

Exhibit X
Additional Public Comments



ALERT·O·LITE Inc.
True Value.

December 4th, 2023

Jennifer Clark
Planning Director
City of Fresno Department of Planning and Development
2600 Fresno Street
Fresno, CA 93721

Dear Director Clark,

On behalf of Alert-O-Lite Inc I would like to extend our support for Scannell Properties proposed industrial development in the City of Fresno.

This project would provide much needed industrial space to help fulfill the pressing commercial real estate demands of the region, while remaining consistent with the City's general plan and zoning designation for this parcel.

Both Fresno County and the City of Fresno currently have low industrial vacancy rates and have as a result lost out on potential projects to other neighboring regions. With an increasing emphasis at the local, state, and federal levels as well as in the private sector on worker upskilling, this means that projects that would be beneficial both to our region's economic and workforce development have not materialized in our city and county.

Over the past few years, the City of Fresno's industrial vacancy rates have remained firmly below 3 percent. This has presented a major barrier to meeting site requirements on inquiries received from site selectors and potential companies. This new development proposed by Scannell would add four new office / industrial spaces to the City's real estate portfolio, totaling over 900,000 square feet. Given the parcel's strategic location near Highway 99 and 180, these new industrial spaces will be highly competitive amongst manufacturing and logistics companies considering Fresno County for their next expansion project. This in turn will create a plethora of new employment opportunities for the residents of the city and the county. The timing is perfect for this project as the region has received significant investments in federal and state funding for workforce development.

Scannell Properties has demonstrated a commitment to environmentally sustainable practices. The proposed development site has been carefully selected to minimize any potential impact on nearby residential areas while maximizing its economic benefits. We believe that the project's careful planning and consideration for the local community make it a valuable addition to our city.

This project aligns closely with the City's vision of fostering a business-friendly environment to accelerate growth. Should the City Council approve these development plans.

Should you have any questions, I can be reached at 559-892-4000 or at debbieh@alertolite.com

Sincerely,
Debbie L Hunsaker
President & CFO

2436 Foundry Park Ave / Fresno CA 93706 559-486-4570 Fax 866-827-1270
PO Box 12224 / Fresno CA 93777-2224
CA Contractors Lic# 786366 www.alertolite.com

Regular Council Meeting

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January 11, 2024

2024 JAN -9 P 3:46

FRESNO CITY COUNCIL

CITY OF FRESNO
CITY CLERK'S OFFICE



Public Comment Packet

ITEM(S)

10:00AM (ID 24-12) HEARING to consider Development Permit Application No. P21-02699, Vesting Tentative Parcel Map No. 2021-09, and related Final Environmental Impact Report (FEIR), State Clearinghouse (SCH) No. 2022050265, regarding an Office/Warehouse Project located on approximately ± 48.03 acres of property at the northeast intersection of North Marks and West Nielsen Avenues (Council District 3)...

Contents of Supplement: Public comment email in support

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.



in Community.
in Jobs.
in **Our Future.**

INVESTFresnoCA.com

January 8, 2024

Tyler Maxwell, President
Fresno City Council
2600 Fresno Street
Room 3065
Fresno, CA 93721

Submitted via Email

RE: SUPPORT – ID 24-12 – Development Permit Application No. P21-02699 – Scannell Properties Office/Warehouse Project

Dear Council President Maxwell and City Council,

I am writing today on behalf of INVEST Fresno, a coalition of Fresno residents, businesses, and community organizations committed to building a diverse and sustainable economy in Fresno, to express our strong support for Permit Application P21-02699 – Scannell Properties Office/Warehouse Project at 2740 W. Nielsen Ave. Fresno, CA 93704.

In Scannell Properties' Nielsen and Hughes Industrial project (hereinafter "Scannell Project"), we find a properly zoned, environmentally sound development concept to deliver more than \$100 million in direct investment in construction and several billion in economic activity and municipal tax revenue for the City of Fresno.

The City of Fresno is approaching a crossroads over whether it will build a next-generation economy by maximizing its built-in advantages of location and workforce or forfeit its position as the Valley's economic leader to neighboring communities in Madera and Tulare counties.

The Scannell Project's benefits to the City of Fresno include:

Expanding Fresno's Tax Base

At a time when the City of Fresno is limited in its ability to grow its tax base through annexation and development due to the lack of an active master tax sharing agreement with the County of Fresno, the Scannell Project offers a direct pipeline to a growing tax base through its deep ties to Fortune 100 tenants and operators.

Because of visionary city leadership and the approval of projects similar to the proposed Scannell Project, Fresno's sales tax revenue and overall tax base have skyrocketed in recent years. In fact, over the past five years, Fresno has seen a nearly 42% increase in sales tax revenue – enabling Fresno to invest more in essential neighborhood services and enhancing infrastructure, public safety, and support for local businesses.

These figures reveal a dynamic shift in our local economy, one that is bringing new hope and prospects for the future and ultimately improving the quality of life for all residents.

Delivering Jobs of All Skill Levels

The Scannell Project is a unique opportunity for Fresno's workforce of all stripes to participate in the construction and operation of a once-in-a-generation development.

Aside from the hundreds of construction jobs and the multiplier effect of jobs supporting the direct construction workforce on the Project, the Scannell Project is likely to boast nearly 1,000 permanent jobs upon full build-out and tenancy, with most light and heavy industrial tenants paying well above market wages to similarly situated workers in the Fresno workforce.

Meeting Soaring Demand for Industrial Space

Fresno faces an extraordinarily tight industrial real estate market, with tenants currently occupying 99% of all industrial space.

This lack of availability has led to increased numbers of prospective tenants eyeing municipalities in Madera, Tulare, and Kern counties, where capacity is more readily available. Routinely, however, tenants have expressed to our members their preference to open and operate in the Fresno market due to its unique position in the San Joaquin Valley and readily available workforce.

The Scannell Project is the first-of-its-kind to meet development and environmental requirements, all while increasing supply to meet the soaring demand for industrial space.

As mentioned, Fresno is at a crossroads when it comes to developing its next-generation economy.

We have grown deeply concerned that extraneous, economically tenuous demands on Scannell and its project are threatening the approval of Scannell's Development Permit application. Such demands are likely not only to eliminate the economic viability of the project itself, but send a chilling message to investors and developers that the City of Fresno is not welcoming to economic development and investment at mass scale.

Fresno has just begun to unlock the potential of the 21st Century industrial economy. Fresno residents deserve an opportunity to lift this community through modern, high-paying jobs.

We appreciate your consideration and respectfully request the City Council approve Permit Application P21-02699 and allow for continued economic and community development and career growth.

