

Regular Council Meeting
October 13, 2022

FRESNO CITY COUNCIL



Supplement Packet

ITEM(S)

10:00 AM #2 (22-1598)

HEARING to Consider Plan Amendment and Rezone Application No. P20-04209, Development Permit Application No. P20-04211, and related Environmental Assessment No. P20-04209/P20-04211...

[TITLE TRUNCATED FOR SUPPLEMENTAL PACKET COVER PAGE]

Contents of Supplement

Exhibit N Supplement – Comments and Responses Matrix

Item(s)

Supplemental Information:

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2022 OCT 12 P 4:53
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Comments and Responses Matrix- Busseto Foods Processing, Warehousing, and Distribution Facility Project (SCH No. 2022030197)

A	COMMENT LETTER #1: Laborers International Union of North America, Local Union No. 294, Dated April 4, 2022	
A-1	<p>Dear Mr. Siegrist and City of Planning and Development:</p> <p>I am writing on behalf of Laborers International Union of North America, Local Union No. 294 ("LIUNA") regarding the Initial Study and Negative Declaration ("IS/ND") prepared for the proposed Busseto Processing, Warehousing, and Distribution Project, Development Application No. P20-04211 and Plan Amendment and Rezone Application No. P20-0409, including all actions related or referring to the proposed construction, use, and maintenance of a new food processing, warehousing, and distribution facility for Busseto Foods, Inc., a manufacturer and marketer of Italian-style specialty meats, totaling 477,470-square feet, at 2325 South West Avenue and 995 West Church Avenue in Fresno, California ("Project").</p> <p>After reviewing the IS/ND, we conclude the IS/ND fails as an informational document, and that there is a fair argument that the Project may have adverse environmental impacts. Therefore, we request that the City of Fresno ("City") prepare an environmental impact report ("EIR") for the Project pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, et seq.</p> <p>This comment has been prepared with the assistance of wildlife biologist Dr. Shawn Smallwood, Ph.D. Dr. Smallwood's comment and curriculum vitae are attached as Exhibit A hereto and is incorporated herein by reference in its entirety.</p>	<p>The comment provides opening remarks and an introduction to the proposed project. No further comment is required.</p>
A-2	<p>I. PROJECT DESCRIPTION</p> <p>The proposed Project includes a General Plan Amendment/Rezone (Plan Amendment/Rezone Application No. P20-04209) and Development Permit (Development Permit Application No. P20-04211) to facilitate the development of a food processing, warehousing, and distribution facility for Busseto Foods, Inc., a manufacturer and marketer of Italian-style specialty meats, in the City of Fresno. The Project would allow for the construction of a 477,470-square foot (SF) facility that consists of two stories with a ground floor of approximately 470,730-SF and second floor for 6,740-SF in addition to two 121-SF security kiosks. The Project will allow</p>	<p>The comment provides description of the proposed project. No further comment is required.</p>

