near the building(s). The City should address the impact of this issue in a R-DEIR.

7. The Air Quality Analysis Failed To Account For The Back-up Generator (BUG) Usage Onsite.

The DEIR's Air Quality Analysis does not account for the need for back-up generators on-site. Backup generators would only be used in the event of a power failure and would not be part of the Project's normal daily operations. In the CalEEMOD outputs provided in the Appendix C to the DEIR prepared by LSA[15], no BUGs are included in the analyses.



9.0 Operational Offroad

CalEEMod Version: CalEEMod.2020.4.0 Page 34 of 34 Date: 9/23/2022 10:03 AM

2740 West Nielsen Office/Warehouse Project - Mitigation - Fresno County, Annual

EMFAC Off-Model Adjustment Factors for Gasoline Light Duty Vehicle to Account for the SAFE Vehicle Rule Applied

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

10.0 Stationary Equipment

Fire Pumps and Emergency Generators

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

Boilers

Figure 9: CalEEMOD Output For Annual Operational Phase

The City's analysis is therefore incomplete and must be corrected in a revised DEIR for the Project.

In addition to the testing emissions the air quality analysis must include the substantial increase in operational emissions from BUGs in the Air Basin due to unscheduled events, including but not limited to Public Safety Power Shutoff (PSPS) events and extreme heat events. Extreme heat events are defined as periods where in the temperatures throughout California exceed 100 degrees Fahrenheit. The total duration of the PSPS events lasted between 141 hours to 154 hours in 2019. In 2021, the Governor Of California declared that during extreme heat events the use of stationary generators shall be deemed an emergency use under California Code of Regulations (CCR), title 17, section 93115.4 sub. (a) (30) (A)(2). The number of Extreme Heat Events is likely to increase in California with the continuing change in climate the State is currently undergoing.

[15] LSA. 2023. Public Review Draft Environmental Impact Report Technical Appendices – Volume I – Appendices A-I. 2740 West Nielsen Avenue Office/Warehouse Project, Fresno, California.

Power produced during PSPS or extreme heat events is expected to come from engines regulated by CARB and California's 35 air pollution control and air quality management districts (air districts). Of particular concern are health effects related to emissions from diesel back-up engines. Diesel particulate matter (DPM) has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of DPM is small enough to be inhaled deep into the lungs and make them more susceptible to injury.

According to the California Public Utilities Commission (CPUC) de-energization report in October 2019, there were almost 806 PSPS events (emphasis added) that impacted almost 973,000 customers (~7.5% of households in California) of which ~854,000 of them were residential customers, and the rest were commercial/industrial/medical baseline/other customers. CARB's data also indicated that on average each of these customers had about 43 hours of power outage in October 2019. Using the actual emission factors for each diesel BUG engines in the air district's stationary BUGs database, CARB staff calculated that the 1,810 additional stationary generators running during a PSPS in October 2019 generated 126 tons of NOx, 8.3 tons or particulate matter, and 8.3 tons of DPM.

For every PSPS or Extreme Heat Event (EHE) triggered during the operational phase of the project, significant concentrations of DPM will be released. A R-DEIR should be prepared for the Project that includes an analysis of the operation of BUGs that will occur at the project site that are not accounted for in the current air quality and GHG analyses.

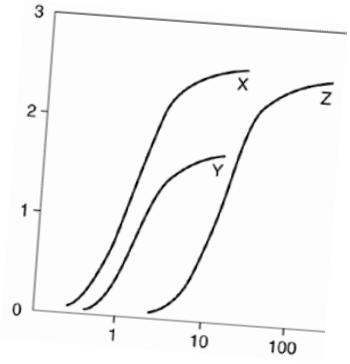
Conclusion

The facts identified and referenced in this comment letter lead me to reasonably conclude that the Project could result in significant unmitigated impacts if the DEIR is approved. The City must re-evaluate the significant impacts identified in this letter by requiring the preparation of a revised draft environmental impact report.

Sincerely,

EXHIBIT A

CV



Clark & Associates
Environmental Consulting, Inc

Office
12405 Venice Blvd.
Suite 331
Los Angeles, CA 90066

Phone
310-907-6165

Fax
310-398-7626

Email
jclark.assoc@gmail.com

James J. J. Clark, Ph.D.

Principal Toxicologist

Toxicology/Exposure Assessment Modeling

Risk Assessment/Analysis/Dispersion Modeling

Education:

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

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

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

Professional Experience:

Dr. Clark is a well-recognized toxicologist, air modeler, and health scientist. He has 30 years of experience in researching the effects of environmental contaminants on human health including environmental fate and transport modeling (SCREEN3, AEROMOD, ISCST3, Johnson-Ettinger Vapor Intrusion Modeling, RESRAD, GENII); exposure assessment modeling (partitioning of contaminants in the environment as well as PBPK modeling); conducting and managing human health risk assessments for regulatory compliance and risk-based clean-up levels; and toxicological and medical literature research.

SELECTED AIR MODELING RESEARCH/PROJECTS

Client(s) - Confidential

Dr. Clark performed a historical dose reconstruction for community members from an active 700 acre petroleum refinery in Los Angeles. The analysis included a multi-year dispersion model was performed in general accordance with the methods outlined by the U.S. EPA and the SCAQMD for assessing the health impacts in Torrance, California. The results of the analysis are being used as the basis for injunctive relief for the communities surrounding the refinery.

Client(s) – Multiple

Indoor Air Evaluations, California: Performed multiple indoor air screening evaluations and risk characterizations consistent with California Environmental Protection Agency's (Cal/EPA) Department of Toxic Substances Control (DTSC) and Regional Water Quality Control Board (RWQCB) methodologies. Characterizations included the use of DTSC's

modified Johnson & Ettinger Model and USEPA models, as well as the attenuation factor model currently advocated by Cal/EPA's Office of Environmental Health and Hazard Assessment (OEHHA).

Client – Adams, Broadwell, Joseph Cardozo, P.C.

Dr. Clark has performed numerous air quality analyses and risk assessments of criteria pollutants, air toxins, and particulate matter emissions for sites undergoing evaluation via the California Environmental Quality Act (CEQA) process. The analyses include the evaluation of Initial Study (IS) and Environmental Impacts Reports (EIR) for each project to determine the significance of air quality, green house gas (GHG), and hazardous waste components of the projects. The analyses were compiled as comment letters for submittal to oversight agencies.

Client – Confidential

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

Client – Confidential

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

PUBLIC HEALTH/TOXICOLOGY

Client: Confidential

Dr. Clark performed a historical dose reconstruction for community members from radiologically impacted material (RIM) releases from an adjacent landfill. The analysis was performed in general accordance with the methods outlined by the Agency for Toxic Substances Control (ATSDR) for assessing radiation doses from historical source areas in North St. Louis County, Missouri.

Client: City of Santa Clarita, Santa Clarita, California

Dr. Clark managed the oversight of the characterization, remediation and development activities of a former 1,000 acre munitions manufacturing facility for the City of Santa

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

Client: Confidential

Dr. Clark performed a historical dose reconstruction for community members exposed to radioactive waste released into the environment from legacy storage facilities. The releases resulted in impacts to soils, sediments, surface waters, and groundwater in the vicinity of the sites. The analysis was performed in general accordance with the methods outlined by the Agency for Toxic Substances Control (ATSDR) for assessing radiation doses from historical source areas in the community.

Client: Confidential

Dr. Clark performed a dose assessment of an individual occupationally exposed to metals and silica from fly ash who later developed cancer. A review of the individual's medical and occupational history was performed to prepare opinions regarding his exposure and later development of cancer.

Client: Brayton Purcell, Novato, California

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

Client: Confidential

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to hexavalent chromium who later developed cancer. A review of the individual's medical and occupational history was performed to prepare opinions regarding her exposure and later development of cancer.

Client: Covanta Energy, Westwood, California

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

Client: Kaiser Venture Incorporated, Fontana, California

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

RISK ASSESSMENTS/REMEDIAL INVESTIGATIONS

Kaiser Ventures Incorporated, Fontana, California

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

ANR Freight - Los Angeles, California

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

Kaiser Ventures Incorporated, Fontana, California

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

Unocal Corporation - Los Angeles, California

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

Client: Confidential, Los Angeles, California

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

Client: Confidential, San Francisco, California

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

Client: Confidential, San Francisco, California

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

IT Corporation, North Carolina

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

Professional Associations

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

Publications and Presentations:

Books and Book Chapters

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

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

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

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

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

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

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

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

Journal and Proceeding Articles

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

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

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

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

Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** 2006. "Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." The 26th International Symposium on Halogenated Persistent Organic Pollutants –

DIOXIN2006, August 21 – 25, 2006. Radisson SAS Scandinavia Hotel in Oslo Norway.

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

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

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

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

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

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

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

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

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

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

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

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

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

McManus, M.S.; Gong, H., Jr.; Clements, P.; **Clark, J.J.J.** (1991). Respiratory Response of Patients With Interstitial Lung Disease To Inhaled Ozone. American Review of Respiratory Disease. 143(4):A91.

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

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

ATTACHMENT B

WILSON IHRIG
ACOUSTICS, NOISE & VIBRATION

CALIFORNIA
WASHINGTON
NEW YORK

WI #22-005

15 May 2023

Kevin T. Carmichael, Esq.
Adams Broadwell Joseph & Cardozo
520 Capitol Mall, Suite 350
Sacramento, California 95814

Subject: **2740 West Nielsen Avenue Office/Warehouse Project**
Fresno, California
Review and Comment on Draft EIR Noise Analysis

Dear Mr. Carmichael,

In June of last year, we reviewed and commented upon the noise impact analysis in the following document:

> *Mitigated Negative Declaration for Development Permit Application No. P21-02699 & Tentative Parcel Map No P21-05930 ("MND")*
> *Project Address: 2740 West Nielsen Avenue, Fresno, California*
> *City of Fresno, Planning and Development Department*
> *May 13, 2022*

Subsequently, the City of Fresno had the consulting firm LSA prepare a Draft Environmental Impact Report for this project:

> *Public Review Draft Environmental Impact Report ("DEIR")*
> *2740 West Nielsen Avenue Office/Warehouse Project*
> *LSA Project No. SNN2102*
> *February 2023*

This letter reports our comments on the noise analysis in the DEIR.

Wilson Ihrig, Acoustical Consultants, has practiced exclusively in the field of acoustics since 1966. During our 57 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 Environmental Noise Model (ENM), Traffic Noise Model (TNM), Roadway Construction Noise Model (RCNM), 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 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. While sheltering-in-place during the COVID-19 pandemic, many people are finding working and learning more difficult because their home environment is not as quiet as their office or school was.

[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)

Comments on Operational Noise Analysis – Traffic Noise

Our comments on the MND may succinctly be summarized as:

1. The MND failed to account for truck noise from the proposed facility, and
2. The MND selectively chose which City policy to use to establish thresholds of significance, thereby potentially failing to identify some significant impact.

The DEIR corrects the first failing, and, in doing so, substantiates the second failing.

Policy NS-1-a of Fresno General Plan, Chapter 9, Noise and Safety, states:

> **Desirable and Generally Acceptable Exterior Noise Environment.** Establish 65 dBA Ldn or CNEL as the standard for the desirable maximum average exterior noise levels for defined usable exterior areas of residential and noise-sensitive uses . . .[2]

It is very important that cities like Fresno adopt absolute standards for the noise environments of their citizens because if only relative standards are used – like the sole standard adopted by the DEIR – then there would literally be no limit to environmental noise exposure over time. Such a notion clearly runs contrary to the spirit of CEQA.

The DEIR adopts as the significance criteria for traffic noise a relative increase of 3.0 dBA CNEL, and it concludes that the residences along Nielsen Avenue will not be significantly impacted by project noise because the increase will be, at most, 2.1 dBA CNEL. [DEIR at p. 4.9-21] The obvious fallacy of this analysis is that if the project wanted to expand its operations, say, 5 years after it becomes operational, the next DEIR could adopt this same threshold, the noise could increase by another 2.1 dBA CNEL (the baseline being "reset" to the then-prevalent conditions), and that would also be deemed a less-than-significant impact despite the 4.2 dBA CNEL increase relative to today's current conditions. The continual use of a relative threshold enables piecemealing project development with significant long-term impacts that evade identification.

The obvious way to close this loophole in the application of CEQA is to adopt an absolute threshold in conjunction with, not in lieu of, a relative threshold. Caltrans recognizes the need for both types of standards when determining impacts:

> Traffic noise impacts as defined in 23CFR772.5 occur when the predicted noise level in the design year approaches or exceeds the Noise Abatement Criteria (NAC) specified in 23CFR772, or a predicted noise level substantially exceeds the existing noise level (a "substantial" noise increase).[3]

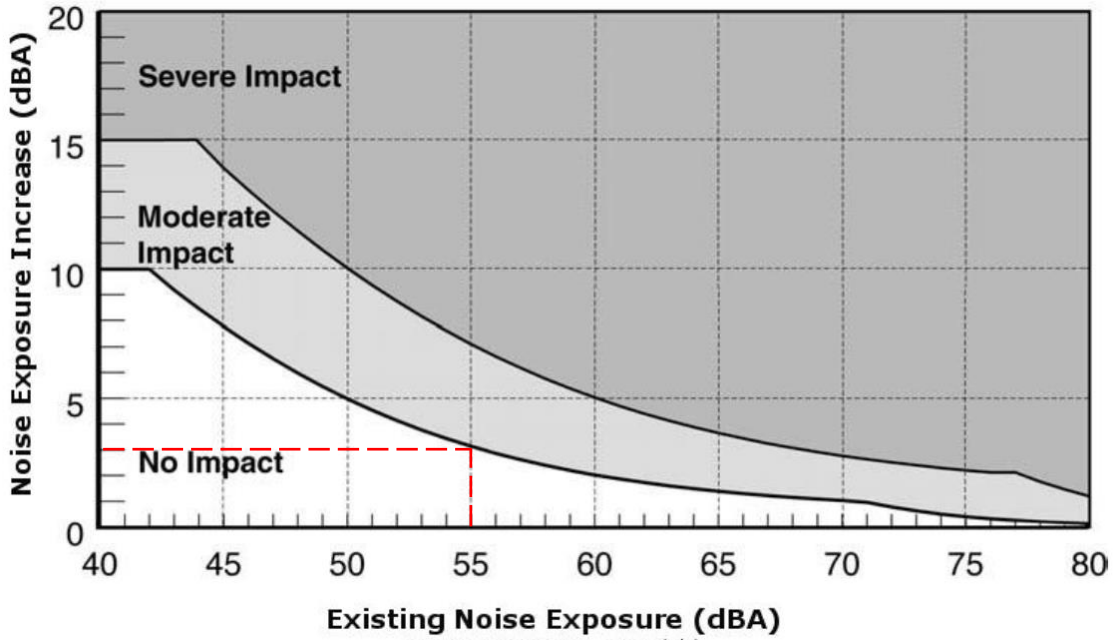
---

[2] The *day-night average sound level* (Ldn) is a 24-hour weighted average that incorporates a 10 dBA penalty during the night hours (10 p.m. to 7 a.m.) to account for the heighted sensitivity of people to noise during the night. The *community noise exposure level* (CNEL) additionally includes a 5 dBA penalty during the evening hours (7 p.m. to 10 p.m.). For transportation-dominated environments, the Ldn and CNEL are very similar, with the CNEL typically being higher than the Ldn by 0.1 to 0.5 dBA. In environmental acoustics, they are used interchangeably.

[3] California Department of Transportation, Division of Environmental Analysis. *Traffic Noise Analysis Protocol for New Highway Construction, Reconstruction Projects, and Retrofit Barrier Projects*. April 2020. p. 3-1.

The 23CFR772 Noise Abatement Criteria are absolute, not relative, values.