Sincerely,



Ben Granholm
Interim Executive Director

cc: Fresno City Council
Mayor Jerry Dyer

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

December 29, 2023

Of Counsel
MARC D. JOSEPH
DANIEL L. CARDOZO

Via Email and Overnight Mail

President Tyler Maxwell
City Council Members
c/o City Clerk
City of Fresno
City Hall
2600 Fresno Street
Fresno, California, 93721-3604

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

Email: clerk@fresno.gov;
district1@fresno.gov; district2@fresno.gov;
district3@fresno.gov; district4@fresno.gov;
district5@fresno.gov; district6@fresno.gov;
district7@fresno.gov

**Re: 2740 West Nielsen Avenue Office/Warehouse Project
(Development Permit Application No. P21-02699 and Tentative
Parcel Map No. P21-05930) (SCH 2022050265): City of Fresno
Workforce Development Policies**

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

We are writing on behalf of Fresno Residents for Responsible Development (“Residents”) regarding Residents’ appeal 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. 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, City Council Agenda (December 14, 2023) available at <https://fresno.legistar.com/View.ashx?M=A&ID=1061521&GUID=6BAFA27A-466C-4DAF-989E-CC24E58B487F>.
6179-021j

proposed buildings would result in a total gross floor area of approximately 901,438 square feet. The appeal is scheduled for a continued hearing before the City Council on January 11, 2023.

Residents' appeal addresses the Project's ongoing failure to comply with the California Environmental Quality Act ("CEQA") and the City's General Plan. This letter addresses the Project's failure to comply with the workforce policies of the General Plan's Economic Development and Fiscal Sustainability Element of the City's 2014 General Plan ("ED Element"). The ED Element applies to new land use development proposals and includes local hire and apprenticeship goals for land use development projects that are intended to provide direct and immediate public benefits to the City and its residents by expanding job and career opportunities for disadvantaged workers.³ The Project fails to comply with the ED Element because it lacks these critical community benefits, such as a commitment to hire a local skilled and trained construction workforce. Absent demonstrated compliance with the ED Element's workforce policies, the Project remains inconsistent with the General Plan and therefore detrimental to the City's land use and economic goals, particularly to its highly qualified construction workforce.

The City Council must consider the objectives and policies of the ED Element when considering whether a land use proposal complies with the City's General Plan, and cannot approve the Project's entitlements unless and until the Council finds that the Project is consistent with applicable General Plan policies.⁴ As discussed herein, the Project is inconsistent with the ED Element and should not be approved until it complies with the ED Element's workforce policies. We urge the Council to require the Applicant to demonstrate compliance with the ED Element's workforce policies as part of the Council's consideration of Residents' appeal, and prior to Project approval.⁵

³ City of Fresno, General Plan, Economic Development and Fiscal Sustainability Element ("Economic Development Element") (December 2014) available at <https://www.fresno.gov/wp-content/uploads/2023/03/General-Plan-2-Economic-Development-7-19.pdf>

⁴ Fresno Municipal Code § 15-5206 (B) (The Director or Planning Commission may only approve a Development Permit application if it finds that the application is consistent with the purposes of this article and with the General Plan and any operative plan or policies the City has adopted.)

⁵ For example, a voluntary commitment by the Applicant to use local workers and apprentices engaged in the building trades for Project construction could be an avenue for compliance.

I. **The Project Fails to Comply with City of Fresno General Plan Workforce Policies**

The General Plan ED Element focuses on improving the business climate, retaining local businesses, developing a high skilled labor force, attracting new industries, supporting the tax base, and sustaining the City's ability to provide public services for current and future residents.⁶ According to the ED Element, the City should continually treat its land use, economic, and fiscal performance as fundamental and integrally linked components that over the long run will rise and/or fall together.⁷ To that end, the City must consider the objectives and policies contained in the ED Element when considering whether a land use proposal complies with the City's General Plan.

The ED Element includes various goals, objectives and policies which are intended to support the City's fiscal health and the long-term viability of employment, housing, education, civic and cultural programs in Fresno.

Goal ED-1 is "Increase opportunity, economic development, business, and job creation."⁸ Goal ED-1's advisory language explains that the purpose of the goal is to:

Use urban form, land use, and Development Code policies to streamline permit approval, promote local educational excellence and workforce relevance, significantly increase business development and expansion, retain, and attract talented people, create jobs and sustained economic growth, strategically locate employment lands and facilities, and avoid the over-saturation of a single type of housing, retail or employment.⁹

The objectives and policies are tools the City uses to implement its economic development plan including **Objective ED-4** which states that the City should:

Cultivate a skilled, educated, and well-trained workforce by increasing educational attainment and the relevant job skill levels in order to appeal to local and nonlocal businesses.¹⁰

⁶ Economic Development Element, p. 2-1.

⁷ Economic Development Element, p. 2-20.

⁸ Economic Development Element, p. 2-3.

⁹ Economic Development Element, p. 2-3 (emphasis added).

¹⁰ Economic Development Element, p. 2-25.

Objective ED-4 includes the following implementing policies to achieve the objective:

ED-4-a: Industry Education Partnerships. Facilitate partnerships between area businesses and training and education partners. Support the continuation of the Fresno Regional Workforce Investment Board’s biannual employment study to provide accurate information to the training community about job trends. Support expansion of Career Technical Education in area schools. Promote adult education for residents who require basic education and training.

ED-4-b: Connect Residents to Jobs. Pilot a “Jobs in Your Neighborhood” initiative to ensure residents are aware of job opportunities in their immediate neighborhood.

ED-4-c: Job Training Program Incentives. Strive to create a program to provide incentives for local businesses to offer internship, mentoring, and apprenticeship programs to high school and college students in partnership with California State University, Fresno and other educational institutions and major employers.

As evidence of the need for workforce development, the ED Element cites to a declining labor force, with contributing factors such as the “the mismatch between available jobs and the skills of the available labor force” (a.k.a. the “skills gap”) and the recent economic downturn.¹¹ The ED Element further explains what implementation of the City’s General Plan workforce policies will require increasing the education and skill level of the local workforce:

Fresno’s challenge will be to continue to attract high-skilled workers—and to improve training of workers already here to be able to meet the demands of these jobs. Fresno still must seek to diversify its economic base into other sectors to meet job creation goals, keep revenue local, and fully serve the population. **One of the primary factors for doing this, and a critical contingency in expanding existing industries and developing new ones, is the education and skill level of the local workforce.** The

¹¹ Economic Development Element, p. 2-5 to 2-6.
6179-021j

General Plan includes policies and implementation strategies that support expanding economic activity, but the quality and wage levels of the jobs will be related to the capacities and competencies of the workforce to meet the demands of business and industry.¹²

General Plan **Objective ED-3** is to “Attract and recruit businesses and offer incentives for economic development.”¹³ Objective ED-3’s Implementing Policy ED-3-a “Business Expansion and Attraction Program,” is to create, adopt, and implement programs to expand existing businesses and attract new businesses, including those that:

- Possess a high growth potential, such as food- and medical related businesses, water and renewable resource technologies, regional and local-serving retail, hotel and conference facilities;
- Generate net fiscal benefits to the City through increased tax revenues;
- **Provide a range of jobs that match the local workforce and provide opportunities for skill training;**
- **Create higher-paying and/or higher-quality jobs for local residents;**
- Complement or augment existing goods and services in Fresno;
- **Create less than significant impacts on the environment;** and
- Don’t require public investment beyond infrastructure and public safety services already available through the City of Fresno.¹⁴

A project fails to demonstrate consistency with the ED Element when it 1) does not include local hire or apprenticeship requirements that would employ a skilled and trained workforce to construct the Project (ED Goal 1, Objective ED-4, Objective ED-3), and 2) does not “create less than significant impacts on the environment” (Objective ED-3). When a project does not include local hire or apprenticeship requirements and results in significant impacts, the project is also inconsistent with the objectives and policies designed to implement Goal ED-1 and does not further the City’s stated need to develop and expand a skilled local workforce in all sectors.