	<p>Busseto Foods, Inc. to consolidate all Fresno based facilities and operations under one roof. A majority of operations including the processing, warehousing, and distribution activities are located on the ground floor with administrative activities located on the second floor. The Project site comprises two parcels totaling approximately 18.90-acres located at 2325 South West Avenue and 995 West Church Avenue on the southeast corner of South West Avenue and West Church Avenue in Fresno, CA (APNs 477-030-20 and 477-030-21). The Project site is located approximately two miles west of State Route-41 (SR-41) and State Route-99 (SR-99) and two miles south of State Route-180 (SR-180). The site is vacant and undeveloped and therefore, there would be no structures demolished as part of the Project. The Project would require a plan amendment and rezone to allow industrial uses.</p>	
A-3	<p>II. LEGAL STANDARD</p> <p>As the California Supreme Court has held, “[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.” (<i>Communities for a Better Env’t v. South Coast Air Quality Mgmt. Dist.</i> (2010) 48 Cal.4th 310, 319-320 (CBE v. SCAQMD) (<i>citing No Oil, Inc. v. City of Los Angeles</i> (1974) 13 Cal.3d 68, 75, 88; <i>Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles</i> (1982) 134 Cal.App.3d 491, 504–505).) “Significant environmental effect” is defined very broadly as “a substantial or potentially substantial adverse change in the environment.” (Pub. Res. Code (“PRC”) § 21068; see also 14 CCR § 15382.) An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.” (<i>No Oil, Inc.</i>, 13 Cal.3d at 83.) “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (<i>Communities for a Better Env’t v. Cal. Res. Agency</i> (2002) 103 Cal.App.4th 98, 109 (CBE v. CRA).)</p> <p>The EIR is the very heart of CEQA. (<i>Bakersfield Citizens for Local Control v. City of Bakersfield</i> (2004) 124 Cal.App.4th 1184, 1214 (<i>Bakersfield Citizens</i>); <i>Pocket Protectors v. City of Sacramento</i> (2004) 124 Cal.App.4th 903, 927.) The EIR is an “environmental ‘alarm bell’ whose purpose is to alert the public and its responsible</p>	<p>The comment provides regulatory background to CEQA. No further comment is required.</p>

officials to environmental changes before they have reached the ecological points of no return.” (*Bakersfield Citizens*, 124 Cal.App.4th at 1220.) The EIR also functions as a “document of accountability,” intended to “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” (*Laurel Heights Improvements Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.) The EIR process “protects not only the environment but also informed self-government.” (*Pocket Protectors*, 124 Cal.App.4th at 927.)

An EIR is required if “there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” (PRC § 21080(d); see also *Pocket Protectors*, 124 Cal.App.4th at 927.) In very limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact thus requiring no EIR (14 CCR § 15371), only if there is not even a “fair argument” that the project will have a significant environmental effect. (PRC §§ 21100, 21064.) Since “[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process,” by allowing the agency “to dispense with the duty [to prepare an EIR],” negative declarations are allowed only in cases where “the proposed project will not affect the environment at all.” (*Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440.)

Mitigation measures may not be construed as project design elements or features in an environmental document under CEQA. The MND must “separately identify and analyze the significance of the impacts ... before proposing mitigation measures” (*Lotus vs. Department of Transportation* (2014) 223 Cal.App.4th 645, 658.) A “mitigation measure” is a measure designed to minimize a project’s significant environmental impacts, (PRC § 21002.1(a)), while a “project” is defined as including “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.” (CEQA Guidelines § 15378(a).) Unlike mitigation measures, project elements are considered prior to making a significance determination. Measures are not technically “mitigation” under CEQA unless they are incorporated to avoid or minimize “significant” impacts. (PRC § 21100(b)(3).)

To ensure that the project’s potential environmental impacts are fully analyzed and disclosed, and that the adequacy of proposed mitigation measures is considered in

depth, mitigation measures that are not included in the project's design should not be treated as part of the project description. (Lotus, 223 Cal.App.4th at 654-55, 656 fn.8.) Mischaracterization of a mitigation measure as a project design element or feature is "significant," and therefore amounts to a material error, "when it precludes or obfuscates required disclosure of the project's environmental impacts and analysis of potential mitigation measures." (*Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 185.)

Where an initial study shows that the project may have a significant effect on the environment, a mitigated negative declaration may be appropriate. However, a mitigated negative declaration is proper only if the project revisions would avoid or mitigate the potentially significant effects identified in the initial study "to a point where clearly no significant effect on the environment would occur, and...there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment." (PRC §§ 21064.5, 21080(c)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331.) In that context, "may" means a reasonable possibility of a significant effect on the environment. (PRC §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors*, 124 Cal.App.4th at 927; *League for Protection of Oakland's etc. Historic Res. v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–05.)

Under the "fair argument" standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency's decision. (14 CCR § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-51; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.) The "fair argument" standard creates a "low threshold" favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. (*Pocket Protectors*, 124 Cal.App.4th at 928.)