The Federal Transit Administration (FTA) also recognizes that as the absolute level of noise exposure increases, the relative increase that results in a significant impact reduces. In its formulation of noise impact assessment, a 3 dBA Ldn increase in noise exposure at residences would only be allowed if the existing noise exposure is 55 dBA Ldn or less. Above that, the allowable increase is progressively smaller. Where the existing noise exposure is 64.0 dBA CNEL, as it is along Nielsen Avenue according to the DEIR, the allowable increase is 1.5 dBA. [DEIR Table 4.9.L at p. 4.9-19]



Reference: FTA Transit Noise and Vibration Impact Assessment Manual, FTA Report No. 0123, September 2018. p. 30.

Table I presents information extracted from DEIR Table 4.9.L [p. 4.9-19]. Note that at every point in time that the noise is assessed, the noise exposure goes from a level that is lower than that established by General Plan Policy NS-1-a (65 dBA CNEL) to one that is higher. This constitutes a significant noise impact.

Table I Traffic Noise Levels Without and With Proposed Project

Roadway Segment	CNEL (dBA) 50 ft from Centerline of Nearest Lane					
	Existing		Opening Year		Year 2035	
	Without	With	Without	With	Without	With
Nielsen Ave between Marks and Hughes	64.0	**66.1**	64.4	**66.4**	64.4	**66.4**

Comments on Construction Noise Analysis

The project construction noise analysis is presented on pages 4.915 to 4.9-18 of the DEIR. On page 4.9-16, reference noise levels for various types of construction equipment are presented. These reference levels are taken from the FHWA Roadway Construction Noise Model and are acceptable. On page 4.9-17, the DEIR presents equations to calculate the composite average (equivalent) noise level for construction equipment, a level that takes into account the reference noise emission level, the amount of time each piece of equipment it typically used, distance, and – potentially – the total amount of equipment anticipated to be used on site. I write "potentially" because the DEIR only calculated "the composite noise level of the two loudest pieces of equipment for each construction phase". [DEIR at p. 4.9-17. This is a common error that stems from FTA guidance that preliminarily, before much is known about construction, the order of magnitude of construction noise may be had by combining the levels of the two loudest pieces of equipment assuming they are running at full power 100% of the time. In this matter, the types and number of equipment is known in detail from the air quality assessment, so it is appropriate to conduct a detailed calculation of construction noise. As an aside, the calculation that the DEIR makes does not assume usage 100% of the time for the two loudest pieces of equipment, so does not even comport with the FTA preliminary guidance.

Table II shows a proper analysis of the noise levels for the first three phases of construction. The types and number of equipment are taken from the DEIR Appendix C, CalEEMod Output Sheets, 9/20/2002, p. 9. The reference emission levels (E.F.) and usage factors (U.F.) are from Table 4.9.K of the DEIR. Finally, the "average acoustical distance" used for the calculations is, as the DEIR explains, "calculated by multiplying the shortest distance between the receiver and the noise source area by the farthest distance, and then taking the square root of the product." For the homes on Nielsen Avenue, the shortest distance to the project site is 115 feet and the distance to the far corner is about 1,930 feet. The square root of 115 x 1,930 is 471 feet.

Following the DEIR analysis, the construction noise levels are logarithmically ("decibel") summed with the ambient (62.3 dBA Leq DEIR Table 4.9.D at p. 4.9-7) to arrive at the combined noise levels shown in Table III. Also shown in Table III is the increase in noise exposure which is larger than the 5 dBA increase the DEIR is using as the threshold of significance. [DEIR at p. 4.9-18] As such, construction noise should be flagged as a significant noise impact.

Finally on this point, I note that Mitigation Measure NOI-1 requires the use of mufflers and the designation of a "disturbance coordinator". While both of these are good ideas that should be implemented, neither would reduce the noise levels shown in Table II. The noise calculations use reference levels from equipment fit with mufflers (so, if the mufflers fall off or rusts away, the noise would be louder than shown, but it's not reasonable to assert that a second muffler could or would be added). Having a disturbance coordinator is always helpful for getting noise issues resolved, but does not, in and of itself, reduce noise levels.

Table II Construction Noise Calculations

Site Preparation						
	RCNM Ref Values @ 50 ft			Noise Level @ Receptor		
Equipment	**E.L.**	**U.F.**	**No.**	**Distance**	**Lmax**	**Leq**
Dozer	85	40%	3	471 ft	66	66.3
Tractor/Loader/Backhoe	84	40%	4	471 ft	65	66.6
Total					**66**	**69.4**
Grading						
	RCNM Ref Values @ 50 ft			Noise Level @ Receptor		
Equipment	**E.L.**	**U.F.**	**No.**	**Distance**	**Lmax**	**Leq**
Excavator	85	40%	2	471 ft	66	64.5
Grader	85	40%	1	471 ft	66	61.5
Dozer	85	40%	1	471 ft	66	61.5
Scraper	85	40%	2	471 ft	66	64.5
Tractor/Loader/Backhoe	84	40%	2	471 ft	65	63.5
Total					**66**	**70.3**
Bldg Construction						
	RCNM Ref Values @ 50 ft			Noise Level @ Receptor		
Equipment	**E.L.**	**U.F.**	**No.**	**Distance**	**Lmax**	**Leq**
Crane	85	16%	1	471 ft	66	57.6
Forklift	85	20%	3	471 ft	66	63.3
Tractor/Loader/Backhoe	84	40%	3	471 ft	65	65.3
Welder	73	40%	1	471 ft	54	49.5
Total					**66**	**67.9**

Table III Construction Noise Assessment

	Noise Levels, dBA Leq		
	Site Prep	**Grading**	**Building**
Ambient	62.3	62.3	62.3
Construction Noise	69.4	70.3	67.9
Combined	70.2	71.0	69.0
Increase	**7.9**	**8.7**	**6.7**

Conclusion

1. The DEIR noise analysis substantiates that project traffic noise will cause noise exposure at residences on Nielsen Avenue to go from levels that are below the City's "desired maximum" – established as 65 dBA CNEL per General Plan Policy NS-1-a – to levels that are above the desired maximum. Because the project would the proximate cause for exceedance of this absolute threshold established by City policy, the project's operational noise impact is significant.

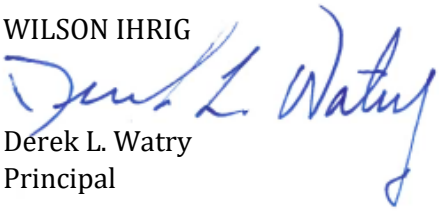
2. The DEIR construction noise analysis erred in that it used a preliminary analysis when the requisite information for a detailed analysis is available, and (to no end) it misapplied the preliminary analysis procedure. A proper detailed analysis conducted using information from the DEIR indicates that construction noise levels will exceed the adopted threshold of significance. As such, the construction noise impact is also significant.

♦ ♦ ♦ ♦ ♦

Please contact me if you have any question about this review of the noise analysis in the *2740 West Nielsen* DEIR noise analysis.

Very truly yours,

WILSON IHRIG



Derek L. Watry
Principal

ATTACHMENT C

794 Sawnee Bean Road
Thetford Center VT 05075

Norman Marshall, President
(802) 356-2969

nmarshall@smartmobility.com

May 19, 2023

Kevin T. Carmichael
Adams Broadwell Joseph & Cardozo
520 Capitol Mall, Suite 350
Sacramento, CA 95814

Subject: 2740 West Nielsen Avenue Warehouse Project

Dear Mr. Carmichael,

I have reviewed trip generation, vehicle miles traveled (VMT) impacts and greenhouse gas (GHG) impacts of the City of Fresno Draft Environmental Impact Report for a proposed warehouse project at 2740 West Nielsen Avenue ("DEIR"). I make the following findings:

1) Given that the tenants have not been identified, trip generation is highly uncertain. The trip generation study the DEIR relies on includes warehouse sites with trip rates of two to six times the rate used in the DEIR.
2) Undercounting trips translates directly into undercounting VMT and GHG.
3) The DEIR applied the Fresno COG ABM to estimate that the project would generate 19.8 VMT per employee per day. The model covers only Fresno County and excludes the portion of travel outside the county. This issue is particularly important for truck trips because major intermodal facilities are 110 – 240 miles from the proposed project. The VMT analysis should be supplemented to include an analysis of external travel with a particular focus on truck travel.
4) The DEIR answers affirmatively that the project includes transportation demand strategies. The DEIR needs to document these trip reduction programs and explain how they will be enforced on the currently unknown tenants.

Project Trip Generation Could Be Much Higher Than Assumed

The project is comprised of four office/warehouse buildings with a total gross floor area of 901,438 square feet. (DEIR, p. 1-3) The tenants have not been identified, and the nature of the operations are unknown at this time.

The DEIR estimates trip generation based on a 2019 study of warehouse trip generation done by WSP for the Western Riverside COG.[1] This study was based on counts at 16 warehouses, segmented between 11 fulfillment centers and 5 parcel hubs. Using average rates, the DEIR calculated trip generation is shown in Table 8, partially reproduced here. The DEIR estimates that the project will generate 1,920 trips per day including 342 truck trips per day.

Table 4.10.A: Project Trip Generation

Trip Generation[1]	Average Daily Trips	Weekday AM Peak Hour[2]			Weekday PM Peak Hour[2]		
		In	Out	Total	In	Out	Total
Trip Generation							
Trip Generation (Cars)	1,578	75	18	93	105	24	129
Trip Generation (2–4 Axle Trucks)	146	5	2	7	8	2	10
Trip Generation (5+ Axle Trucks)	196	8	2	10	7	2	9
Trip Generation (Total Trucks)	342	13	4	17	15	4	19
Trip Generation (Total)	**1,920**	**88**	**22**	**110**	**120**	**28**	**148**
PCE Trip Generation							
Trip Generation (Cars)	1,578	75	18	93	105	24	129
PCE Trip Generation (2–4 Axle Trucks)[3]	292	10	4	14	16	4	20
PCE Trip Generation (5+ Axle Trucks)[3]	588	24	6	30	21	6	27
PCE Trip Generation (Total Trucks)	880	34	10	44	37	10	47
PCE Trip Generation (Total)	**2,458**	**109**	**28**	**137**	**142**	**34**	**176**

Source: LSA (2021).

[1] Rates from the Western Riverside Council of Governments (WRCOG) *TUMF High-Cube Warehouse Trip Generation Study*, January 2019, prepared by WSP.

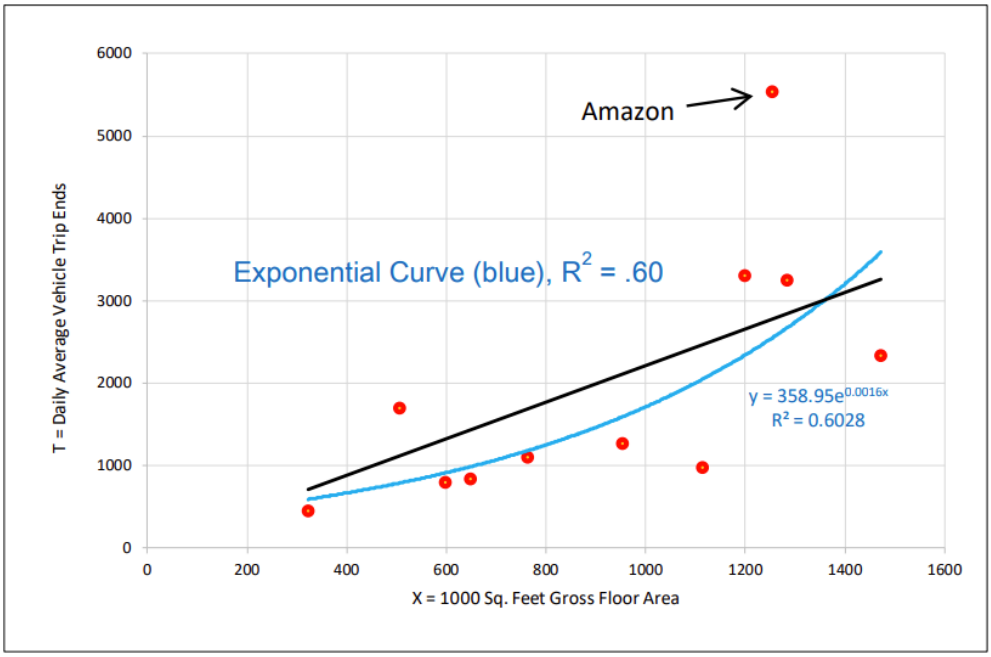
[2] The WRCOG study does not provide in/out splits for the peak hour trip generation. Therefore, in/out splits from Institute of Transportation Engineers (ITE) Trip Generation Manual (10th Edition) supplement Land Use 155 - "High-Cube Fulfilment Center Warehouse" have been used for obtaining in/out traffic.

[3] A Passenger Car Equivalent (PCE) factor 2.0 has been taken for 2-4 axle trucks based on Highway Capacity Manual (HCM) recommendations. Further, as a conservative approach, a PCE factor of 3.0 is taken, for 5+ axle trucks, consistent with latest practices in numerous California jurisdictions.

The data in the Western Riverside COG study are much more variable than the average rates suggest. As shown in the figure below, the different fulfillment center sites have wildly different trip generation rates, with an Amazon facility having an especially high rate.

[1] https://wrcog.us/AgendaCenter/ViewFile/Agenda/_02212019-292

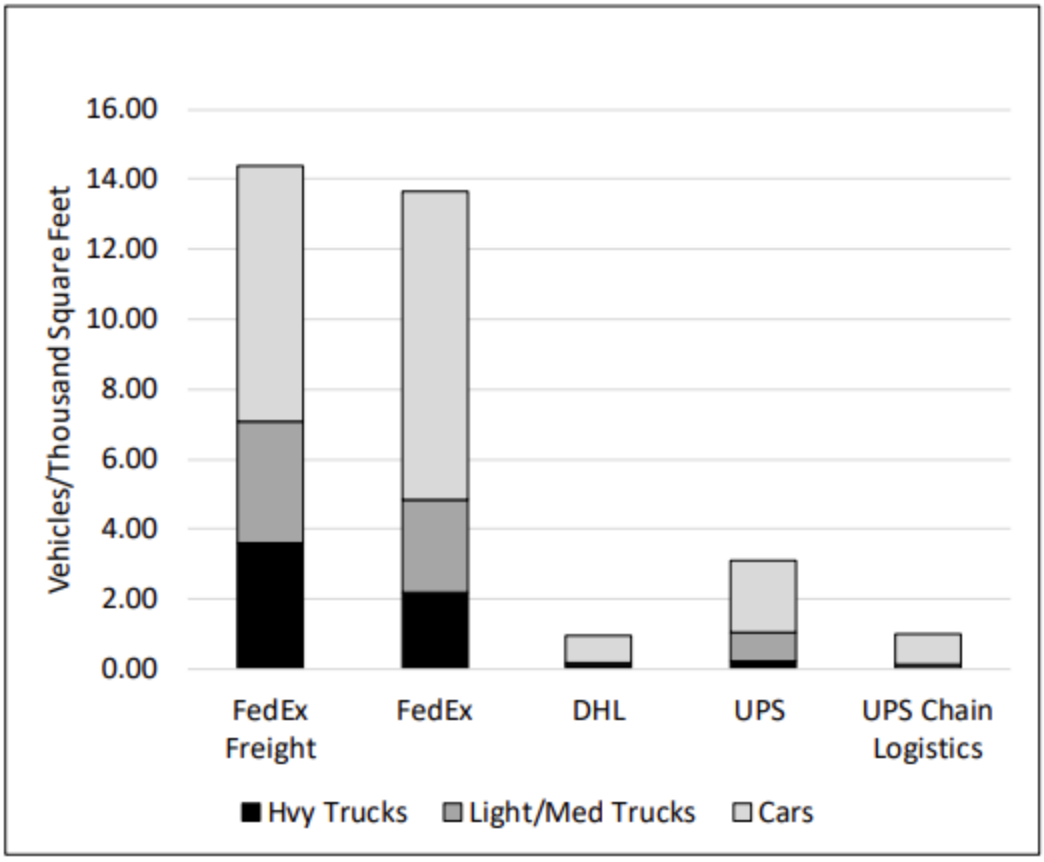
Exhibit 1: Data Plot for Daily Total Vehicle Trip Ends against Building Size (Fulfillment Center)



Other businesses are copying many of Amazon's logistics methods, so the higher rate could be applicable to many new operations. For example, the trip generation rate at the Walmart site in the Western Riverside COG study also is higher than the average used in the DEIR. If the Amazon rate were applied to the proposed Fresno warehouse, project trip generation would be twice as high as estimated in the DEIR.