Local hire and apprenticeship requirements provide direct and immediate public benefits by expanding job and career opportunities for disadvantaged workers in the City. Registered apprenticeship programs help to diversify the construction industry by bringing more underrepresented minorities and women

¹² Economic Development Element, p. 2-8.

¹³ Economic Development Element, p. 2-23.

¹⁴ Economic Development Element, p. 2-23 to 2-24.

into the trades.¹⁵ Each apprentice is a full-time worker who is receiving on-the-job training as an employee of a contractor on a jobsite. In addition, apprenticeship programs have been found to “reduce wage differentials and occupational segregation in the workplace itself, as well as help offset the negative career effects of unequal access to good schools and job-hiring networks.”¹⁶

Fresno has several union apprenticeship programs providing a local pipeline of construction workers, such as:

- Fresno Area Electrical Training Center: a jointly sponsored apprenticeship program of the International Brotherhood of Electrical Workers (IBEW) and the National Electrical Contractors Association (NECA).¹⁷
- Ironworkers Training Center.¹⁸
- Fresno Sheet Metal Apprenticeship Training.¹⁹
- Fresno Area Plumbers, Pipe and Refrigeration Fitters Joint Apprenticeship and Training Committee.²⁰

In order to comply with the City of Fresno’s General Plan workforce policies, every project should commit to local hire, participation in apprenticeship programs and hiring a skilled and trained workforce to enable more of the City’s disadvantaged workers to enter the pathway to a long-term, family-supporting career in construction.

II. Conclusion

As a result of the deficiencies and errors identified above, and in Residents’ prior comments on the EIR and in our appeal, the Planning Commission’s approval of the Project’s Development Permit and Tentative Parcel Map violated CEQA and

¹⁵ United States Department of Labor, Apprenticeship USA, Registered Apprentice Program Factsheet (August 2022) available at <https://www.apprenticeship.gov/sites/default/files/dol-industry-factsheet-apprenticeship101-v10.pdf>.

¹⁶ Thomason & Bernhardt, UC Berkeley Center for Labor Research and Education, *The Union Effect in California #2: Gains for Women, Workers of Color, and Immigrants* (June 2018) at p. 1. available at <https://laborcenter.berkeley.edu/union-effect-in-california-2/>

¹⁷ <https://www.fresnojtc.org/>.

¹⁸ <https://www.universityofiron.org/>.

¹⁹ <https://fresnosheetmetal.com/>.

²⁰ <https://www.ualocal246.com/about.shtml>

December 29, 2023
Page 7

the General Plan and must be reversed. Additionally, the Project must provide workforce development policies consistent with the City's ED Element for the Project to be consistent with the General Plan.

Residents urge the City Council to uphold its appeal and remand the Project to City Staff to prepare a legally adequate revised EIR for the Project. Residents also urge the City Council to work with the Applicant to ensure that the Project complies with the workforce policies of the General Plan's ED Element, including the establishment of local hire and apprenticeship hire goals.

Sincerely,



Kevin Carmichael

KTC:ljl

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

January 10, 2024

Of Counsel
MARC D. JOSEPH
DANIEL L. CARDOZO

Via Email and Overnight Mail

President Tyler Maxwell
City Council Members
c/o City Clerk
City of Fresno
City Hall
2600 Fresno Street
Fresno, California, 93721-3604

Email: clerk@fresno.gov;
district1@fresno.gov; district2@fresno.gov;
district3@fresno.gov; district4@fresno.gov;
district5@fresno.gov; district6@fresno.gov;
district7@fresno.gov

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: Agenda Item ID 24-12: 740 West Nielsen Avenue
Office/Warehouse Project (Development Permit Application
No. P21-02699 and Tentative Parcel Map No. P21-05930) (SCH
2022050265)**

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

We are writing on behalf of Fresno Residents for Responsible Development (“Residents”) regarding the City’s response to Resident’s appeal 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

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, City Council Agenda (January 11, 2024) available at <https://fresno.legistar.com/MeetingDetail.aspx?ID=1061555&GUID=1379E5D0-3003-4B9D-A485-66D1D154E0B9&Search=6179-024j>

The staff report for the January 11, 2024 City Council hearing contains a new memo from the City’s environmental consultant which purports to respond to the appeal letters submitted by Residents, Councilmember Miguel Arias, and Golden State Environmental Justice Alliance (“Appeal Response”).³ The Appeal Response repeats many of the same factual errors and misstatements of law contained in the FEIR without disclosing or reducing any outstanding impacts to less than significant levels. Upon review of the Appeal Response, Residents and their experts find that the City continues to fail to address the significant air quality, transportation, GHG emissions, and noise impacts that will result from construction and operation of the Project.⁴ Additionally, as detailed in our December 27, 2023 letter to this Council, the Project fails to comply with key General Plan Economic Development objectives and policies, rendering the Project inconsistent with the General Plan and preventing the Council from approving the Project. This issue is not addressed in the staff report.

The following comments address the inadequacy of the Appeal Responses and reiterate the need for the City Council to uphold Resident’s appeal of the Planning Commission’s approval of the Project.

A. The FEIR Still Fails to Analyze Reasonably Foreseeable Transportation Impacts and Resulting GHG Impacts

According to the DEIR, the Project’s future tenants have not been identified, therefore, the number of vehicle trips generated by future Project operation cannot be determined with specificity.⁵ Under CEQA, a lead agency may choose the methodology used to analyze the significance of a project’s environmental impacts.⁶ In all cases, the chosen methodology must be supported by substantial evidence.⁷

³ City of Fresno, LSA Response to Appeal Letters (December 13, 2023) (hereinafter “Appeal Response”) available at <https://fresno.legistar.com/View.ashx?M=F&ID=12556319&GUID=3800EBBF-A6A4-4992-BA25-51248B9EBA50>

⁴ See **Attachment A**: Comments of James Clark Ph. D.; **Attachment B**: Comments of Norman Marshall; **Attachment C**: Comments of Derek Watry.

⁵ DEIR, 3-13.

⁶ *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 228.

⁷ *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal* (1988) 47 Cal. 3d 376; *N. Coast Rivers Alliance v. Marin Mun. Water Dist.* (2013) 216 Cal.App.4th 614, 642-643.