The "fair argument" standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

This 'fair argument' standard is very different from the standard normally followed by public agencies in their decision making. Ordinarily, public

	<p>agencies weigh the evidence in the record and reach a decision based on a preponderance of the evidence. [Citation]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact.</p> <p>(<i>Kostka & Zishcke, Practice Under the California Environmental Quality Act</i>, §6.37 (2d ed. Cal. CEB 2021).) The Courts have explained that “it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency’s determination. Review is de novo, with a preference for resolving doubts in favor of environmental review.” (<i>Pocket Protectors</i>, 124 Cal.App.4th at 928 (emphasis in original).)</p> <p>For over forty years the courts have consistently held that an accurate and stable project description is a bedrock requirement of CEQA—the sine qua non (that without which there is nothing) of an adequate CEQA document:</p> <p style="padding-left: 40px;">Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the “no project” alternative) and weigh other alternatives in the balance. An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.</p> <p>(<i>County of Inyo v. City of Los Angeles</i> (1977) 71 Cal.App.3d 185 at 192–93.) CEQA therefore requires that an environmental review document provide an adequate description of the project to allow for the public and government agencies to participate in the review process through submitting public comments and making informed decisions.</p> <p>Lastly, CEQA requires that an environmental document include a description of the project’s environmental setting or “baseline.” (CEQA Guidelines § 15063(d)(2).) The CEQA “baseline” is the set of environmental conditions against which to compare a project’s anticipated impacts. (<i>CBE v. SCAQMD</i>, 48 Cal.4th at 321.) CEQA Guidelines section 15125(a) states, in pertinent part, that a lead agency’s environmental review under CEQA:</p> <p style="padding-left: 40px;">...must include a description of the physical environmental conditions in the</p>	
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	<p>vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.</p> <p>(See <i>Save Our Peninsula Committee v. County of Monterey</i> (2001) 87 Cal.App.4th 99, 124-25 (“<i>Save Our Peninsula</i>”).) As the court of appeal has explained, “the impacts of the project must be measured against the ‘real conditions on the ground,’” and not against hypothetical permitted levels. (Id. at 121-23.)</p>	
A-4	<p>III. DISCUSSION</p> <p>A. The IS/ND Fails to Adequately Mitigate the Potential Adverse Impacts of the Project on Wildlife.</p> <p>Expert wildlife biologist Dr. Shawn Smallwood, Ph.D., reviewed the IS/ND and proposed Project and associated biological study report (i.e., the Habitat Assessment Report at Appendix B to the IS/ND). Dr. Smallwood’s review of the impacts to wildlife from the Project concluded that the Project may have significant impacts on several special-status species. An EIR is required to analyze these impacts. Dr. Smallwood’s comment and CV are attached as Exhibit A.</p> <p>Dr. Smallwood visited the proposed Project site 15:42 to 17:52 hours on March 29, 2022. (See Ex. A, pp. 1-25.) Dr. Smallwood detected “38 species of vertebrate wildlife at the project site,” during the nearly 2.5 hours he spent surveying the Project site. (Id., pp. 1-9 & 3, Table 1.) Three of the species that he detected during his site visit were special-status species. (See, id., pp. 2-3, Table 1.) Dr. Smallwood observed abundant wildlife, including many birds foraging on site. He observed American crows, which were nesting in trees just off site, foraging on the project site (Photo 3). (Id., p. 3.) Dr. Smallwood saw that portions of the aerosphere over the project site serve the foraging, daily travel, courtship, and breeding needs of multiple species, including Canada goose (Photo 4), Mallard (Photo 5), great egret (Photos 6 and 7), cattle egret (Photo 8), great blue heron, and black-crowned night heron (Photos 9 and 10). (Id.) According to Dr. Smallwood, the IS/ND’s biological study report incorrectly assumes “the site could not support wildlife species in nesting, foraging, or escaping from predators as a result of the site’s heavy alteration and lack of cover.” (Ex. A, pp. 11-12 (citing IS/ND, Ex. B, p. 94).) However, Dr. Smallwood</p>	<p>The commenter indicates that the IS/ND did not provide a comprehensive environmental setting of the Project sties. Dr. Smallwood’s biological comments implies that the Biological Assessment prepared by Precision Civil Engineering, Inc., failed to detect many species that could be present. Dr. Smallwood detected “38 species of vertebrate wildlife at the project site”, three (3) of which are special-status species. However, these three (3) species, including California gull, red-tailed hawk, and merlin, are observed to be flying over, nesting offsite, and hunting. CEQA does not factor into the impact assessment of any birds, whether special status or not, that are simply observed flying in the area, especially birds that soar during flight, such as raptors and vultures. To suggest that because a bird flies in the airspace above a project site, the development of the site will impact the bird is a bit nonsensical. Certainly, any bird species could use any site temporarily for resting or foraging, but that temporal use does not constitute a direct impact unless the temporal use is for nesting.</p> <p>That said, Dr. Smallwood identified nesting of killdeer, savannah sparrows, and mourning doves on site. The impact of nesting birds is acknowledged as part of</p>