The observed trip generation rates at two of the parcel hub sites are even higher, i.e., more than six times the rate used in the DEIR.

Exhibit 11: Daily Trip Generation Rates at Parcel Hubs



To be conservative, the DEIR should apply the Amazon trip generation rate, or possibly the even higher parcel hub rate if parcel hub tenants are possible in this project. The Amazon rate is about 4.5 daily trips per 1000 square feet. With the Amazon trip generation rate, the project would generate about 4,000 trips per day, i.e., twice the 1,920 trips per day estimated in the DEIR. The parcel hub trip generation rates are about 14 trips per day per 1000 square feet. At the parcel rate, the project would generate about 12,600 trips per day, i.e., over six times as many as estimated in the DEIR.

Project VMT and GHG Emissions Could Be Much Higher Than Assumed

The DEIR estimates project 5.6 million VMT per year using CalEEMod Version 4.0 (DEIR Vol. 1 Appendices A – I p. 146 of 1022). In CalEEMod, VMT is calculated from a combination of the assumed daily trip generation rate (discussed above) and assumptions about trip lengths.

If the Amazon trip generation rate were used instead, the VMT output from CalEEMod would be twice as high. If the parcel hub rate were used, the VMT output would six times as high.

The default CalEEMod trip lengths were applied in the DEIR:

- Work trips 9.5 miles
- Other trips 7.3 miles

If these default values are too low, this also would cause VMT to be underestimated. The DEIR estimates that 10.2% of daily trips are made by heavy trucks (5+ axles) and another 7.6% are made by medium trucks (2-4 axles). It is likely that the average truck trip lengths are much higher than assumed in the CalEEMod default values. Major intermodal facilities are far from the project site including:

- Rail intermodal facilities in Bakersfield 110 miles,
- Rail intermodal facilities in Stockton 120 miles,
- Port of Oakland 175 miles, and
- Port of Los Angeles 240 miles.

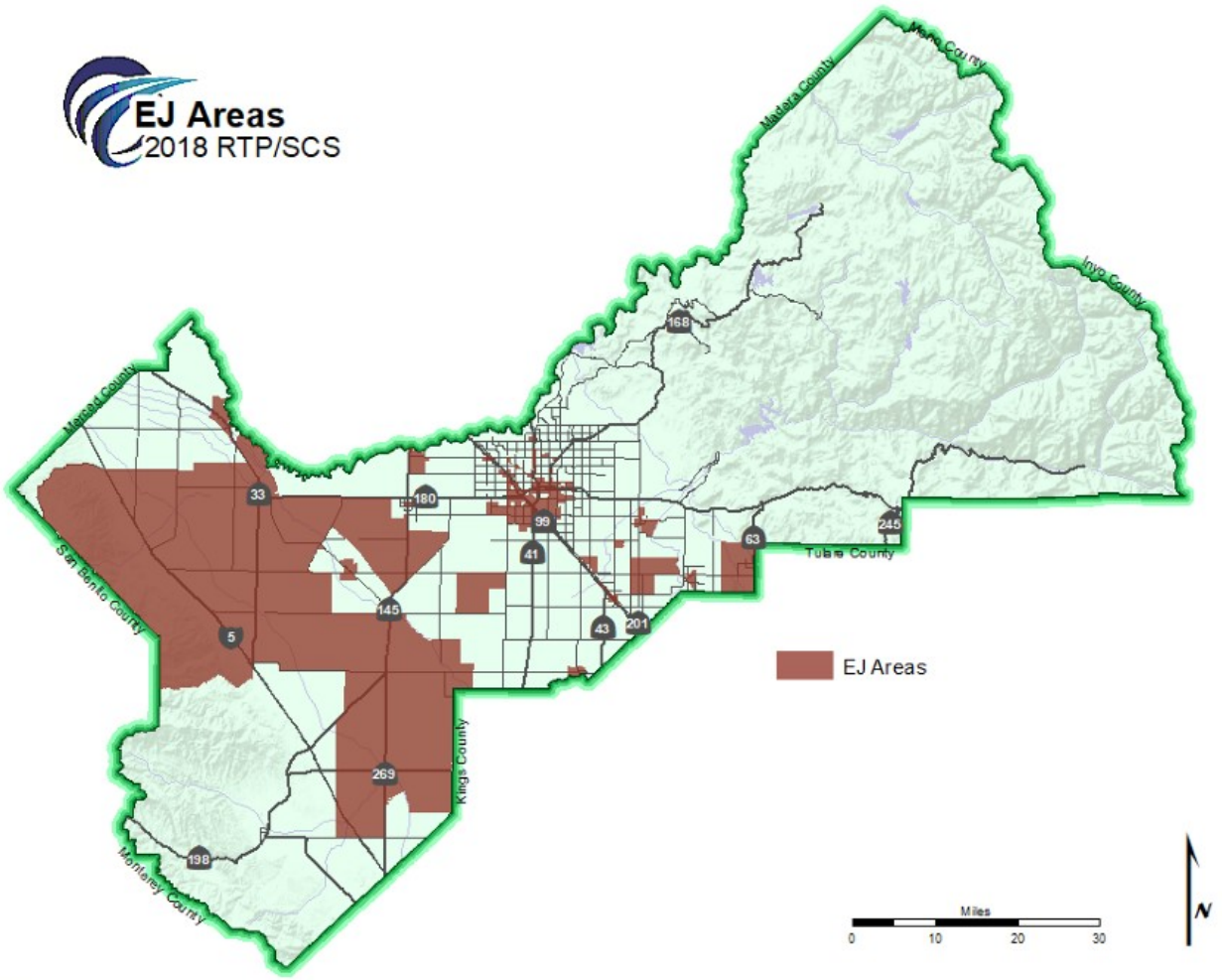
It is impossible to fully evaluate trip lengths until more is known about the facility operations.

Any VMT underestimation translates to underestimating GHG as well.

The DEIR Likely Underestimates VMT Impacts

The DEIR applied the Fresno COG ABM to estimate that the project would generate 19.8 VMT per employee per day. (DEIR, XHIBIT-6.-2740-W-Nielsen-Appendices-Vol-2_J-M-Copy.pdf, p. 396-398 of 786.

As shown in the Figure[2] below, the Fresno ABM covers only Fresno County.



A significant percentage of Fresno County trips have origins or destinations that are outside the County. As this issue is not discussed in the DEIR, it appears that all of the VMT outside the County ("external" travel) is excluded from the analysis.

This issue is particularly important for truck trips. As discussed in the previous section, major intermodal facilities are 110 – 240 miles from the proposed project. The VMT analysis should be supplemented to include an analysis of external travel with a particular focus on truck travel.

[2] Fresno Council of Governments. Fresno Activity-Based Model. agendas.fresnocog.org/itemAttachments/596/II_D_Modeling_101_Slides.pdf

Transportation Demand Strategies Not Described in the DEIR

The DEIR includes a Greenhouse Gas (GHG) Reduction Plan Update – CEQA Project Consistency Checklist as Appendix H. This checklist answers in the affirmative:

- Does the project implement pedestrian bicycle, and transit linkages with surrounding land uses and neighborhoods? For GHG Reduction Plan consistency, the project must include all sidewalks, paths, trails, and facilities required by the General Plan and Active Transportation Plan, as implemented through the Fresno Municipal Code and project conditions of approval.
- Will the project accommodate a large employer (over 100 employees) and will it implement trip reduction programs such as increasing transit use, carpooling, vanpooling, bicycling, or other measures to reduce vehicle miles traveled pursuant to San Joaquin Valley Air Pollution Control District Rule 9410?

These transportation demand strategies are not described anywhere else in the DEIR, and they should be. In particular, the DEIR needs to explain how the second bullet regarding trip reduction programs will be enforced on the currently unknown tenants.

Sincerely,

Norman L. Marshall

Norman L. Marshall

Resume

NORMAN L. MARSHALL, PRESIDENT

nmarshall@smartmobility.com

EDUCATION:

Master of Science in Engineering Sciences, Dartmouth College, Hanover, NH, 1982
Bachelor of Science in Mathematics, Worcester Polytechnic Institute, Worcester, MA, 1977

PROFESSIONAL EXPERIENCE: (33 Years, 19 at Smart Mobility, Inc.)

Norm Marshall helped found Smart Mobility, Inc. in 2001. Prior to this, he was at RSG for 14 years where he developed a national practice in travel demand modeling. He specializes in analyzing the relationships between the built environment and travel behavior and doing planning that coordinates multi-modal transportation with land use and community needs.

Regional Land Use/Transportation Scenario Planning

Portland Area Comprehensive Transportation System (PACTS) – the Portland Maine Metropolitan Planning Organization. Updating regional travel demand model with new data (including AirSage), adding a truck model, and multiclass assignment including differentiation between cash toll and transponder payments.

Loudoun County Virginia Dynamic Traffic Assignment – Enhanced subarea travel demand model to include Dynamic Traffic Assignment (Cube). Model being used to better understand impacts of roadway expansion on induced travel.

Vermont Agency of Transportation-Enhanced statewide travel demand model to evaluate travel impacts of closures and delays resulting from severe storm events. Model uses innovate Monte Carlo simulations process to account for combinations of failures.

California Air Resources Board – Led team including the University of California in $250k project that reviewed the ability of the new generation of regional activity-based models and land use models to accurately account for greenhouse gas emissions from alternative scenarios including more compact walkable land use and roadway pricing. This work included hands-on testing of the most complex travel demand models in use in the U.S. today.

Climate Plan (California statewide) – Assisted large coalition of groups in reviewing and participating in the target setting process required by Senate Bill 375 and administered by the California Air Resources Board to reduce future greenhouse gas emissions through land use measures and other regional initiatives.

Chittenden County (2060 Land use and Transportation Vision Burlington Vermont region) – led extensive public visioning project as part of MPO's long-range transportation plan update.

Flagstaff Metropolitan Planning Organization – Implemented walk, transit and bike models within regional travel demand model. The bike model includes skimming bike networks including on-road and off-road bicycle facilities with a bike level of service established for each segment.

Chicago Metropolis Plan and Chicago Metropolis Freight Plan (6-county region)— developed alternative transportation scenarios, made enhancements in the regional travel demand model, and used the enhanced

model to evaluate alternative scenarios including development of alternative regional transit concepts. Developed multi-class assignment model and used it to analyze freight alternatives including congestion pricing and other peak shifting strategies.

Municipal Planning

City of Grand Rapids – Michigan Street Corridor – developed peak period subarea model including non-motorized trips based on urban form. Model is being used to develop traffic volumes for several alternatives that are being additional analyzed using the City's Synchro model

City of Omaha - Modified regional travel demand model to properly account for non-motorized trips, transit trips and shorter auto trips that would result from more compact mixed-use development. Scenarios with different roadway, transit, and land use alternatives were modeled.

City of Dublin (Columbus region) – Modified regional travel demand model to properly account for non-motorized trips and shorter auto trips that would result from more compact mixed-use development. The model was applied in analyses for a new downtown to be constructed in the Bridge Street corridor on both sides of an historic village center.

City of Portland, Maine – Implemented model improvements that better account for non-motorized trips and interactions between land use and transportation and applied the enhanced model to two subarea studies.

City of Honolulu – Kaka'ako Transit Oriented Development (TOD) – applied regional travel demand model in estimating impacts of proposed TOD including estimating internal trip capture.

City of Burlington (Vermont) Transportation Plan – Led team that developing Transportation Plan focused on supporting increased population and employment without increases in traffic by focusing investments and policies on transit, walking, biking and Transportation Demand Management.

Transit Planning

Regional Transportation Authority (Chicago) and Chicago Metropolis 2020 – evaluated alternative 2020 and 2030 system-wide transit scenarios including deterioration and enhance/expand under alternative land use and energy pricing assumptions in support of initiatives for increased public funding.

Capital Metropolitan Transportation Authority (Austin, TX) Transit Vision – analyzed the regional effects of implementing the transit vision in concert with an aggressive transit-oriented development plan developed by Calthorpe Associates. Transit vision includes commuter rail and BRT.

Bus Rapid Transit for Northern Virginia HOT Lanes (Breakthrough Technologies, Inc and Environmental Defense.) – analyzed alternative Bus Rapid Transit (BRT) strategies for proposed privately-developing High Occupancy Toll lanes on I-95 and I-495 (Capital Beltway) including different service alternatives (point-to-point services, trunk lines intersecting connecting routes at in-line stations, and hybrid).

Roadway Corridor Planning

I-30 Little Rock Arkansas – Developed enhanced version of regional travel demand model that integrates TransCAD with open source Dynamic Traffic Assignment (DTA) software, and used to model I-30 alternatives. Freeway bottlenecks are modeled much more accurately than in the base TransCAD model.

South Evacuation Lifeline (SELL) – In work for the South Carolina Coastal Conservation League, used Dynamic Travel Assignment (DTA) to estimate evaluation times with different transportation alternatives in coastal South Caroline including a new proposed freeway.

Hudson River Crossing Study (Capital District Transportation Committee and NYSDOT) – Analyzing long term capacity needs for Hudson River bridges which a special focus on the I-90 Patroon Island Bridge where a microsimulation VISSIM model was developed and applied.

PUBLICATIONS AND PRESENTATIONS (partial list)

DTA Love: Co-leader of workshop on Dynamic Traffic Assignment at the June 2019 Transportation Research Board Planning Applications Conference.

Forecasting the Impossible: The Status Quo of Estimating Traffic Flows with Static Traffic Assignment and the Future of Dynamic Traffic Assignment. *Research in Transportation Business and Management* 2018.

Assessing Freeway Expansion Projects with Regional Dynamic Traffic Assignment. Presented at the August 2018 Transportation Research Board Tools of the Trade Conference on Transportation Planning for Small and Medium Sized Communities.

Vermont Statewide Resilience Modeling. With Joseph Segale, James Sullivan and Roy Schiff. Presented at the May 2017 Transportation Research Board Planning Applications Conference.

Assessing Freeway Expansion Projects with Regional Dynamic Traffic Assignment. Presented at the May 2017 Transportation Research Board Planning Applications Conference.

Pre-Destination Choice Walk Mode Choice Modeling. Presented at the May 2017 Transportation Research Board Planning Applications Conference.

A Statistical Model of Regional Traffic Congestion in the United States, presented at the 2016 Annual Meeting of the Transportation Research Board.