CEQA also requires that the lead agency analyze the impacts of all reasonably foreseeable future uses of the project site,⁸ and clarifies “an EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences.”⁹

Residents’ appeal explained that the FEIR’s transportation analysis failed to meet these standards by calculating VMT and truck trips based on unsupported assumptions that Project operation would involve low-intensity warehouse use and by failing to consider all reasonably foreseeable uses of the Project. The FEIR acknowledges that future tenants of the Project site are not known. Nevertheless, the City chose to rely on truck trip levels from lower-intensity warehouse uses described in the Western Riverside Council of Governments (“WRCOG”) Transportation Uniform Mitigation Fee (“TUMF”) High-Cube Warehouse Trip Generation Study to calculate the number of truck and vehicle trips that the Project is expected to produce. Based on the WRCOG study, the FEIR found that the Project would result in just 1,920 daily trips, of which 342 would be truck trips, generating approximately 2.1 vehicle trips per 1,000 square feet of total building area.¹⁰

Residents’ expert Mr. Marshall found that the data in the WRCOG Study are much more variable than the average rates cited in the FEIR. Using the same study, Mr. Marshall identified substantially trip rates than disclosed in the FEIR, including trip generation rates as high as 4.5 daily trips per 1,000 square feet for more intensive fulfillment center uses, and trip generation rates at parcel hubs (high-intensity warehouse uses) of approximately 14 trips per day per 1,000 square feet.¹¹ Mr. Marshall explained that the Project’s site plan, zoning, location, and comparable warehouse uses in the region demonstrated that a higher intensity use was reasonably foreseeable at the Project site, and concluded that the FEIR’s transportation analysis substantially undercounted truck and vehicle trips from such uses. The Project’s underestimated trip generation rates also factored into the FEIR’s analysis of the Project’s vehicle miles traveled impacts, GHG emissions impacts, air quality impacts, noise impacts, and energy impacts, resulting in underestimated impacts in each of these areas.

⁸ *Laurel Heights*, 47 Cal. 3d at 396-99; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 660.

⁹ CEQA Guidelines, § 15151.

¹⁰ DEIR, p. 4.10-10.

¹¹ Marshall Comments, p. 2.

The Appeal Response does nothing to resolve these deficiencies. Rather, the Appeal Response simply reiterates the City's responses to comments on the FEIR and dismisses Mr. Marshall's well-supported analysis by arguing that the Project site will not have high-intensity warehouse users simply because "the project applicant has confirmed an Amazon facility is not under consideration to be a possible tenant; therefore, using Amazon trip generation rates would not be accurate or applicable to the proposed project."¹² Amazon is not the only high-intensity warehouse tenant in California. Rather, it remains reasonably foreseeable that another parcel-hub or a business distribution warehouse tenant may occupy the Project buildings, causing increased Project vehicle trips and the correlated VMT, GHG emissions, air quality, and noise impacts; which the FEIR fails to disclose and analyze. By failing to calculate truck and vehicle trips based on these reasonably foreseeable trip generation rates of the Project, the FEIR failed to disclose reasonably foreseeable direct and indirect impacts, in violation of CEQA's requirements and precluding informed decision making and informed public participation.¹³

Further undermining the FEIR's trip generation assertions is the fact that there are no restrictions on high-intensity warehouse use at the Project site. Neither the MMRP nor the Project's Conditions of Approval include a requirement that the future tenants of the Project limit the Project's operational trips to the levels analyzed in the FEIR. Without restrictive conditions, there is nothing preventing Project future warehouse operators from expanding industrial uses in the near future, thereby increasing the pollution burden on the community beyond the levels analyzed in the FEIR. The FEIR failed to analyze or mitigate these increased impacts, and the City lacks substantial evidence to conclude that the Project will not generate heavy truck and vehicle trips consistent with the reasonably foreseeable high intensity uses allowed at the Project site. The FEIR therefore remains inadequate and in violation of CEQA.

B. The FEIR Still Fails to Disclose and Analyze the Project's Significant Health Risk Impacts from Valley Fever

The FEIR failed to disclose or mitigate the potentially significant health risk impacts from Coccidioidomycosis, which is commonly referred to as "Valley Fever". The Appeal Response doubles down on the errors and omissions in the FEIR with three legally and factually unsupported arguments: (1) that Valley Fever health

¹² Appeal Response, p. 11.

¹³ CEQA Guidelines § 15151; *Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs* (2001) 91 Cal.App.4th 1344, 1355
6179-024j

risk cannot be assess because there is no established threshold of significance; (2) that Valley Fever spores would travel less than 110 feet from the Project site; and (3) that existing dust control mitigation measures and OSHA regulations for construction workers will protect sensitive receptors from any all risks of Valley Fever exposure.

All three assertions are demonstrably false. As explained in Dr. Clark's previous and attached comments, there is substantial evidence demonstrating that Valley Fever spores may be released during ground-disturbing Project construction activities, that human exposure to even a small amount of Valley Fever spores may result in an infection, that these spores may travel long distances to expose human receptors on and off the Project site, and that standard dust and worker mitigation measures are inadequate to reduce the risk of Valley Fever exposure.

1. Health Risk

The Appeal Response asserts that the City was unable to analyze the health risk from Valley Fever because "Neither the GAMAQI [San Joaquin Valley Air Pollution Control District guidance] nor the State CEQA Guidelines include requirements or thresholds of significance for addressing Valley Fever."¹⁴ This statement is contrary to law and demonstrates an abdication of the City's duty to determine the severity of public health impacts caused by the Project.¹⁵

The absence of an established threshold by SJVAPCD does not absolve the City of the responsibility to analyze the potentially significant health risk impacts from Valley Fever *cocci* exposure. Pursuant to CEQA, each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects, and may develop such thresholds on a case-by-case basis if necessary.¹⁶ Thresholds of significance may, but are not required, to assist lead agencies in determining whether a project may cause a significant impact.¹⁷ As the Supreme Court has explained, "[t]hresholds [] only define the level at which an environmental effect 'normally' is

¹⁴ Appeal Response, p. 10.

¹⁵ see CEQA Appendix G, Section III(C) (Would the project exposure sensitive receptors to substantial pollutant concentrations?); *Sierra Club v County of Fresno* (2018) 6 Cal.5th 502, 518–522 (CEQA requires an analysis of human health impacts).

¹⁶ CEQA Guidelines, § 15064.7(b)

¹⁷ 14 CCR § 15064(b)(2).

considered significant; they do not relieve the lead agency of its duty to determine the significance of an impact independently."¹⁸ The City's claim that it was unable to analyze the severity of Valley Fever exposure caused by Project construction is specious and contrary to law.

The City's conclusion that Valley Fever health impacts would be less than significant is also unsupported by facts. The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data.¹⁹ The lead agency's determination regarding the validity or appropriateness of the threshold of significance must be supported by substantial evidence.²⁰ The City failed to establish a threshold of significance regarding health risk impacts from Valley Fever *cocci* exposure, failed to assess the severity of the impact, and in concluding that the Project would not cause significant health risk impacts did not employ careful judgement based on scientific and factual data, in violation of CEQA.