MEMBERSHIPS/AFFILIATIONS

Associate Member, Transportation Research Board (TRB)

Member and Co-Leader Project for Transportation Modeling Reform, Congress for the New Urbanism (CNU)

ATTACHMENT B

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209
kcarmichael@adamsbroadwell.com

SO. SAN FRANCISCO OFFICE

601 GATEWAY BLVD., SUITE 1000
SO. SAN FRANCISCO, CA 94080

TEL: (650) 589-1660
FAX: (650) 589-5062

ARIANA ABEDIFARD
KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
RICHARD M. FRANCO
ANDREW J. GRAF
TANYA A. GULESSERIAN
DARION N. JOHNSON
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO

Of Counsel
MARC D. JOSEPH
DANIEL L. CARDOZO

October 3, 2023

Agenda Item VIII-D

Via Email and Overnight Mail
Chair Peter Vang
Planning Commissioners
c/o Planning and Development Department
City of Fresno
City Hall
2600 Fresno Street, Room 3043
Fresno, California, 93721-3604
Email: PublicCommentsPlanning@fresno.gov

Via Email Only
Steven Martinez, Planner
Email: Steven.Martinez@fresno.gov

Re: Agenda Item VIII-D: 2740 West Nielsen Avenue Office/Warehouse Project (Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21-05930) (SCH 2022050265)

Dear Chair Vang, Planning Commissioners, and Mr. Martinez:

We are writing on behalf of Fresno Residents for Responsible Development ("Residents") regarding the City of Fresno Planning Commission's Agenda Item No. VIII-D for the proposed 2740 West Nielsen Avenue Office/Warehouse Project (Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21-05930; SCH 2022050265) ("Project"), proposed by Scannell Properties ("Applicant").[1] The Project proposes construction of four office/warehouse buildings

[1] City of Fresno, Planning Commission Agenda (October 4, 2023) available at https://fresno.legistar.com/View.ashx?M=A&ID=1057020&GUID=756A2F25-13EC-44BD-9120-9A1242198A34

that would be configured for heavy industrial uses.[2] The proposed buildings would result in a total gross floor area of approximately 901,438 square feet.[3]

The Project site is located at 2740 West Nielsen Avenue, between North Marks and North Hughes Avenues in the City and County of Fresno.[4] The 48.03-acre Project site is currently vacant but formerly consisted of an industrial warehouse that has since been demolished.[5] The Project site is bounded to the north by partially developed land, to the east by North Hughes Avenue, to the south by West Nielsen Avenue, and to the west by North Marks Avenue.[6] Regional access to the site is provided by State Route 180 ("SR-180"), which is located approximately 0.3 mile south of the project site, and State Route 99 ("SR-99"), which is located approximately 0.8 miles east of the project site.[7]

On May 19, 2023, Residents submitted written comments on the Draft Environmental Impact Report ("DEIR") ("DEIR Comments"), including expert comments, which identified significant errors, omissions, and fatal defects in the environmental document prepared for the Project. In particular, the DEIR failed to accurately disclose and mitigate the Project's potentially significant air quality, greenhouse gas ("GHG") emissions, noise, and transportation impacts. The City prepared a Final Environmental Impact Report ("FEIR") for the Project which includes written responses to the DEIR Comments.[8]

Residents and their experts have reviewed the FEIR and Staff Report and supporting exhibits prepared for this hearing. Based upon our review of the FEIR and supporting documentation, we conclude that the City has not resolved the issues raised in Residents' DEIR comments, and that the FEIR still fails to comply with the requirements of the California Environmental Quality Act[9] ("CEQA"). Although the City purports to have revised its air quality and GHG analysis in response to our DEIR Comments, our review demonstrates that the FEIR's air

---

[2] City of Fresno, Draft Environmental Impact Report, 2740 West Nielsen Avenue Office/Warehouse Project (SCH: 2022050265) (hereinafter "DEIR") (February 2023) p. 1-3. available at https://ceqanet.opr.ca.gov/2022050265/3.
[3] DEIR, p. 1-3.
[4] DEIR, p. 2-2.
[5] DEIR, p. 3-5.
[6] DEIR, pp. 2-1 – 2-2.
[7] DEIR, p. 3-1.
[8] City of Fresno, Final Environmental Impact Report, 2740 West Nielsen Avenue Office/Warehouse Project (Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21-05930) (hereinafter "FEIR") available at https://ceqanet.opr.ca.gov/Project/2022050265
[9] Pub. Resources Code (hereinafter "PRC") §§ 21000 et seq.; 14 Cal. Code Regs (hereinafter "CEQA Guidelines") §§ 15000 et seq.

quality and GHG analyses remain substantially inaccurate and incomplete. The FEIR also fails to meaningfully respond to the majority of Resident's technical comments, and fails to resolve the majority of legal and evidentiary deficiencies we identified in the DEIR. As a result, the FEIR still fails to adequately disclose, analyze, and mitigate the Project's potentially significant impacts related to air quality, GHG emissions, noise, and on transportation and traffic. The City lacks substantial evidence to support the FEIR's conclusions that impacts will be mitigated to less than significant levels. The FEIR also continues to rely on legally inadequate, ineffective, and unenforceable mitigation measures that fail reduce impacts to less than significant levels, and fail to meet the basic mitigation requirements of CEQA. The Planning Commission cannot approve the Project in reliance on such a legally inadequate FEIR.

These comments address the outstanding deficiencies in the City's environmental analysis and proposed mitigation for the Project. These comments are supported by substantial evidence in the form of technical comments from qualified experts identifying significant, unmitigated air quality, GHG emissions, transportation, and noise impacts that the FEIR fails to adequately address. These comments were prepared with the assistance of air quality and hazardous materials expert James J.J. Clark, Ph.D. of Clark and Associates, noise expert Derek Watry of Wilson Ihrig, and transportation expert Norman Marshall of Smart Mobility. Their technical comments are attached hereto as Exhibit A, Exhibit B, and Exhibit C respectively and incorporated by reference herein.[10] These experts address the FEIR's failure to remedy the DEIR's analytical errors and omissions, and lack of adequate mitigation, that were described in detail in their DEIR comments.

We urge the Planning Commission to carefully consider these comments and to remand the Project to City Staff to prepare a legally adequate EIR for the Project. The Project should 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.[11]

---

[10] **Exhibit A**, James J.J. Clark, Ph.D., Clark & Associates (hereinafter "Clark Comments"); **Exhibit B**, Derek Watry, Wilson Ihrig (hereinafter "Watry Comments"); Exhibit **C**, Norman Marshall, Smart Mobility (hereinafter "Marshall Comments").

[11] 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

Fresno Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential impacts associated with Project development. Fresno Residents includes the International Brotherhood of Electrical Workers Local 100, Plumbers and Pipefitters UA Local 246, Sheet Metal Workers Local 104, Sprinkler Fitters Local 669, District Council of Ironworkers their members and their families, and other individuals that live and/or work in the City of Fresno and Fresno County.

Fresno Residents support sustainable development in the City. Fresno Residents has a strong interest in enforcing the State's environmental laws that encourage sustainable development and ensure a safe working environment for its members. Large warehouse projects like this Project should avoid adverse impacts to air quality, noise levels, transportation, biological resources, and public health, and should take all feasible steps to ensure unavoidable impacts are mitigated to the maximum extent feasible. Only by maintaining the highest standards can commercial and industrial development truly be sustainable.

The individual members of Fresno Residents live, work, recreate, and raise their families in the City of Fresno and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work constructing the Project itself. They would be the first in line to be exposed to any health and safety hazards which may be present on the Project site. They each have a personal interest in protecting the Project area from unnecessary, adverse environmental and public health impacts.

In addition, Fresno Residents 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.

Finally, Fresno Residents is concerned with projects that can result in serious environmental harm without providing countervailing economic benefits. CEQA provides a balancing process whereby economic benefits are weighed against significant impacts to the environment.[12] It is in this spirit we offer these comments.

II. LEGAL DISCUSSION

A. The City's Responses to Public Comments on the DEIR Are Inadequate

CEQA requires that a lead agency evaluate and prepare written responses to comments in a FEIR.[13] Agencies are required to provide "detailed written response to comments . . . to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and the public participation in the environmental review process is meaningful."[14] When a comment raises a "significant environmental issue," the written responses must describe the disposition of each such issue raised by commentators.[15] Specifically, the lead agency must address the comment "in detail giving reasons why" the comment was "not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice,"[16] particularly in response to comments are made by agencies or experts.[17] Failure of a lead agency to respond to comments raising significant environmental issues before approving a project frustrates CEQA's informational purpose and may render the EIR legally insufficient.[18] As the court explained in *City of Long Beach*:

> The requirement of a detailed written response to comments helps to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to

---

[12] PRC § 21081(a)(3); *Citizens for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.
[13] PRC § 21091(d); 14 CCR §§ 15088(a), 15132.
[14] *City of Long Beach v. Los Angeles Unified Sch. Dist*. (2009) 176 Cal.4th 889, 904.
[15] PRC §21091(d); 14 CCR §§15088(c), 15132(d), 15204(a).
[16] 14 CCR § 15088(c); *see Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1124 ("*Laurel II*"); *The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal. App. 4th 603, 615.
[17] *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1367, 1371; *People v. County of Kern* (1976) 62 Cal.App.3d 761, 772).
[18] *Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615; *Rural Landowners Association v. City Council* (1983) 143 Cal.App.3d 1013, 1020.

public scrutiny, and that public participation in the environmental review process is meaningful.[19]

The City's responses to comments in the FEIR fail to fulfill the City's legal duty to provide reasoned responses to comments in several ways.

First, the Responses fail to meaningfully respond to the detailed technical comments of Dr. Clark and dismiss comments regarding the Project's potentially significant health risk impacts from exposure to Valley Fever causing fungus spores and from the operation of backup generators, transportation refrigeration units, and fire pumps at the Project site. Additionally, the FEIR claims that an updated health risk analysis ("HRA") was performed for the Project. However, the HRA is not included in the FEIR or the materials attached to the Agenda for this hearing. The City cannot rely on hidden studies which are not disclosed to the public to support findings regarding the Project's environmental impacts.[20] The FEIR's responses also missed the main technical points of Dr. Clark's comments and the lack of a detailed response to Dr. Clark's comments fails to comply with CEQA.[21]

The Responses also fail to meaningfully respond to Mr. Watry's comments explaining that the Project has significant construction and operational noise impacts that require mitigation to lower decibel levels encountered by sensitive receptors. In his DEIR comments, Mr. Watry identified clear errors in the City's noise analysis showing that the Project would result in a significant unmitigated impact and explained that the City's proposed noise mitigation, MM NOI-1, does nothing to reduce excess decibel levels. In response to Mr. Watry's comments, the FEIR simply reiterates the DEIR's unsupported conclusion that the noise analysis is correct, and that MM NOI-1 would reduce noise levels to less than significant levels. By so doing, the FEIR fails to respond to Mr. Watry's comment raising a "significant environmental issue," and as a result, fails to mitigate this impact. This is a clear violation of CEQA.[22]

Finally, the FEIR fails to meaningfully respond to Mr. Marshall's comments on the DEIR's failure to accurately estimate Project truck traffic and the resulting transportation and GHG emissions impacts. Furthermore, the FEIR fails to

---

[19] 176 Cal. App. 4th at 904.
[20] *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 ("Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.").
[21] 14 CCR § 15088(c); *People v County of Kern* (1976) 62 CA3d 761.
[22] PRC §21091(d); 14 CCR §§15088(c), 15132(d), 15204(a).

consider the addition of proposed mitigation to reduce the Project's potentially significant impacts on GHG emissions resulting from the Project's truck trip generation.

The City's failure to respond to Residents' expert comments is comparable to the errors made by the City of Carmel in *Flanders Foundation.*[23] In that case, a city prepared a FEIR for a project involving the sale of a city-owned historic property surrounded by city-owned parkland. Its DEIR had proposed a conservation easement to mitigate the loss of city parkland. Comments submitted on the *Flanders* DEIR recommended an alternative of selling the residence with a smaller lot in order to mitigate the potentially significant impacts from the loss of city park space. However, the FEIR failed to provide a substantive response to this comment, and instead merely reiterated the city's reliance on the same conservation easement that had been originally proposed in the DEIR as "sufficient mitigation."[24] Both the trial court and the Court of Appeal held that Carmel's response was legally inadequate because it had ignored the commenter's observation that a reduction in the size of the parcel would mitigate an environmental impact of the project.[25]

Similarly here, the Responses fail entirely to respond to Dr. Clark's comments documenting significant health risk impacts, respond to Mr. Watry's comments on inadequate noise mitigation by simply reiterating the inadequate analysis and mitigation measure originally proposed in the DEIR, and fail to analyze the potentially significant transportation and GHG emissions impacts from the reasonably foreseeable use of the Project. These are patently inadequate responses which fail to meet the clear legal standard articulated in the CEQA Guidelines. As the *Flanders Foundation* court explained:

> Since the proposed project would have an unmitigated significant environmental impact by eliminating parkland, the comment's suggestion reasonably questioned whether that impact could be reduced by reducing the size of the parcel. The City's obligation under CEQA was to explain in the FEIR "*in detail giving reasons why*" the City was not considering the sale of the residence with a reduced parcel. The City made no effort to satisfy its obligation.…The City's failure to respond to this significant comment violated its duty under CEQA, and the trial court correctly found that the City's certification of the FEIR was therefore invalid.[26]

---

[23] *Flanders Foundation*, 202 Cal.App.4th at 609.
[24] *Flanders Foundation*, 202 Cal.App.4th at 609.
[25] *Id.* at 615-616.
[26] *Id.* at 616-17.

The FEIR must be revised and recirculated to correct the significant errors and omissions in the City's Responses.

B. The FEIR Fails to Accurately Disclose and Mitigate the Project's Potentially Significant Transportation Impacts

The FEIR continues to substantially underestimate the Project's transportation impacts by relying on unsupported assumptions regarding the Project's operations and failing to consider reasonably foreseeable uses of the Project.

First, Resident's comments on the DEIR explained that, because the Project's future tenants have not been identified, the Project's trip generation analysis was highly uncertain. Additionally, the trip generation study relied upon in the DEIR included warehouse sites with trip rates of two to six times the rate used in the DEIR, thus inflating the baseline against which the Project's trips were analyzed. Furthermore, our comments detailed that the failure to account for the reasonably foreseeable uses of the Project resulted in a failure to accurately analyze the Project's air quality and GHG emissions impacts.

In response, the FEIR focuses on one facet of our comments, specifically, that if the Project were to operate as an Amazon fulfillment center, the Project would result in 4.5 daily trips per 1,000 square feet, twice the rate assumed in the DEIR. The FEIR states that the Applicant has confirmed that Amazon is not a potential future tenant of the Project site and summarily dismisses the remainder of our comments.[27] However, as detailed in our comments on the DEIR, an Amazon fulfillment center is just one of many foreseeable intensive warehouse uses that would generate truck trips exceeding that which was assumed in the DEIR's transportation analysis. Additionally, Mr. Marshall notes that many businesses are copying Amazon's logistics model.[28] Therefore, even if Amazon is not a potential future tenant, the City lacks evidentiary support to conclude that a similar logistics center would not be a reasonably foreseeable use of the Project site. Neither the MMRP nor the Project's conditions of approval include a requirement that the future use of the Project limit the truck trips to the levels analyzed in the FEIR. Therefore, the City lacks substantial evidence to conclude that the Project will not generate truck trips consistent with the high intensity high-cube warehouse uses allowed at the Project site.

---

[27] FEIR, p. 3-236.
[28] Marshall Comments, p. 2.

Second, our comments on the DEIR detailed that the City applied the Fresno COG ABM to estimate that the Project would generate 19.8 VMT per employee per day. Mr. Marshall found that the model covers only Fresno County and excludes the portion of travel outside the county, thereby excluding distances traveled to major intermodal facilities that are 110 – 240 miles from the proposed project.[29] In response, the FEIR states that the VMT analysis in Appendix G of the DEIR included external passenger vehicle travel.[30] However, in his review of the ABM, Mr. Marshall found that the external travel was calculated based on coarse output data from the California Statewide Travel Demand Model ("CSTDM") which cannot be relied on for project level analysis.[31] The website for the CSTDM includes a disclaimer which states: "This model is not an appropriate tool for individual project level analysis."[32] By the State's own admission, the CSTDM is not an appropriate tool to evaluate the Project's external VMT. As a result, the City lacks substantial evidence to support the conclusion that the Project will not result in significant VMT impacts. Furthermore, Mr. Marshall notes that VMT analysis for land uses which will generate significant truck traffic, such as the Project here, must include an analysis of truck VMT and GHG emissions in order to adequately inform decisionmakers of a project's potential impacts.