Dr. Clark's comments provided substantial evidence demonstrating that Valley Fever exposure is a potentially significant health risk and that there is no safe level of exposure.

As Dr. Clark explains, Valley Fever is a disease that can spread when persons are exposed to *Coccidioides immitis* ("Cocci") fungus spores. The *cocci* spores are released from soils during ground disturbance such as grading and site preparation during construction.²¹ Valley Fever rates in Fresno County have seen a significant increase over the last decade, increasing from 161 in 2014 to as high as 828 in 2017.²² In 2022, 403 cases were recorded in Fresno County and 443 cases have been reported thus far for 2023.²³

¹⁸ *Newhall Ranch*, 62 Cal.4th at 230-31 (quoting CEQA Guidelines, 14 CCR § 15064.7(a)).

¹⁹ CEQA Guidelines, § 15064 (b); see also *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068.

²⁰ *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1072.

²¹ Clark Comments, p. 2.

²² California Department of Public Health ("CDPH"), Epidemiologic Summary of Valley Fever (Coccidiomycosis) In California, 2019 (2019) available at <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CocciEpiSummary2019.pdf>

²³ CDPH, Coccidiomycosis In California, Provisional Monthly Report, January – November 2023 (November 30, 2023) available at <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CocciinCAProvisionalMonthlyReport.pdf>

The Fresno County Department of Public Health recognizes the risks of Valley Fever infection, and according to the County's Valley Fever Dashboard, "[a]lthough Fresno County has seen a decrease in reported Coccidioidomycosis cases in recent years, it remains a hot spot for infections, ranking in the top 5 California counties for disease incidence."²⁴ Additionally, the California Department of Public Health has found that high rainfall over the winter months is linked to increased Valley Fever cases across California, increasing the risk of Valley Fever exposure after heavy rainfall seasons such as those predicted by the National Oceanic and Atmospheric Administration for 2023-2024.²⁵

Dr. Clark further explains that there is "no acceptable exposure level for *Coccidioides immitis* in air."²⁶ This means that any amount of exposure has the potential to create a health risk. There are also studies documenting that just a few spores—less than 10—can cause the disease.²⁷ Thus, ***a reasonable significance threshold for Valley Fever exposure is exposure to nine or fewer cocci spores.***

The Project will disturb up to 180 acres of soil during construction²⁸ which may lead to the release of *cocci* spores resulting in impacts to Project workers and nearby sensitive receptors. The City has not shown that no Valley Fever spores will be released from the Project site. Therefore, the potential health risks from exposure to Valley Fever *cocci* from Project construction constitute a significant health risk impact under CEQA and must be disclosed, analyzed, and mitigated by the City.

2. Valley Fever Spores Travel Longer Distances than Particular Matter Due to Small Size

The closest sensitive receptors to the Project site include single-family residences located approximately 110 feet south of the project site across West Nielsen Avenue. In response to the substantial evidence presented by Residents'

²⁴ Fresno County, Valley Fever Dashboard (accessed January 9, 2024) available at <https://lookerstudio.google.com/reporting/be75f92d-748c-448f-ac2b-7cea2fe8b0b0/page/QuhYD>

²⁵ California Department of Public Health, Potential Increased Risk for Valley Fever Expected (August 1, 2023) available at <https://www.cdph.ca.gov/Programs/OPA/Pages/NR23-023.aspx>; see also National Oceanic and Atmospheric Administration, U.S. Winter Outlook: Wetter South, warmer North (October 19, 2023) available at <https://www.noaa.gov/news-release/us-winter-outlook-wetter-south-warmer-north>

²⁶ Clark Comments, p. 3.

²⁷ *Id.*, Wilken 2018, pdf 15.

²⁸ DEIR, Appendix C, CalEEMod Output Sheets, pp. 8 and 9 of 34.
6179-024j

expert regarding the potential health risk impacts from *cocci* spores to sensitive receptors 110 feet from the Project site, the Appeal Response states:

Except under high wind conditions, this distance [110 feet] is sufficient that particulate matter will settle prior to reaching the nearest sensitive receptor.

The Appeal Response²⁹ further states that crosswinds influenced by adjacent traffic intersections would help dissipate any particulate matter associated with the construction phase of the project such that no significant impacts would occur.

These statements are non-responsive to the issue of dispersion of *Coccidioides Immitis* spores because they are significantly smaller than particulate matter and can travel longer distances when airborne, and therefore not based on any scientific data. The City confuses “particulate matter” with cocci spores, two very different types of particles. The City’s conclusions are also refuted by evidence provided by Dr. Clark that due to their size, 2 microns to 5 microns in diameter, *cocci* can remain suspended in the air for several hours following the disturbance of impacted soils allowing them to travel much further than larger dust particles.³⁰ Based on the particle size and settling rate, Dr. Clark concludes that “**Valley Fever spores present in soils are capable of travel many miles following the disturbance of impacted soils.**”³¹

The City’s conclusion that Valley Fever spores would not reach sensitive receptors by the Project site is incorrect and unsupported by evidence.

3. Standard Dust Control and OSHA Mitigation Are Inadequate to Control Valley Fever Exposure

Regarding the potential health risk to construction workers from the exposure to *cocci* spores, the Appeal Response states:

[D]uring project construction, it is possible that workers could be exposed to Valley Fever through fugitive dust. Dust control measures, consistent with SJVAPCD Regulation VIII (as required by Mitigation Measure AIR-1), would reduce the exposure of the workers.

²⁹ LSA. 2023. Memorandum: 2740 West Nielsen Avenue Office/Warehouse Project – Response to Appeal Letters. Dated December 13, 2023. Exhibit U to FEIR.

³⁰ Clark Comments, p. 3.

³¹ Clark Comments, p. 6.

As above, the City does not provide any scientific data or factual basis to support this claim. On the other hand, Dr. Clark provides substantial evidence that conventional dust control methods, such as those required by Mitigation Measure AIR-1 are ineffective in preventing the spread of *cocci* spores, and that additional, health-specific mitigation measures are required.³²

The Appeal Response also asserts that construction workers are not subject to any potential health risk from Valley Fever exposure based on construction-site OSHA requirements, stating that:

[A]ny exposure to workers would be subject to the Occupational Safety and Health (OSH) Act of 1970, 29 United States Code (USC) 654(a)(1), and other applicable Occupational Safety and Health Administration requirements, including Respiratory Protection (29 CFR 1910.134).