The City must prepare a revised EIR for the Project and include an analysis of the Project's reasonably foreseeable truck trip generation and VMT.

C. The FEIR Fails to Accurately Disclose and Mitigate the Project's Potentially Significant Health Risk Impacts

The FEIR continues to substantially underestimate the Project's health risk impacts by relying on unsupported assumptions regarding Project operations. Additionally, the FEIR fails to respond to Residents' comments regarding the potentially significant health risks stemming from exposure to Valley Fever.

1. The FEIR Still Fails to Address Health Risk Impacts from Transportation Refrigeration Units

We previously provided comments that the DEIR failed to account for the operation of transportation refrigeration units ("TRUs") during Project operations

[29] Marshall Comments, p. 1.
[30] FEIR, p. 3-238.
[31] Marshall Comments, p. 2.
[32] State of California, CalTrans, California Statewide Travel Demand Model (accessed September 29, 2023) available at https://dot.ca.gov/programs/transportation-planning/division-of-transportation-planning/data-analytics-services/statewide-modeling/california-statewide-travel-demand-model

resulting in an underestimated foreseeable health risk to the community as well as associated GHG emissions impacts. In response, the FEIR states that the DEIR's analysis "assumed that any refrigerated trucks would use the electrical hookups to power the TRUs rather than operate their onboard diesel engines."[33] However, the City does not provide any evidence to support this assumption, nor does the MMRP include any mitigation measures to ensure that TRUs at the Project site will use auxiliary electrical hookups instead of onboard diesel engines. Project Mitigation Measure ("MM") AIR-3 requires that the Project provide infrastructure to "accommodate a minimum of one **future** charger per 50,000 square feet."[34] MM AIR-3 does not require the installation of charging stations, only that there is infrastructure to support future charging stations. If no charging stations are subsequently installed, there would be no quantifiable emissions reductions resulting from this infrastructure. The City lacks supporting evidence to rely on the assumption that there will be charging stations or auxiliary power for TRUs.

As a result, the City's analysis of health risk impacts from the operation of TRUs fails to meet the requirements to analyze the Project's health risk impacts under CEQA.

2. The FEIR Still Fails to Address Health Risk Impacts from Backup Generators

Resident's comments on the DEIR detailed that the City failed to account for the use of backup generators and fire pumps during Project operation resulting in a failure to analyze the reasonably foreseeable air quality and health risk impacts from diesel particulate matter emissions. In response, the FEIR states that "a supplemental analysis to evaluate potential emissions associated with equipment, emergency backup generators, and diesel fire pumps was conducted using CalEEMod" and found that the use of "equipment, emergency backup generators, and diesel fire pumps would not exceed the significance criteria for annual ROG, NOX, CO, SOX, PM10, or PM2.5 emissions."[35] However, the FEIR fails to attach the referenced analysis, and in our review of the entire record, such analysis could be located. If the City did perform an updated HRA for the Project, it has not been disclosed to the public, and cannot be relied upon by the City to conclude that the Project will not result in significant health risk impacts from the operation of backup generators and fire pumps.

[33] FEIR, pp. 3-254 – 3-255.
[34] FEIR, p. 3-252 (emphasis provided).
[35] FEIR, p. 3-256.

The City must prepare a revised DEIR for the Project which discloses the results of the updated HRA, and provide the public the opportunity to review the analysis.

3. The FEIR Still Fails to Address Impacts from Valley Fever

Resident's comments on the DEIR detailed the potential health risk to construction workers and nearby residents from exposure to *Coccidioides immitis* ("*Cocci*") fungus spores which can spread a disease known as Valley Fever. Our comments explained that the most at-risk populations are construction and agricultural workers and that 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 which measure 0.002–0.005 millimeters into nonendemic areas, potentially exposing large non-Project-related populations. The City fails to respond to substantial evidence demonstrating the known presence of Valley Fever in the Project's vicinity and the potential impacts of exposure to the fungus spores.

According to the FEIR, the closest sensitive receptors to the Project site include the single-family residences located approximately 110 feet south of the project site across West Nielsen Avenue.[36] These sensitive receptors are at risk of Valley Fever exposure during Project construction, resulting in a potentially significant health risk impact, and are not subject to the protective Valley Fever training requirements of Labor Code 6702. Furthermore, the small fungus spore particles will not be controlled by the conventional construction dust control mitigation measures proposed in the DEIR under Mitigation Measure ("MM") Air-1.[37] Thus, off-site sensitive receptors may have a significant risk of exposure to Valley Fever spores with no mitigation.

In response to Residents' comments, the FEIR states that the distance to nearby sensitive receptors is far enough such that particulate matter will settle prior to reaching the nearest sensitive receptor.[38] Additionally, the FEIR states that "crosswinds influenced by adjacent traffic intersections would help dissipate any particulate matter associated with the construction phase of the project."[39] Based on these assumptions the FEIR concludes that Valley Fever causing *Cocci*

[36] FEIR, p. 3-235.
[37] Clark Comments, p. 6.
[38] FEIR, p. 3-235.
[39] FEIR, p. 3-235.

spores will not reach nearby sensitive receptors and that the dust control measures required by Mitigation Measure AIR-1 will reduce exposure to workers onsite.[40] Here, the FEIR disregards substantial evidence provided by Residents and Dr. Clark and relies on unsupported assumptions in its response.

Dr. Clark notes that smaller particles like spores require significantly longer to settle out of air.[41] For particles 10 um in diameter the settling time is measured in minutes, but for particles less than 10 um in diameter, the settling time is measured in hours.[42] *Cocci* spores are 2-5 um in diameter, thus allowing the spores to travel significantly further, thereby impacting receptors at greater distances. The FEIR's unsupported assumption that the spores would not reach sensitive receptors is not supported by substantial evidence and cannot be used as justification for the City's conclusion that the Project will not result in a significant health risk impact.

Additionally, as detailed in our DEIR comments, conventional dust control measures, such as those required under MM AIR-1, are inadequate to control the spread of C*occi* spores.

The FEIR still fails to provide any information regarding the prevalence of *Cocci* fungus spores in the Project's vicinity, fails to discuss applicable construction worker Valley Fever training requirements and fails to include any Valley Fever-specific mitigation in the MMRP. This continued lack of disclosure by the City prevents meaningful analysis and mitigation of the potential health impacts the Project will cause to onsite construction workers and other individuals in close proximity to the Project site from disturbing soils which may be contaminated with Valley Fever spores site during Project construction.

The City must prepare a revised DEIR which includes a discussion of the potential for the presence of *Cocci* fungus spores at the Project site in order to accurately analyze and mitigate the Project's potentially significant health risk impacts from Valley Fever.

[40] FEIR, p. 3-235.
[41] Clark Comments, p. 5.
[42] Clark Comments, p. 5.

4. The FEIR Still Fails to Include Effective Mitigation Measures to Reduce the Project's Potentially Significant Health Risks from Valley Fever

In his comments on the DEIR, Dr. Clark proposed a number of feasible mitigation measures the City should consider and adopt in the MMRP for the Project to reduce potential health impacts from Valley Fever. The City failed to provide any response to the proposed mitigation measures. Residents reiterate that the following mitigation measures must be included in the MMRP for the Project to reduce the potentially significant health risk impacts to construction workers and nearby sensitive receptors from exposure to *Cocci* spores during Project construction:

(1) Include specific requirements in the Project's Injury and Illness Prevention Program regarding safeguards to prevent Valley Fever.

(2) Control dust exposure through the following methods:

- 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.

(3) Prevent transport of cocci outside endemic areas:

- Prevent spillage or loss of bulk material from holes or other openings in the cargo compartment's floor, sides, and/or tailgate;

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

(4) Improve medical surveillance for employees:

- Employees should have prompt access to medical care, including suspected work-related illnesses and injuries.
- Work with a medical professional to develop a protocol to medically evaluate employees who have symptoms of Valley Fever.
- Consider preferentially contracting with 1-2 clinics in the area and communicate with the health care providers in those clinics to ensure that providers are aware that Valley Fever has been reported in the area. This will increase the likelihood that ill workers will receive prompt, proper and consistent medical care.
- Respirator clearance should include medical evaluation for all new employees, annual re-evaluation for changes in medical status, and annual training, and fit-testing.
- Skin testing is not recommended for evaluation of Valley Fever.[43]
- 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.

Any mitigation measures must be included in the MMRP for the Project and be fully enforceable through permit conditions, agreements, or other legally binding instruments.[44] Failure to include enforceable mitigation measures is considered a

[43] 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.

[44] CEQA Guidelines §15126.4(a)(2).

failure to proceed in the manner required by CEQA.[45] In order to meet this requirement, the above mitigation measures must be incorporated directly into the EIR to be enforceable.[46]

The City must prepare a revised DEIR to include mitigation measures such as the those proposed by Dr. Clark to reduce the impacts of exposure to Valley Fever causing fungus spores and mitigate impacts to sensitive receptors.

D. The FEIR Fails to Accurately Disclose, Analyze, and Mitigate the Project's Potentially Significant Noise Impacts

1. The FEIR Still Fails to Establish an Absolute Threshold of Significance for Project Related Noise Impacts

Residents' comments on the DEIR detailed that the noise analysis for the Project only compared the Project's operational noise impacts to a relative threshold of significance and ignored the noise impacts resulting from the absolute increase in the noise environment. In response, the FEIR reiterates the analysis contained in the DEIR stating that the noise analysis for the Project relies on the threshold established in General Plan Policy NS-1-j which states that the City considers a 3 dBA increase to be a significant increase in ambient noise.[47] The FEIR concludes that, because the Project will result in a 2.1 dBA increase in noise, the Project will not result in a significant noise impact.

In our comments on the DEIR. we presented evidence that the Project will result in a noise increase from 64 dBA CNEL to 66.1 dBA CNEL, thereby exceeding the absolute threshold in General Plan Policy NS-1-j which establishes "65 dBA Ldn or CNEL as the standard for the desirable maximum average exterior noise levels for defined usable exterior areas of residential and noise-sensitive uses."[48] The FEIR does not address the data presented by Residents' expert, and dismisses relevant case law cited in Residents' comments showing that the noise increase from the Project must be analyzed against the absolute threshold of 65 dBA.

As discussed in Residents' DEIR comments, an agency cannot simply rely on compliance with local noise regulations to conclude there will be no significant noise

---

[45] *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 672.
[46] *Lotus v. Dept of Transportation* (2014) 223 Cal. App. 4th 645, 651-52.
[47] FEIR, p. 3-244.
[48] City of Fresno, General Plan, Noise and Safety Element, Policy NS-1-j (December 18, 2014) p. 9-22. Available at https://www.fresno.gov/wp-content/uploads/2023/03/9-Noise-and-Safety-02-03-21.pdf

impacts without considering the impacts of increases in noise.[49] In *King & Gardiner Farms, LLC v. County of Kern*, the County approved an EIR for proposed zoning amendments to streamline oil and gas permitting.[50] The EIR included an analysis of noise impacts that determined significance based solely on whether the 65 decibel day-night average ("dBA DNL") threshold in the County General Plan would be exceeded.[51] The Court of Appeal reasoned that the County General Plan did not conclude that all increases in the magnitude of noise are insignificant until the 65 dBA DNL threshold is exceeded, so the General Plan "does not constitute substantial evidence that the magnitude of an increase in ambient noise is irrelevant."[52] Rather, an EIR's noise analysis should consider both the increase in noise level and the absolute noise level associated with a project in determining the significance of the project's noise impacts.[53] The Court of Appeal concluded that an agency cannot exclusively rely on "a single cumulative DNL metric for determining the significance of the project's noise impacts" while deciding "the magnitude of the increase in ambient noise is irrelevant."[54]

In *Berkeley Jets*, the Court of Appeal invalidated the Port of Oakland's EIR for expansion of the Oakland Airport because of its reliance on an improper noise standard.[55] The EIR evaluated the significance of noise impacts based on whether the estimated level of sound would exceed 65 dB Community Noise Equivalent Level ("CNEL").[56] However, as the Court of Appeal explained, the CNEL metric—which averages noise over the course of a day—could not be the sole indicator of significant effects from noise because it does not provide a meaningful analysis of the "degree single overflights will create noise levels over and above the existing ambient noise level at a given location, and the community reaction to aircraft noise, including sleep disturbance."[57] Therefore, the Court concluded, a revised EIR with additional study of noise impacts from flights was necessary.[58]

Similarly here, the City continues to rely on the Project's purported compliance with local noise regulations to conclude that the Project will not result in significant construction noise impacts. As in *Keep Our Mountains Quiet*, the

---

[49] *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 894.
[50] *Id.* at 829.
[51] *Id.* at 830, 889.
[52] *Id.* at 894.
[53] *Id.*
[54] *Id.*
[55] *Berkeley Jets*, 91 Cal.App.4th at 1381–1382.
[56] *Id.* at 1373.
[57] *Id.* at 1381–1382.
[58] *Id.* at 1382.

City's reliance on noise regulations does not provide substantial evidence to support the FEIR's conclusion that the Project will not have significant noise impacts. The FEIR must be revised and recirculated to analyze the Project's construction noise impacts against a meaningful significance threshold.

2. The FEIR Still Fails to Analyze Construction Noise Impacts

Residents' comments on the DEIR detailed that the construction noise analysis completed for the Project incorrectly applied the Federal Transit Administration's ("FTA") guidance on calculating construction noise by reducing the usage factor of the construction equipment used in the analysis. Mr. Watry corrected the errors identified in the DEIR's noise analysis and found that construction of the Project will result in a significant noise impact. Specifically, he found that the site preparation phase will result in a noise level of 70.2 dBA Leq, while grading will result in noise levels of 71 dBA Leq, and building construction will result in noise levels of 69.0 dBA Leq. When compared to the existing ambient noise level of 62.3 dBA Leq, Mr. Watry found that Project construction will result in noise exposure increases of 7.9, 8.7 and 6.7 dBA Leq during the Projects site preparation, grading, and building phases respectively. Therefore, the Project will exceed the DEIR's threshold of 5 dBA Leq during three phases of construction, resulting in a significant impact.

The FEIR fails to address Mr. Watry's findings that the City's analysis relies on an improper application of the FTA methodology and reiterates that Project construction will result in an increase of 3.0 dBA Leq, thereby resulting in a less than significant impact.[59] The FEIR also states that when using the detailed construction methodology and information from the DEIR's CalEEMod analysis, the construction noise levels will reach 68.9 dBA Leq, and would not exceed the 5 dBA threshold of significance.[60] However, as Mr. Watry notes in his comments, the FEIR's conclusion is based on an incorrect baseline ambient noise level, rendering their conclusion incorrect.[61] The FEIR incorrectly states that the ambient noise level at nearby residential uses between 7:00 a.m. and 4:00 p.m is 66.0 dBA Leq.[62] However, based on the information provided in the DEIR's noise analysis, Mr.

[59] FEIR, p. 3-246.
[60] FEIR, p. 3-246.
[61] Watry Comments, p. 4.
[62] FEIR, p. 3-246.

Watry calculated the ambient noise level to be 62.3 dBA Leq.[63] Based on the FEIR's own calculations, the Project's construction noise levels of 68.9 dBA Leq will exceed the 5 dBA Leq threshold, resulting in a significant noise impact.