However, pursuant to the language in 29 CFR 1910.134, employers are only required to provide respirators to employees “when such equipment is necessary to protect the health of such employees”³³; a determination that has not been made by the City due to the lack of disclosure and analysis provided in the FEIR. Thus, there is no certainty that Project construction workers would be provided with health-protective equipment necessary to guard against the risk of Valley Fever exposure. The City’s assertion is also contradicted by overwhelming evidence of construction workers contracting Valley Fever from work on various project sites in California notwithstanding on-site OSHA regulations.³⁴

Based on the City’s failure to establish an applicable threshold of significance for *cocci* exposure; and the related failure to disclose and analyze the health risk impacts associated with such exposure; the FEIR fails to incorporate feasible mitigation measures that would reduce the health risks from Valley Fever *cocci* exposure. In his comments, Dr. Clark provides a comprehensive list of feasible and

³² Clark Comments, p. 5.

³³ 29 CFR 1910.134(a)(2).

³⁴ Armstrong & Associates, California Workers in Danger of Valley Fever, October 16, 2018; available at <https://armstrongprofessional.com/valley-fever-strikes-again/>; Sondermeyer Cooksey et al., Update on Coccidioidomycosis in California, pp. 20, in: Medical Board of California Newsletter, v. 141, Winter 2017; available at http://www.mbc.ca.gov/Publications/Newsletters/newsletter_2017_01.pdf; California Department of Industrial Relations, News Release, Cal/OSHA Cites Six Employers Over \$240,000 for Exposing Workers to Valley Fever, November 20, 2017; available at <https://www.prnewswire.com/news-releases/calosha-cites-six-employers-over-240000-for-exposing-workers-to-valley-fever-300559637.html>;

effective mitigation measures that would reduce the risks to construction workers and nearby sensitive receptors and should be included in the MMRP for the Project to reduce the Project's health risk impacts.

C. The FEIR Still Fails to Disclose Potentially Significant Noise Impacts

The FEIR failed to disclose the Project's operational noise impacts which may reach undesirable noise levels for local residents and violate the 65 dBA absolute noise threshold in General Plan Policy NS-1-a. The Appeal Response cites to a different General Plan Policy, Policy NS-1-j, used in the FEIR, which considers a 3 dBA increase to be a significant increase in ambient noise. The City concludes that, because Project-related traffic noise would increase noise levels by 2.1 dBA (less than 3 dBA), the Project would not exceed the City's noise threshold and would not result in any significant noise impacts.³⁵

While the City is correct that Project related noise increases would not violate General Plan Policy NS-1-j (3 dBA increase), the Appeal Response ignores the fact that the Project will nevertheless result in a significant impact due to the incremental increase in noise at nearby residences which will exceed desirable and generally acceptable exterior noise levels for residential and noise sensitive uses of 65 dBA under General Plan Policy NS-1-a.³⁶ The courts have held that compliance with general plan noise thresholds does not foreclose the possibility of significant noise impacts.³⁷

Based on the City's own data in the DEIR, Residents' noise expert found that the Project will result in ambient noise to increase from the existing 64 dBA CNEL to 66.1 dBA CNEL along the roadway segment of Nielsen Avenue between Marks Avenue and Hughs Avenue.³⁸ Mr. Watry found that this increase will cause exterior areas of residential and noise sensitive uses south of the Project site to exceed the desirable and generally acceptable exterior noise level established under Policy NS-1-a, resulting in a potentially significant noise impact to sensitive receptors.³⁹

³⁵ Appeal Response, p. 13.

³⁶ City of Fresno, General Plan, Chapter 9: Noise and Safety (December 2014) p. 19 available at <https://www.fresno.gov/wp-content/uploads/2023/03/9-Noise-and-Safety-02-03-21.pdf>

³⁷ *Keep our Mountains Quiet v. Santa Clara* (2015) 236 Cal.App.4th 714, 732-33; *Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1338 (relying on general plan noise standard).

³⁸ DEIR, p. 4.9-19.

³⁹ Watry Comments, p. 2.

A determination that an environmental impact complies with a threshold of significance does not relieve a lead agency of its obligation to consider evidence that indicates the impact by be significant despite compliance with the threshold.⁴⁰ In the context of this Project, the City's General Plan Policy NS-1-j does not excuse consideration of evidence of other noise impacts. If, as here, evidence is submitted tending to show that the environmental impact might be significant despite the significance standard used in the EIR, the agency must address that evidence.⁴¹ To date, the City has not addressed the evidence presented by Resident's and its experts demonstrating that the Project will result in ambient noise increases in violation General Plan Policy NS-1-a.

I. CONCLUSION

The Appeal Response fails to resolve the deficiencies and errors identified in Residents' appeal. We urge the City Council to uphold this appeal, vacate the Planning Commission approvals, and remand the Project to City Staff to prepare a legally adequate revised EIR for the Project.⁴²

Sincerely,



Kevin Carmichael

KTC:lj1

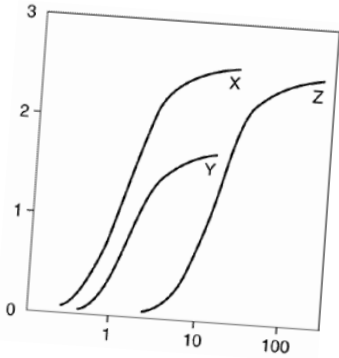
ATTACHMENTS

⁴⁰ CEQA Guidelines § 15064(b)(2)

⁴¹ *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111.

⁴² We reserve the right to supplement our comments at a later date, and at any later proceedings related to this Project. 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



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

January 9, 2024

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

Attn: Mr. Kevin T. Carmichael

Subject: Comments on LSA Response to Appeals of 2740 West Nielsen Avenue Office/Warehouse Project - 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. LSA, the consultant for the Proponent, prepared new responses to comments on appeal released in January 2024. After reviewing the appeal responses from LSA, it is evident that the City continues not to address the FEID deficiencies I previously raised.

According to the conclusions of the FEIR and the responses from LSA, 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 public health impacts is not supported by the facts of the Project. There are potentially significant public health impacts from exposure to Valley Fever that the FEIR failed to disclose and the City continues to ignore. This important health issue must be addressed in a revised environmental impact report.

Specific Comments:

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

LSA's assertion that the Project poses no significant risk of Valley Fever exposure to nearby receptors or construction workers is based on incorrect factual assumptions that are contrary to scientific data on Valley Fever spores and exposure, and without modeling Project-specific impacts. As explained in my previous comments and herein, there is evidence demonstrating that Valley Fever spores may be released during ground-disturbing Project construction activities, that human exposure to even a small amount of Valley Fever spores may result in an infection, and these spores may travel long distances to expose human receptors.

A. Health Risk

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).¹ In 2022, 403 cases were recorded in Fresno County,² almost three times (2.8 times exactly) as many as the amounts reported in 2014. and in 2023, Fresno County reported 443 cases between January and November.