The City must revise the construction noise analysis in a revised and recirculated EIR for the Project which includes mitigation measures that will reduce the Project's noise impacts to less than significant.

3. The FEIR Still Fails to Mitigate Significant Noise Impacts to Less Than Significant Levels.

Mr. Watry's DEIR comments explained that MM NOI-1 constituted ineffective mitigation for the Project's noise impacts because the measures proposed (requiring that all equipment be equipped with properly operating and maintained mufflers, and the designation of a "disturbance coordinator" at the City who would be responsible for responding to any local complaints about construction noise) are existing standard features in construction equipment and will not reduce Project construction noise. The DEIR also lacked any quantitative analysis to assess whether the noise reduction achieved by the measures included in MM NOI-1 would result in meaningful reductions in decibel levels. The FEIR failed to revise MM NOI-1 in any way. Therefore, MM NOI-1 remains ineffective.

E. The FEIR Still Fails to Consider the Office of The Attorney General's Best Practices and Mitigation Measures for Warehouse Projects

Resident's comments on the DEIR detailed that the Project fails to comply with several measures outlined in the California Office of the Attorney General's ("OAG") "*Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act*" ("Best Practices").[64]

The Best Practices were developed to aid local agencies to achieve CEQA compliance, and promote environmentally-just development when they are considering warehouse project proposals.[65] The OAG developed the Best Practices based on knowledge gained from monitoring, providing comments on, and litigating,

---

[63] Watry Comments, p. 3.
[64] California Office of the Attorney General, Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act (hereinafter "Best Practices") (September 2022) available at https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf
[65] Best Practices, p. 1.

warehouse development projects in California.[66] The Best Practices state that while CEQA analysis is necessarily project-specific, the document provides feasible best practices and mitigation measures which were adapted from actual warehouse projects in California.[67] The purpose of the Attorney General's guidance is to ensure that warehouse projects reduce their individual and cumulative impacts on the communities in which they are located to the greatest extent feasible.

The Best Practices provides examples of environmentally superior methods of developing warehouse projects and offers sample mitigation measures that a local agency should consider when faced with a project such as the Project proposed here. For example, the Best Practices encourage local governing bodies to proactively plan for logistics projects by establishing industrial districts near major highway and rail corridors but away from sensitive receptors in order to help attract investment while avoiding conflicts between warehouse facilities and residential communities.[68]

The FEIR fails to respond to most of the Best Practices measures outlined in Residents' DEIR comments and relies on MM AIR-2 and MM-AIR-3 to demonstrate the Project's compliance with the Best Practices.

The FEIR fails to address many of the recommendations in the Best Practices. For example:

- Per CARB guidance, siting warehouse facilities so that their property lines are at least 1,000 feet from the property lines of the nearest sensitive receptors.
- Placing facility entry and exit points from the public street away from sensitive receptors, e.g., placing these points on the north side of the facility if sensitive receptors are adjacent to the south side of the facility. [69]

As noted above, the closest receptor is 110 feet to the south of the project site, considerably closer than what is recommended by the Best Practices. Additionally, the entry and exit point to the Project site on Nielsen Avenue faces the sensitive receptors to the south, increasing the likelihood of causing significant impacts to those receptors.

---

[66] Best Practices, p. 1
[67] Best Practices, p. 1.
[68] Best Practices, p. 3.
[69] Best Practices, p. 6.

The Best Practices also recommend that local jurisdictions take care when considering potential impacts from air quality and GHG emissions from project construction and operation. The FEIR does not address many of the recommendations and fails to include mitigation measures that conform with the Best Practices, which for construction include:

- Prohibiting grading on days with an Air Quality Index forecast of greater than 100 for particulates or ozone for the project area.
- Limiting the amount of daily grading disturbance area.
- Providing electrical hook ups to the power grid, rather than use of diesel-fueled generators, for electric construction tools, such as saws, drills and compressors, and using electric tools whenever feasible.[70]

For operational air quality and GHG emissions impacts, the Best Practices recommend:

- Requiring all heavy-duty vehicles entering or operated on the project site to be zero-emission beginning in 2030.
- Requiring on-site equipment, such as forklifts and yard trucks, to be electric with the necessary electrical charging stations provided.
- Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations.
- Forbidding trucks from idling for more than two minutes and requiring operators to turn off engines when not in use.

The FEIR fails to demonstrate conformance with any of the above recommendations. The Best Practices also include several recommendations and suggested mitigation measures regarding warehouse noise and transportation impacts that the FEIR fails to consider.

The City must consider all of the recommendations of the OAG and incorporate any feasible measures recommended in the Best Practices as mitigation measures in a revised DEIR to further reduce the Project's potentially significant air quality, GHG emissions, transportation, energy, and noise impacts.

[70] Best Practices, p. 8.

F. The FEIR Fails to Disclose the Project's Inconsistencies with Land Use and Planning Laws and Regulations

Pursuant to Appendix G of the CEQA Guidelines, a project will have a significant adverse environmental impact on land use and planning if it will cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.[71] Here, the FEIR fails to disclose inconsistency with the City's General Plan which result in a significant adverse environmental impact on land use and planning.

1. The FEIR Fails to Disclose the Project's Inconsistencies with the Noise Element of the City's General Plan

Under California law, a general plan serves as a "charter for future development"[72] and embodies "fundamental land use decisions that guide the future growth and development of cities and counties."[73] The general plan has been aptly described as "the constitution for all future developments" within a city or county.[74] Further, the "propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements."[75] The consistency doctrine has been described as the "linchpin of California's land use and development laws; it is the principle which infuses the concept of planned growth with the force of law."[76]

The City of Fresno's General Plan Noise Element includes objectives and policies that work to protect the citizens of the City from the harmful and annoying effects of exposure to excessive noise. The Noise Element includes the following policy to guide development:

> **NS-1-a** Desirable and Generally Acceptable Exterior Noise Environment. Establish 65 dBA Ldn or CNEL as the standard for the desirable maximum average exterior noise levels for defined usable exterior areas of residential and noise sensitive uses for noise, but designate 60 dBA Ldn or CNEL

---

[71] CEQA Guidelines, Appendix G §X(b).
[72] *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 54.
[73] *City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521, 532.
[74] *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors of El Dorado County* (1998) 62 Cal.App.4th 1334, 1335.
[75] *Citizens of Goleta Valley v. Board of Supervisors of County of Santa Barbara* (1990) 52 Cal.3d 553, 570.
[76] *Corona-Norco Unified School District v. City of Corona* (1993) 17 Cal.App.4th 985, 994.

> (measured at the property line) for noise generated by stationary sources impinging upon residential and noise sensitive uses. Maintain 65 dBA Ldn or CNEL as the maximum average exterior noise levels for non-sensitive commercial land uses, and maintain 70 dBA Ldn or CNEL as maximum average exterior noise level for industrial land uses, both to be measured at the property line of parcels where noise is generated which may impinge on neighboring properties.[77]

As demonstrated above, the Project will result in significant noise impacts during Project operation that will violate Policy NS-1-a unless mitigated. Mr. Watry provides substantial evidence that the Project will exceed the desirable and generally acceptable noise thresholds established in Policy NS-1-a, and as a result, the FEIR fails to demonstrate consistency with the General Plan.

III. THE PLANNING COMMISSION CANNOT MAKE THE FINDINGS REQUIRED FOR PROJECT APPROVAL

The Project requires approval of a Development Permit and a Tentative Parcel Map by the City. Pursuant to the Fresno City Code ("Code") the City Planning Director ("Director") has the authority to approve, conditionally approve, or deny the Project's applications based on specific sets of findings applicable to each permit, the Director may refer items directly to the Planning Commission when in their opinion the public interest would be better served by having the Planning Commission conduct the Development Permit review.[78] Here, the Director has referred the Project applications to the Planning Commission for review. In order to approve the Development Permit for the Project, the Planning Commission must find that the Project is consistent with the following:

1. The applicable standards and requirements of [the City] Code.
2. The [City's] General Plan and any operative plan or policies the City has adopted.
3. Any applicable design guidelines adopted by the City Council.
4. Any approved Tentative Map, Conditional Use Permit, Variance, or other planning or zoning approval that the project required.

---

[77] City of Fresno, General Plan, Chapter 9: Noise and Safety, p. 9-19 available at https://www.fresno.gov/darm/wp-content/uploads/sites/10/2022/12/upload_temp_Consolidated-GP-10-13-2022.pdf

[78] Fresno City Code ("FCC") § 15-5203 (Development Permit); *see also* FCC § 15-3308 (Tentative Parcel Map).

5. Fresno County Airport Land Use Compatibility Plan (as may be amended) adopted by the Fresno County Airport Land Use Commission pursuant to California Public Utilities Code Sections 21670—21679.5.[79]

Additionally, pursuant to the Code, the Planning Commission may approve or conditionally approve a Tentative Parcel Map based on the following findings:

1. The proposed subdivision, together with the provisions for its design and improvement, is consistent with the General Plan, any applicable operative plan, adopted policies or guidelines, and the Municipal Code.
2. A subdivision for which a Tentative Map is required shall provide pursuant to the Map Act (Section 66473.1), to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision.
3. Water will be available and sufficient to serve a proposed subdivision with more than 500 dwelling units in accordance with the Map Act (Section 66473.7).
4. There exists sufficient infrastructure capacity for water, runoff, storm water, wastewater, and solid waste systems to serve the proposed subdivision. In cases where existing infrastructure is found to be deficient, plans shall show how sufficient capacity will be provided.
5. The proposed subdivision is compliant with the City of Fresno Floodplain Management Ordinance and the State of California Code of Regulations Title 23, as well as any other applicable State or federal law.[80]

The City cannot make all of the above findings for the Project, thereby precluding approval of the Project's land use permits. As demonstrated in the foregoing comments, the Project is inconsistent with the General Plan's Noise and Safety Element. Therefore, the Planning Commission cannot find that the Project is consistent with the General Plan, precluding finding No. 2 for the Development Permit and Finding No. 1 of the Tentative Parcel Map and cannot make the necessary findings to approve the Project's entitlements until the deficiencies in the FEIR are corrected.

[79] FCC § 15-5206.
[80] FCC § 15-3309.

IV. THE PROJECT FAILS TO COMPLY WITH THE SUBDIVISION MAP ACT

The Project requires the approval of a Tentative Parcel Map to subdivide the existing two parcels into four parcels.[81]

The FEIR still fails to analyze this component of the Project. The FEIR therefore lacks substantial evidence to support the Map Act's required factual findings to approve the Tentative Parcel Map, which require the City to find that a proposed subdivision is consistent with the general plan/specific plan, and does not have any detrimental environmental or public health effects.[82] In addition, as discussed above, there is substantial evidence demonstrating that the Project is likely to have, potentially significant impacts related to transportation, air quality, health risk, GHG emissions, noise, and land use and planning. These impacts are not adequately mitigated in the FEIR. As a result of these unmitigated impacts, the Project fails to comply with mandatory Map Act requirements and the City cannot make the requisite findings to approve the Project's Tentative Parcel Map.

The purpose of the Map Act is to regulate and control design and improvement of subdivisions with proper consideration for their relation to adjoining areas, to require subdividers to install streets and other improvements, to prevent fraud and exploitation, and to protect both the public and purchasers of subdivided lands.[83] Before approving a tentative map, the Map Act requires the agency's legislative body to make findings that the proposed subdivision map, together with the provisions for its design and improvement, is consistent with the general plan and any specific plan.[84] The Map Act also requires the agency's legislative body to deny a proposed subdivision map in any of the following circumstances:[85]

a) The proposed map is ***not consistent with applicable general and specific plans*** as specified in Section 65451.
b) The design or improvement of the proposed subdivision is ***not consistent with applicable general and specific plans***.
c) The site is not physically suitable for the type of development.
d) The site is not physically suitable for the proposed density of development.

---

[81] DEIR, pg. 3-13.
[82] Gov Code §§66473.5, 66474.
[83] *Pratt v. Adams* (1964) 229 Cal.App.2d 602.
[84] Gov Code § 66473.5.
[85] Gov. Code § 66474 (emphasis added).

e) The ***design of the subdivision or the proposed improvements are likely to cause substantial environmental damage*** or substantially and avoidably injure fish or wildlife or their habitat.
f) The ***design of the subdivision or type of improvements is likely to cause serious public health problems***.
g) The design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

Residents' experts provided substantial evidence demonstrating that the Project is likely to have significant, unmitigated impacts to public health from exposure to *Cocci* fungus spores; on the environment and public health from construction and operational noise; and on the climate from excess GHG emissions caused by unmitigated VMT. These impacts demonstrate that the Project fails to comply with the General Plan, is "likely to cause substantial environmental damage," and "is likely to cause serious public health problems."[86] These unmitigated impacts render the Project inconsistent with Map Act requirements. The Map Act therefore requires the City to deny the Project's Tentative Parcel Map pursuant to Government Code Sections 66473.5 and 66474(a), (b), (e), and (f).

V. CONCLUSION

For the reasons stated herein, in Residents' comments on the DEIR, and in other comments from the public, Residents urges the Planning Commission to remand the Project to City Staff to prepare and circulate a legally adequate EIR which fully discloses and mitigates the Project's potentially significant impacts related to air quality, health risks, GHG emissions, noise, and transportation. The City must remedy all substantial defects in the FEIR, and in the Project as a whole, before the Project may be presented to the City's decision making body at any future public hearing.

Thank you for your consideration of these comments.

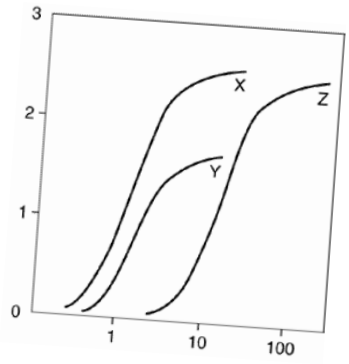
Sincerely,

Kevin Carmichael

KTC:ljl

[86] Gov. Code §§ 66474(a), (b), (e), and (f).

EXHIBIT A



Clark & Associates
Environmental Consulting, Inc.

OFFICE
12405 Venice Blvd
Suite 331
Los Angeles, CA 90066

PHONE
310-907-6165

FAX
310-398-7626

EMAIL
jclark.assoc@gmail.com

October 2, 2023

Adams Broadwell Joseph & Cardozo
520 Capitol Mall, Suite 350
Sacramento, CA 95814

Attn: Mr. Kevin T. Carmichael

Subject: Comments On Final Environmental Impact Report (FEIR) For Development Permit Application No. P21-02699 & Tentative Parcel Map No. P21-05930

Dear Mr. Carmichael:

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the September 2023 City of Fresno (the City) FEIR for the above referenced project.

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

Project Description:

According to the City's FEIR, Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21-05930 was filed by Scannell Properties. The applicant proposes to construct four office/warehouse buildings with a total area of 901,438 square feet, as well as associated circulation, parking, and infrastructure improvements.

The buildings' exterior would be up to 44 feet high with an interior height of up to 36 feet and designed with a total of 201 loading dock doors on the north and south sides of the buildings. The four buildings would be comprised of the following: Building 1 would be 468,812 square feet and would provide 122 loading dock doors; Building 2 would be 248,786 square feet and would provide 46 loading

dock doors; Building 3 would be 93,074 square feet and would provide 18 loading dock doors; and Building 4 would be 90,766 square feet and would provide 15 loading dock doors. The proposed project would also subdivide the project site into four separate parcels and would consist of each proposed building on a separate parcel. A total of 594 on-site parking spaces would be provided for vehicles and trucks. Of the 594 parking spaces, 385 spaces would be dedicated for standard vehicles, 11 spaces would be dedicated for accessible standard vehicles, and 10 spaces would be dedicated for accessible vans. The remaining 188 spaces would be dedicated for trailers and would be located along the eastern and western edges of the project site and would be located behind two 8-foot-tall gates, which would be installed to separate the general parking area from the truck storage and dock loading area.