Dust exposure is one of the primary risk factors for contracting Valley Fever (via *Coccidioides immitis* (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,

¹ CDPH. 2019. Epidemiologic Summary of Valley Fever (Coccidioidomycosis) 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>

² CDPH. 2023. Coccidioidomycosis In California, Provisional Monthly Report, January – November 2023 (as of November 30, 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>

or during earthquakes, the fungal spores become airborne. Construction workers in endemic areas, such as those that will build the Project, are at risk.³

LSA says the FEIR could not determine whether Valley Fever exposure poses a significant health risk because there is no established air district significance threshold for Valley Fever. This statement is inconsistent with scientific data. There is currently no acceptable exposure level for *Coccidioides immitis* in air. This means that any amount of exposure has the potential to create a health risk. There are also studies documenting that just a few spores—less than 10—can cause the disease.⁴ Exposure to *Coccidioides immitis* is especially dangerous for immunocompromised individuals and to the elderly. The City has not shown that no Valley Fever spores will be released from the Project site. LSA's statements are contrary to current evidence.

Valley fever exposure also poses a significant health risk. Valley fever is the initial form of coccidioidomycosis infection. The acute form of Valley Fever can develop into a more serious disease, including chronic and disseminated coccidioidomycosis. The initial, or acute, form of coccidioidomycosis is often mild, with few or no symptoms. Signs and symptoms occur one to three weeks after exposure. They tend to be similar to flu symptoms. Symptoms can range from minor to severe, including:

- Fever
- Cough
- Tiredness
- Shortness of breath
- Headache
- Chills
- Night sweats
- Joint aches and muscle soreness
- Red, spotty rash, mainly on lower legs but sometimes on the chest, arms and back

If the initial coccidioidomycosis infection doesn't completely resolve, it may progress to a

³ CDPH, June 2012; Jason Wilken, Preventing Valley Fever in Construction Workers, August 21, 2018 (Wilken 2018); available at: <https://www.cdph.ca.gov/Programs/CCDC/DEODC/OHB/CDPH%20Document%20Library/CDPH-VF-Webinar-Slides.pdf>. Recording available at: <https://cdph-conf.webex.com/cdph-conf/lsr.php?RCID=bc2a65f06de80b7326ac17fc0cf25caa>. Passcode: VFeverAug21.

⁴ *Id.*, Wilken 2018, pdf 15.

chronic form of pneumonia. This complication is most common in people with weakened immune systems. Signs and symptoms of chronic coccidioidomycosis include:

- Low-grade fever
- Weight loss
- Cough
- Chest pain
- Blood-tinged sputum (matter discharged during coughing)
- Nodules in the lungs

The most serious form of the disease, disseminated coccidioidomycosis, is uncommon. It occurs when the infection spreads (disseminates) beyond the lungs to other parts of the body. Most often these parts include the skin, bones, liver, brain, heart, and the membranes that protect the brain and spinal cord (meninges). Signs and symptoms of disseminated disease depend on the body parts affected and may include:

- Nodules, ulcers and skin lesions that are more serious than the rash that sometimes occurs with initial infection
- Painful lesions in the skull, spine or other bones
- Painful, swollen joints, especially in the knees or ankles
- Meningitis — an infection of the membranes and fluid surrounding the brain and spinal cord

Given the wide range of public health impacts from coccidioidomycosis infection/exposure it is clear that the City's responses to questions about Valley Fever exposure are inadequate for the protection of residents of the community and the workers at the Project Site.

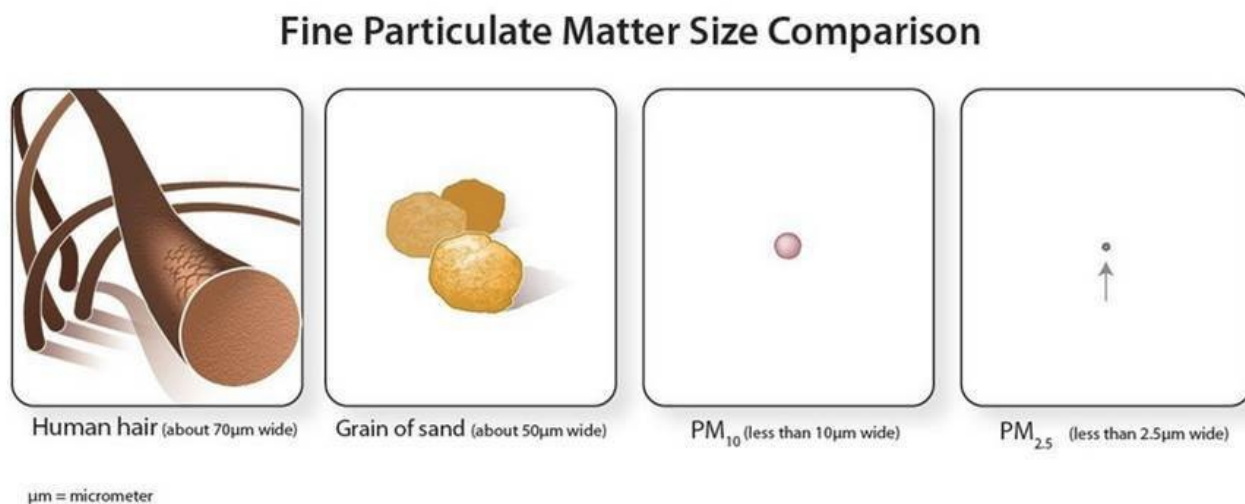
B. Valley Fever Spores Travel Longer Distances than Particular Matter Due to Small Size

According to LSA'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. LSA states that except under high wind conditions, this distance is sufficient that particulate matter will settle prior to reaching the nearest sensitive receptor. The response from LSA⁵ further states that crosswinds influenced by adjacent traffic intersections would help dissipate any particulate matter associated with the construction phase of the project such that no significant impacts would occur.

⁵ LSA. 2023. Memorandum: 2740 West Nielsen Avenue Office/Warehouse Project – Response to Appeal Letters. Dated December 13, 2023. Exhibit U to FEIR.

These statements are non-responsive to the issue of dispersion of *Coccidioides Immitis* spores because they are significantly smaller than particulate matter and can travel longer distances when airborne.

As was noted in my initial comments *Coccidioides 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 behave differently with airborne and require different mitigation measures than the much larger PM₁₀ Referred to by the City in Response B3. 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 Frey⁶ 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, including reaching or travelling beyond the 110 foot distance to the nearest sensitive receptors to the Project site.

⁶ 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

Particle settling time in still air

Particle size (μm)	Time required to settle 8 ft
100	8 secs
10	13 mins
1	19 hrs
0.1	79 days
0.01	Infinite

Characteristics of Aerosols and Particle Settling Time in Still Air

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.

C. Valley Fever Prevention Requires More Than Standard Dust Control

LSA also states that dust control measured contained in SJVAPCD Rule VIII and OSHA Regs. Sec. 1910.134 will mitigate potential impacts to construction workers. These responses are completely inaccurate and fail to consider the severe health consequences of exposure to *Coccidioides immitis*.

Standard fugitive dust mitigation measures are not adequate to protect construction workers and nearby sensitive receptors from this risk. According to the SJVAPCD, fugitive dust control measures must demonstrate that the measures can achieve 50% control efficiency.⁷ Given that there is not an acceptable threshold level for *Coccidioides immitis* in air the City must require additional measures beyond the standard fugitive dust mitigation measures to actively suppress the spread of VF. The Proponent should be required to:

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;

⁷ SJVAPCD. 2024. Fugitive PM10 Management Plans. <https://ww2.valleyair.org/compliance/dust-control/fugitive-pm10-management-plans/>

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

related illnesses and injuries.