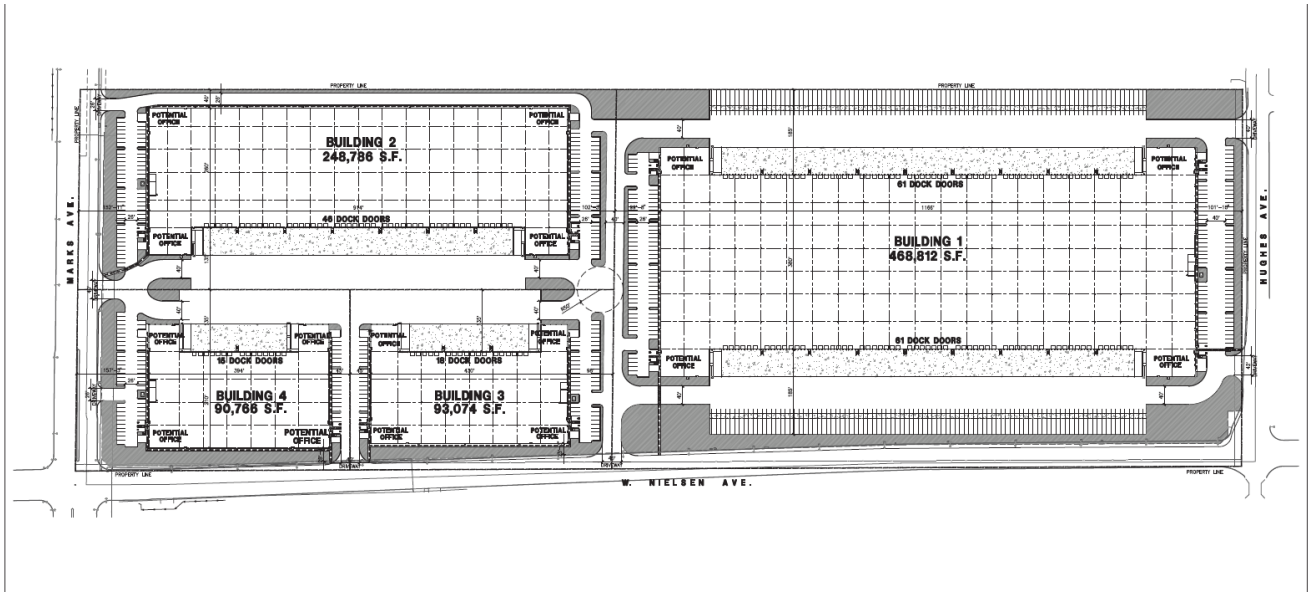


Figure 1: Project Site Plan

The 48.03-acre project site is currently vacant but formerly consisted of an industrial warehouse that has since been demolished. The project site is bounded to the north by partially developed land, to the east by North Hughes Avenue, to the south by West Nielsen Avenue, and to the west by North Marks Avenue. Regional access to the site is provided by State Route 180 (SR-180), which is located approximately 0.3 mile south of the project site, and State Route 99 (SR-99), which is located approximately 0.8 miles east of the project site.

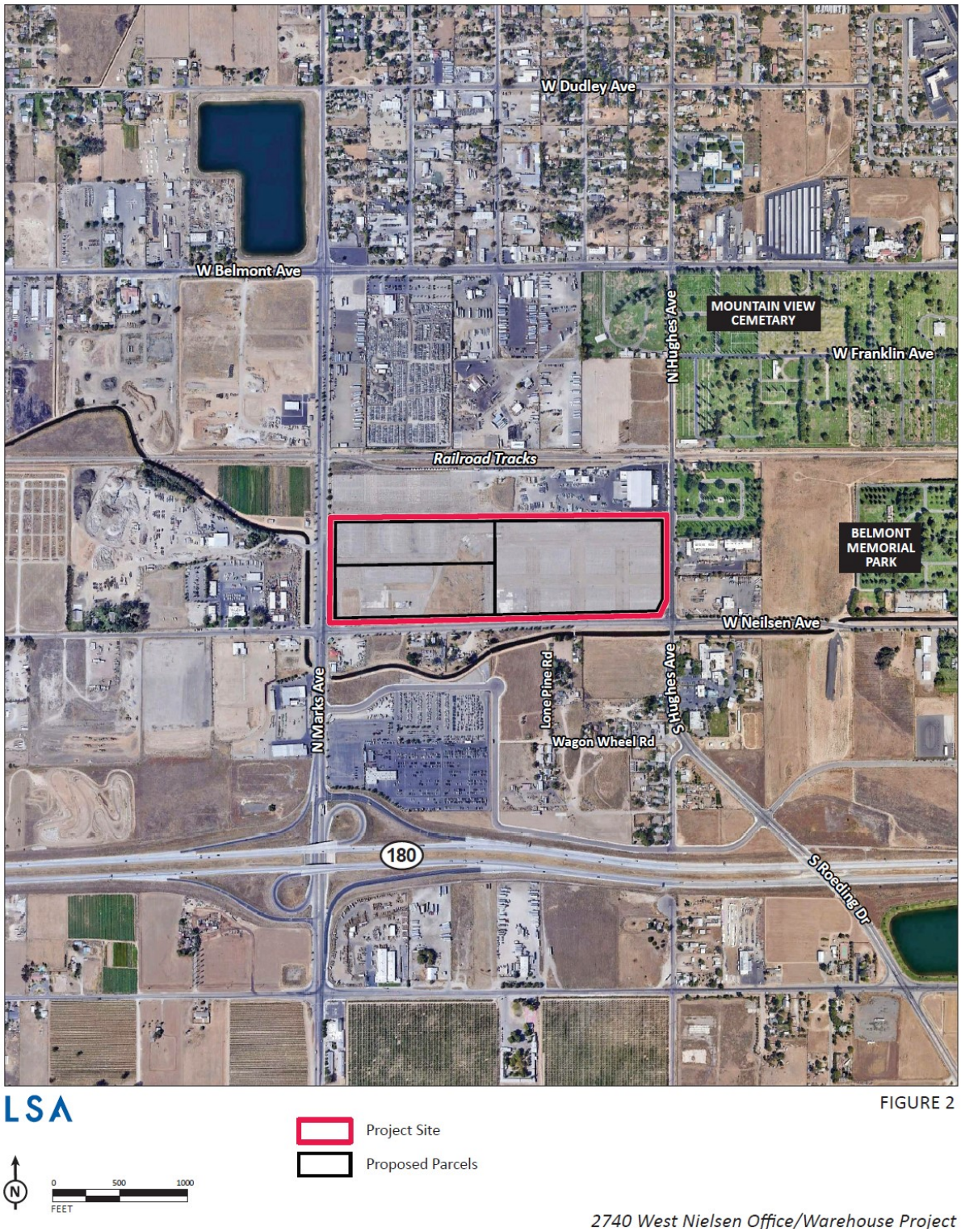


Figure 2: Site Vicinity Map

The City's analysis assumes that the proposed project would be operational 24 hours per day, 7 days per week. A total of 594 on-site parking spaces would be provided for vehicles and trucks. Of

the 594 parking spaces, 385 spaces would be dedicated for standard vehicles, 11 spaces would be dedicated for accessible standard vehicles, and 10 spaces would be dedicated for accessible vans. The remaining 188 spaces would be dedicated for trailers and would be located along the eastern and western edges of the project site and would be located behind two 8-foot-tall gates, which would be installed to separate the general parking area from the truck storage and dock loading area.

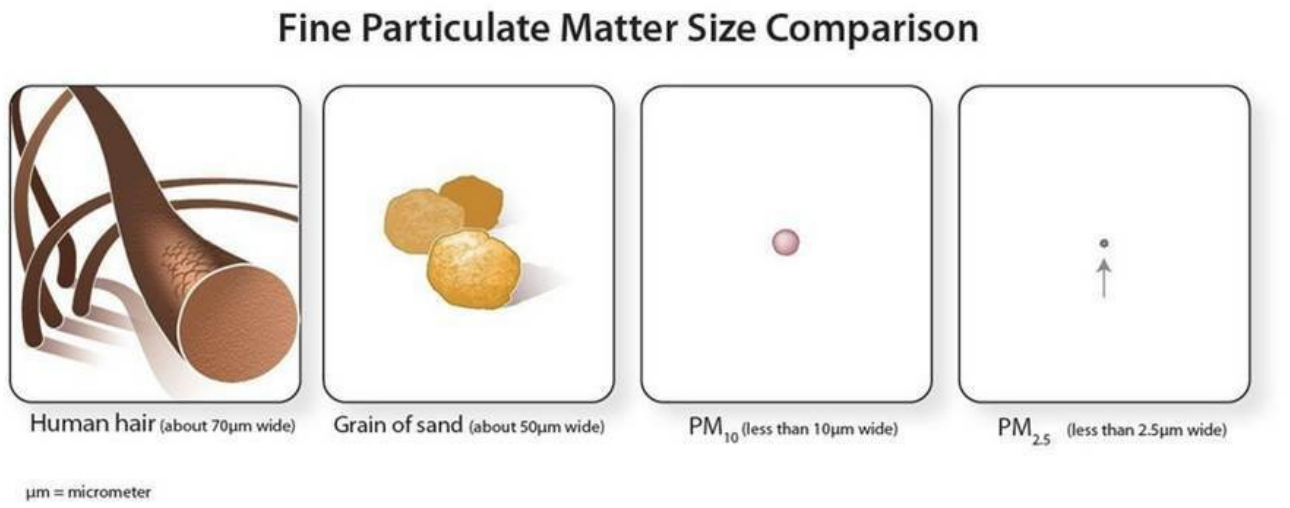
According to the conclusions of the FEIR, the proposed project is not expected to result in any significant unavoidable adverse impacts. The conclusion from the City that there will not be significant air quality impacts is not supported by the facts of the Project. There are substantial impacts that are not addressed in the City's analysis that must be addressed in a revised environmental impact report .

Specific Comments:

1. **Response B3-Regarding Concerns About Exposure To *Coccidiodes Immitis* (Valley Fever Cocci) From Particulate Matter Released From Site During Construction Activities of The Project Cites Minimizes The Impacts That Emissions Will Have At Sensitive Receptors Without Actually Modeling The Impacts.**

According to the City's response to B3-10, the closest sensitive receptors include the single-family residences located approximately 110 feet south of the project site across West Nielsen Avenue. The City notes that except under high wind conditions, this distance is sufficient that particulate matter will settle prior to reaching the nearest sensitive receptor. This response is completely inaccurate.

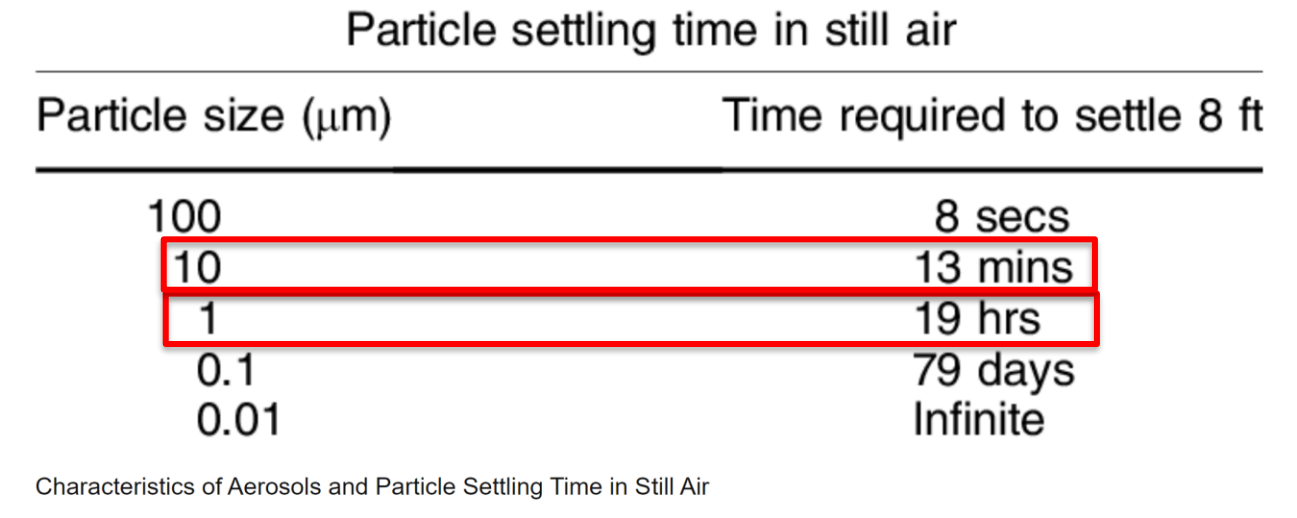
As was noted in my initial comments *Coccidiodes Immitis* spores are very small. The spores are typically 0.002–0.005 millimeters ("mm") or 2 microns to 5 microns in diameter. Disturbing soils impacted by the spores will release these very small particles into the air.



Very small particles require different mitigation measures than the much larger PM_{10}. The settling velocity of a particle (the amount of time a particle takes to fall to the ground) is proportional to the diameter of the spherical particle squared. The larger the particle diameter, the faster the particle will settle. The smaller the particle diameter, the longer it will stay suspended in air.

In a 2004 paper regarding the fate of viruses and bacteria, including spores, in the air, Utrup and Frey[1] noted that smaller particles like spores require significantly longer to settle out of air. For particles 10 um in diameter the settling time is measured in minutes. For particles less than 10 um in diameter, the settling time is measured in hours. This would allow the spores to travel significantly longer distances impacting receptors at greater distances.

[1] Utrup, L. and A. Frey. 2004. Fate of Bioterrorism-Relevant Viruses and Bacteria, Including Spores, Aerosolized into an Indoor Air Environment. *Experimental Biology and Medicine* 229(4):345-50



Characteristics of Aerosols and Particle Settling Time in Still Air

Clearly, based on the particle size and setting rate, Valley Fever spores present in soils are capable of travel many miles following the disturbance of impacted soils. The City must correct their speculative answer with an accurate assessment of the threat posed to residents and other sensitive receptors in the area. Since the project will disturb 160 acres of soils (from CalEEMOD analysis) over an 80 day period, it is clear that there will be ample opportunity for Valley Fever spores to migrate well offsite if additional mitigation measures are not applied.

As was previously noted in my comments, since 2014, the number of cases of Valley Fever in Fresno County has increased from 161 in 2014 to 828 in 2017, as reported by the California Department of Public Health (CDPH).[2] In 2022, 450 cases were recorded in Fresno County,[3] almost three times (2.8 times exactly) as many as the amounts reported in 2014. In the first quarter of 2023, Fresno County reported 83 cases.

2. The Project's Air Quality Analysis Is Incomplete And Still Fails To Adequately Consider The Use of Refrigeration Units and TRU's Onsite

According to the FEIR, the proposed project would result in the construction of four

[2] 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

[3] 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

office/warehouse buildings that would be configured for heavy industrial uses by tenants that have not been identified. The project is being built as a "spec" building whereby tenant(s) would perform the final improvements, while the proposed project would fully build the office spaces. The description provided does not preclude the use of the buildings as refrigerated/cold storage warehouses. Given the vague description of the Project end use, the City should include an analysis of the Project assuming that the buildings could be used for cold storage and should also include the use of Transport Refrigeration Units (TRUs) on site in the air quality analysis.

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[4] 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.

Given the lack of a clear project description of the use of the Project Site, it is therefore reasonable to conclude that refrigeration units and TRUs are a foreseeable project component. The refrigeration units and 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 refrigeration units and TRUs. The City must assess the impacts since they are allowing for the potential future use of these sources of pollution onsite in a revised FEIR.