- Work with a medical professional to develop a protocol to medically evaluate employees who have symptoms of Valley Fever.
- Consider preferentially contracting with 1-2 clinics in the area and communicate with the health care providers in those clinics to ensure that providers are aware that Valley Fever has been reported in the area. This will increase the likelihood that ill workers will receive prompt, proper and consistent medical care.
- Respirator clearance should include medical evaluation for all new employees, annual re-evaluation for changes in medical status, and annual training, and fit-testing.
- Skin testing is not recommended for evaluation of Valley Fever.⁸
- 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 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.

Conclusion

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

Sincerely,



⁸ 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>.

ATTACHMENT B



794 Sawnee Bean Road
Thetford Center VT 05075

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

January 9, 2024

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

Subject: 2740 West Nielsen Avenue

Dear Mr. Carmichael,

At your request, Smart Mobility reviewed the January 2024 staff report prepared by LSA Associates in response to my comments on trip generation, vehicle miles traveled (VMT) impacts and greenhouse gas (GHG) impacts of the proposed 2740 West Nielsen Avenue Project Final Environmental Impact Report ("FEIR"). As you know, I previously prepared comments on the Draft Environmental Impact Report ("DEIR") in May 2023, and comments addressing the City's inadequate FEIR responses in October 2023. The current staff report still fails to resolve the issues I raised regarding underestimated trip generation, improper exclusion of truck VMT, and lack of mitigation for potentially significant VMT and GHG impacts.

To recap, 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.

In October 2023, I 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 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 cited 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.

In December 2023, I reviewed Exhibit R: EIR Summary memorandum dated October 23, 2023. This memorandum fails to address any of the issues I raised in my October 2, 2023, comments. Now I have

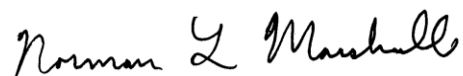
¹ <https://dot.ca.gov/programs/transportation-planning/division-of-transportation-planning/data-analytics-services/statewide-modeling/california-statewide-travel-demand-model>

reviewed Exhibit U, LSA Response to Appeal Letters dated December 13, 2023, and make the following findings:

- Exhibit U reiterates the rationale for the trip generation assumptions but fails to address the inherent uncertainty in trip generation at this stage of the project or provide any assurance that the trip generation will not be exceeded significantly if the project is constructed.
- Exhibit U reiterates the rationale for using the Fresno COG Activity-Based Model but fails to address the issue of external passenger vehicle VMT likely being underestimated raised in my previous comments.
- Exhibit U reiterates the basis for the truck trip estimates but fails to address the issue raised in my previous comments that truck VMT is improperly excluded from the analysis.
- As with the previous project documents, Exhibit U fails to offer any mitigation for these impacts.

The City's responses to comments fail to resolve the analytical errors and omissions identified in my past letters on the DEIR, FEIR and on appeal. The City must revise the transportation impact analysis for the Project and require additional mitigation measures to reduce the Project's significant impacts prior to certification of the FEIR.

Sincerely,

A handwritten signature in black ink that reads "Norman L. Marshall". The signature is written in a cursive style with a large, stylized 'N' and 'M'.

Norman L. Marshall

ATTACHMENT C



9 January 2024

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 LSA Response to Appeal Letters**

Dear Mr. Carmichael,

In June 2022, 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:

*Recirculated Public Review Draft Environmental Impact Report ("RDEIR")
2740 West Nielsen Avenue Office/Warehouse Project
LSA Project No. SNN2102
February 2023; recirculated in April 2023, but no alterations were made to the noise analysis*

We commented on the RDEIR noise analysis in May of this year, comments you subsequently submitted to the City. The City 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*

On October 2nd, 2023, we commented on the City's responses. In summary, we commented that:

1. **Operational Noise** The City took no issue with our analysis that shows that the subject project would cause the environmental noise level along Nielsen Avenue between Marks Avenue and Hughes Avenue to increase from a level that is "desirable" under Policy NS-1-a of the Fresno General Plan to one that is presumably undesirable. However, the City did assert that the specific noise standard cited policy, 65 dBA Ldn, is not relevant to its CEQA analysis for this project, and reasserted that their sole use of relative criterion is adequate. By "relative criterion", I mean one that does not assess the absolute environmental noise level, but only the increase relative to the existing noise level. As we have pointed out in all of our previous comments on this project, sole use a relative criterion means that, in the long run, there is effectively no cap on environmental noise levels in the City of Fresno. Noise pollution begets even more noise pollution. We find this contrary to the spirit and intent of CEQA.

We note that our October 2nd comment letter was sent to the City as an attachment to a letter from Adams Broadwell Joseph & Cardozo on October 3rd. Despite being in receipt of our comment letter, the RDEIR preparer, LSA, issued

*Summary of the 2740 West Nielsen Avenue Office/Warehouse Project Environmental Impact Report ("EIR Summary Memo")
Memorandum to Steven Martinez, City of Fresno
October 23, 2023*

The EIR Summary Memo did nothing to address our concerns about the lack of an absolute significance threshold (meaning, noise levels may increase *in perpetuity*) or the potentially significant noise impacts on local receptors that would result from operational noise levels reaching undesirable levels.

Recently, the City provided to the public another memorandum from LSA that does purport to address the comments we made in our letter to you dated October 2nd, 2023:

*Memorandum: 2740 West Nielsen Avenue Office/Warehouse Project – Response to Appeal Letters ("Appeal Letters Response Memo")
Memorandum to Steven Martinez, City of Fresno
December 13, 2023*

This memo also fails to substantively address the issue of the absolute environmental noise level exceeding a City policy standard as a direct consequence of project operations.

The foundation of our argument with regard to operational noise – noise that will forevermore affect the nearby residents – is that both the relative increase in noise levels and the absolute noise levels should be considered. The RDEIR only considers the relative increase which, as we have noted many times, means there is effectively no limit on noise exposure in the long run as the baseline will continually be reset. We have also noted many times that the RDEIR's own noise analysis indicates

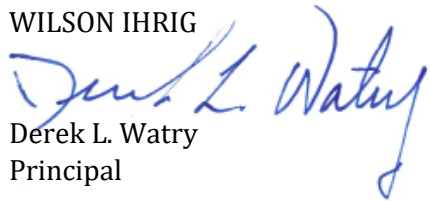
that the project would push noise levels in the neighborhood from a level that is desirable to one that is undesirable (based on noise standards in Policy NS-1-a of the Fresno General Plan). In the Appeal Letters Response Memo, LSA asserts that concern for the absolute level does not fall under the purview of CEQA. We continue to disagree.



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

Very truly yours,

WILSON IHRIG



Derek L. Watry
Principal

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