3. **Response B3-21: The FEIR Claims That Emissions From Backup Generators, Diesel Fire Pumps, and Forklifts Were Included In The Air Quality Analysis.**

   According to the City's response to Comment B3-21, "Responses A4-6 and B3-7, to be conservative, a supplemental analysis to evaluate potential emissions associated with equipment, emergency backup generators, and diesel fire pumps was conducted using

[4] 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.

> CalEEMod. This supplemental analysis conservatively assumed that 40 diesel-powered forklifts would be used for 8 hours per day and that four diesel-powered 500 HP emergency backup generators and four diesel-powered 500 HP diesel fire pumps would be used for up to 50 hours per year. The results of the supplemental analysis indicate that the use of equipment, emergency backup generators, and diesel fire pumps would not exceed the significance criteria for annual ROG, NO_x, CO, SO_x, PM_{10}, or $PM_{2.5}$ emissions."

Nowhere in the files posted by the City is there a file showing any of the sources listed above being listed in a CalEEMOD analysis. A search using the terms generator, forklift, and fire pump shows zero references in the CalEEMOD analyses provided by the City. The City must correct this major flaw in the Air Quality Analysis of the FEIR

Conclusion

The facts identified and referenced in this comment letter lead me to reasonably conclude that the Project could result in significant unmitigated impacts if the DEIR is approved. The City must re-evaluate the significant impacts identified in this letter by requiring the preparation of a revised draft environmental impact report.

Sincerely,

EXHIBIT A

CV

EXHIBIT B

WILSON IHRIG
ACOUSTICS, NOISE & VIBRATION

CALIFORNIA
WASHINGTON
NEW YORK

WI #22-005

2 October 2023

Kevin T. Carmichael, Esq.
Adams Broadwell Joseph & Cardozo
520 Capitol Mall, Suite 350
Sacramento, California 95814

Subject: **2740 West Nielsen Avenue Office/Warehouse Project**
Fresno, California
Review and Comment on City Responses to Previous Comments

Dear Mr. Carmichael,

In June of last year, we reviewed and commented upon the noise impact analysis in the following document:

Mitigated Negative Declaration for Development Permit Application No. P21-02699 & Tentative Parcel Map No P21-05930 ("MND")
Project Address: 2740 West Nielsen Avenue, Fresno, California
City of Fresno, Planning and Development Department
May 13, 2022

Subsequently, the City of Fresno had the consulting firm LSA prepare a Draft Environmental Impact Report for this project:

Public Review Draft Environmental Impact Report ("DEIR")
2740 West Nielsen Avenue Office/Warehouse Project
LSA Project No. SNN2102
February 2023

We commented on the DEIR noise analysis in May of this year, comments you subsequently submitted to the City. The City has now responded to those comments in the following document:

Response to Comments Document ("RTCD")
2740 West Nielsen Avenue Office/Warehouse Project
LSA Project No. SNN2102
September 2023

This letter reports our comments on City's response to our previous comments.

Comments on Operational Noise Analysis – Traffic Noise

The gist of our previous comments on traffic noise was that the analysis relied solely upon a relative criterion (i.e., it only considered the increase, not the absolute level) and that misses the fact that a significant absolute threshold would, indeed, be exceeded if the project were to move forward. We noted that both Caltrans and the Federal Transit Administration both recognize that absolute as well as relative thresholds need to be considered, a point you further elaborated upon in your comment letter by citing relevant case law.

The absolute threshold that we believe should be applied to this situation is that established by Policy NS-1-a of the Fresno General Plan in Chapter 9, Noise and Safety:

> **Desirable and Generally Acceptable Exterior Noise Environment.** Establish 65 dBA Ldn or CNEL as the standard for the desirable maximum average exterior noise levels for defined usable exterior areas of residential and noise-sensitive uses . . .[1]

We presented Table I below to show how information in the DEIR [Table 4.9.L, p. 4.9-19] substantiates that at every point in time that the noise level is assessed, the noise exposure goes from a level that is lower than 65 dBA CNEL to one that is higher. We conclude that this constitutes a significant noise impact.

Table I Traffic Noise Levels Without and With Proposed Project

Roadway Segment	CNEL (dBA) 50 ft from Centerline of Nearest Lane					
	Existing		Opening Year		Year 2035	
	Without	With	Without	With	Without	With
Nielsen Ave between Marks and Hughes	64.0	**66.1**	64.4	**66.4**	64.4	**66.4**

The city responds to these comments in Response B3-24 on page 3-244 of the RTCD. As a technical matter, they take no exception to the data presented above. They do, however, dismiss the idea that 65 dBA Leq is an applicable absolute threshold or that they even need to consider an absolute threshold.

As they do not take issue with the technical aspect of this argument, I have no additional comments.

[1] The *day-night average sound level* (Ldn) is a 24-hour weighted average that incorporates a 10 dBA penalty during the night hours (10 p.m. to 7 a.m.) to account for the heighted sensitivity of people to noise during the night. The *community noise exposure level* (CNEL) additionally includes a 5 dBA penalty during the evening hours (7 p.m. to 10 p.m.). For transportation-dominated environments, the Ldn and CNEL are very similar, with the CNEL typically being higher than the Ldn by 0.1 to 0.5 dBA. In environmental acoustics, they are used interchangeably.

Comments on Construction Noise Analysis

The DEIR construction noise analysis purported to rely upon a methodology contained in the Federal Transit Administration *Transit Noise and Vibration Impact Assessment Manual* ("FTA Manual"). The FTA Manual provides for two options: (i) Option A, General Assessment and (ii) Option B, Detailed Analysis. The DEIR claimed to have used Option A. In our comment letter on the DEIR, we noted that the analysis mis-applied Option A and presented a more thorough analysis using the more detailed Option B.

Before proceeding, I note that commenting on the DEIR analysis and now commenting on the RTCD response is somewhat difficult because of the lack of transparency in both documents. Nowhere are the details of the noise calculations provided with any clarity. Rather, statements are made that simply state results, leaving it up to the reader to back-calculate and triangulate whatever analysis was done. Since that is difficult to do and even more difficult to explain, I shall proceed by presenting straightforward analyses that take the RTCD responses into account.

To begin, the DEIR analysis adopts as the threshold of significance a 5 dB increase over the existing ambient. This is reiterated in Response B3-24 by the sentence "Because the increase would be less than 5 dBA, construction noise would be considered less than significant." So, it is clear that the threshold is existing ambient plus 5 dB.

But what is the existing ambient? In the text of neither the DEIR nor the RTCD is this plainly stated. It may, however, be inferred by this statement which appears in both documents, "When logarithmically combined with the existing average ambient noise level, the total noise level would be 66.2 dBA Leq, resulting in an increase of 3.9 dBA Leq." [DEIR at p. 4.9-18; RTCD at p. 3-246]. 66.2 dBA minus 3.9 dBA equals 62.3 dBA. As we pointed out previously, this value may be found in the DEIR in Table 4.9.D: Long-Term Noise Measurements [DEIR at p. 4.9-7]. So, it seems clear that the existing ambient is 62.3 dBA Leq which makes the relevant threshold 67.3 dBA Leq.

Now consider construction noise estimates using the FTA methodologies. Both use the following equation to estimate the noise level for any single piece of equipment:

$$L_{eq}(equip) = E.L. + 10\log(U.F.) - 20\log\left(\frac{D}{50}\right)$$

where: $L_{eq}(equip)$ = L_{eq} at a receiver resulting from the operation of a single piece of equipment over a specified time period

E.L. = noise emission level of the particular piece of equipment at a reference distance of 50 feet

U.F. = usage factor that accounts for the fraction of time that the equipment is in use over the specified period of time

D = distance from the receiver to the piece of equipment

The major difference between Option A and Option B is that Option A only considers the two loudest pieces of equipment and assumes a usage factor of 1 so that 10log(U.F.) = 0 whereas Option B considers all equipment but allows for usage factors to be taken into account.

Option A Analysis: Let's go back to the DEIR which states, based on their application of Option A, "The project construction composite noise levels at a distance of 50 feet would range from 74 dBA Leq to 84 dBA Leq, with the highest noise levels occurring during the grading phase." With the exception of pile driving (which will not be used on this project), the highest noise emission level used in the DEIR is 85 dBA Lmax at 50 feet. Many pieces of equipment operate at this level, including dozers and graders, so reasonable to assume that the two loudest pieces of equipment during grading will operate at this level. Now, decibels add logarithmically which make calculations somewhat difficult to follow, but it is a simple matter of logarithmic mathematics that if two sources of equal loudness are combined, the resulting level will be 3 dB higher than the individual sources. So, in this case, two pieces of equipment each operating at 85 dBA at 50 ft will together generate 88 dBA at 50 ft. This is where the Option A analysis should stop. The so-called "construction composite noise level" for grading should be 88 dBA at 50 ft. To arrive at a combined level of 84 dBA Leq at 50 feet for two pieces of equipment – as the DEIR asserts – one must use a usage factor of 40% for both pieces: 10log(0.40) = -4 dB. This is explicitly in violation of the Option A methodology. The whole point of Option A is to simplify the analysis by only considering two pieces of equipment, but to then compensate for the absense of the other equipment by assuming that the two run 100% of the time.

Now let's look at the distance factor. The DEIR and RTCD both state ". . . it is expected that composite noise levels during construction at the nearest off-site sensitive residential use to the south would reach an average noise level of 64 dBA Leq during daytime hours." (This is construction noise alone and not combined with the existing ambient.) Since this is based on a source level of 84 dBA at 50 ft, this implies an attenuation with distance of 20 dB. Using the formula above, one may back-calculate that the distance must be 500 ft because 20log(500/50) is 20. For my previous comments, I had estimated 471 feet, but this difference is negligible. We can use 500 ft and 20 dB as the DEIR does.

Using a construction composite noise level of 88 dBA Leq at 50 ft and 20 dB attenuation with distance, one arrives at a noise level of 68 dBA Leq at the nearest residence. Combining that (logarithmically) with the existing ambient of 62.3 dBA Leq results in a total noise exposure of 69.0 dBA Leq, well over the 67.3 dBA Leq threshold of significance.

So, a proper application of FTA Option A results in a significant noise impact.

Option B Analysis: In Response B3-25, the City asserts that although detailed information about construction equipment is acceptable for the air quality analysis, it is not suitable for a detailed, Option B noise analysis [RTCD at p. 3-245]. It nonetheless goes on to imply that the preparers have conducted a detailed analysis along the lines of that I presented previously. However, whereas I arrived a total noise exposure (construction plus ambient) of 71.0 dBA Leq during grading, the RTCD states that ". . . the composite noise levels during construction at the nearest off-site sensitive residential use to the south would reach an average noise level of 68.9 dBA Leq at the acoustical average distance of 471 feet during daytime hours." (Here they used the 471 ft distance I used previously. The difference between using 471 ft and 500 ft is only 0.5 dB which is inconsequential in this context.)

To state the obvious, 68.9 dBA (construction noise alone) is greater than 67.3 dBA – the threshold of significance – so the RTCD detailed analysis corroborates my previous finding of a significant noise impact. To be honest, I cannot follow the argument presented by Response B3-24 on RTCD page 3-246 that leads them to conclude that 68.9 dBA does not constitute an impact. They seem to be

confused as to what the ambient level is because they cite "the existing average daytime noise level of 66.0 dBA Leq" which it is not as established above.

As a final note on this, if the RTCD construction noise estimate of 68.9 dBA Leq is combined with the existing ambient of 62.3 dBA Leq, the total noise exposure is 69.8 dBA Leq, a 7.5 dBA increase over the existing ambient indicating a significant noise impact.

In summary, regardless of whether FTA Option A or Option B is used for the construction noise analysis, the project information provided in the DEIR and RTCD lead to the conclusion that construction noise will exceed the adopted threshold of significance and will, therefore, cause a significant impact.

♦ ♦ ♦ ♦ ♦

Please contact me if you have any question about this review.

Very truly yours,

WILSON IHRIG

Derek L. Watry
Principal

2023-10-02 - 2740 w nielsen - comments on rtcd - noise - d watry.docx

EXHIBIT C

794 Sawnee Bean Road
Thetford Center VT 05075

Norman Marshall, President
(802) 356-2969
nmarshall@smartmobility.com

October 2, 2023

Kevin T. Carmichael
Adams Broadwell Joseph & Cardozo
520 Capitol Mall, Suite 350
Sacramento, CA 95814

Subject: Duke Warehouse at Slover and Alder

Dear Mr. Carmichael,

At your request, Smart Mobility reviewed the trip generation, vehicle miles traveled (VMT) impacts and greenhouse gas (GHG) impacts of the proposed 2740 West Nielsen Avenue Mitigated Negative Declaration ("MND") in June 2022 and the Draft Environmental Impact Report ("DEIR") in May 2023. My May 2023 findings concerning the DEIR included:

1) Given that the tenants have not been identified, trip generation is highly uncertain. The trip generation study the DEIR relies on includes warehouse sites with trip rates of two to six times the rate used in the DEIR.
2) Undercounting trips translates directly into undercounting VMT and GHG.
3) The DEIR applied the Fresno COG ABM to estimate that the project would generate 19.8 VMT per employee per day. The model covers only Fresno County and excludes the portion of travel outside the county. This issue is particularly important for truck trips because major intermodal facilities are 110 – 240 miles from the proposed project. The VMT analysis should be supplemented to include an analysis of external travel with a particular focus on truck travel.
4) The DEIR answers affirmatively that the project includes transportation demand strategies. The DEIR needs to document these trip reduction programs and explain how they will be enforced on the currently unknown tenants.

Now I have also reviewed the September 2023 Final Environmental Impact Report ("FEIR") Response to Comments Document for the Project.

Re comments #1 & #2, the FEIR response B3-6) focuses on an Amazon warehouse cited in my letter, and states that Amazon will not be the tenant for the proposed warehouse. However, Amazon is only one of the warehouses cited with higher trip rates than assumed in the EIR. Furthermore, my comment letter stated that the observed Amazon rate was likely indicative of other, non-Amazon, warehouses because: "Other businesses are copying many of Amazon's logistics methods." The FEIR does not dispute that future trip generation is unknown, and therefore could be significantly higher than assumed – which also would cause VMT and GHG to be higher than assumed. The applicant should take one of two paths -either a) applying a significantly higher and more conservative trip generation rate, or b) requesting as a condition of approval that trip generation will not exceed the number assumed in the EIR, and this be certified prior to beginning construction.

Re comment #3, the FEIR notes that Appendix G of the traffic study includes external passenger vehicle travel (Response B3-14). The model documentation, *Fresno Activity-Based Model Update* (August 30, 2018) states that this this external travel is calculated outside of the general activity-based model framework from outputs from the California Statewide model. These estimates are very coarse. The project page for the California Statewide Travel Demand Model (CSTDM) states: "This model is not an appropriate tool for individual project level analysis."[1] The FEIR states that "truck trips were not included in the VMT analysis" (Response B3-14), arguing that it is not required. For land uses that generate significant truck traffic, including warehouses, it is critical that truck VMT and GHG be analyzed.

Re comment #4, the FEIR fails to include enforceable transportation demand strategies, arguing the "identification and analysis of mitigation measures is not required." (Response B-16)

All the citied FEIR responses minimize the VMT and GHG impacts of the proposed project:

- Assuming a relatively low trip generation rate for an unknown project,
- Estimating external passenger vehicle VMT with a coarse statewide model,
- Ignoring truck VMT, and
- Not considering mitigation.

The VMT and GHG impacts of the project could be significantly greater than presented in the FEIR.

[1] https://dot.ca.gov/programs/transportation-planning/division-of-transportation-planning/data-analytics-services/statewide-modeling/california-statewide-travel-demand-model