	<p>notes that:</p> <p>In fact, despite being disked, the site could support wildlife in all of these ways. Killdeer and savannah sparrows nested on site, despite the recent diskings (Photos 12 and 13). Great-tailed grackles nested just off the site, but undoubtedly did so to benefit from the food resources available on the project site (Photo 14). American crows nested just off site, but supported their nest-attempt by repeatedly foraging on the project site (Photo 15). Mourning doves, which often nest on the ground, copulated on the east side of the project site (Photos 16 and 17). Canada goose used that portion of the aerosphere over the project site to sort out their breeding arrangements (Photos 18 and 19), as did multiple other species. Multiple species foraged amid the soil that was recently upturned by diskings, including about 80 American pipits, which were themselves actively hunted by a merlin (Photos 20 and 21). The very reason a particular American pipit survived the merlin, which had targeted it for an attack, was because it found refuge amid vegetation that remained despite the diskings (photo 22). (Ex. A, p. 12.)</p> <p>Dr. Smallwood also identified 82 special-status species of wildlife as potentially occurring at the site based on his site visit and his own database review using eBird and iNaturalist. (Ex. A, p. 22.) According to Dr. Smallwood, “[o]f these, 7 (8.5%) were confirmed on or immediately adjacent to the site by survey visits or eBird records, 6 (7.3%) have been documented within 1.5 miles of the site (‘Very close’), 41 (50%) within 1.5 and 3 miles (‘Nearby’), and another 22 (26.8%) within 3 to 50 miles (‘In region’).” (Id.) Based on Dr. Smallwood’s site visit and database assessment, “[t]he site holds much more potential for supporting special-status species of wildlife than has been determined in the IS/ND.” (Id.)</p> <p>Thus, Dr. Smallwood concludes:</p> <p>Listed species likely use the site, but documenting their use would take more survey effort to achieve a reasonable likelihood of detecting them. No reconnaissance-level survey is capable of detecting enough of the wildlife species that occur at a site to realistically characterize the site’s wildlife community. <i>A fair argument can be made for the need to prepare an EIR that is better informed by biological resources surveys and by appropriate</i></p>	<p>their Southwest Fresno Specific Plan EIR (2017) Impact BIO-1.8: “Implementation of the proposed Plan could result in take of birds or nests.” Consequently, MEIR Mitigation Measure BIO-1.8 from the Specific Plan EIR was incorporated in the IS/ND to mitigate take on birds or nest protected under Fish and Game Code 3500 and the Migratory Bird Treaty Act.</p> <p>The commenter implies that biological assessment is deficient because it did not include a query of the eBird and iNaturalist database. The eBird database is a database used by the birding community but is not typically used as part of CEQA analysis. Failure to query eBird is not in any way a deficit or flaw in the biological impact assessment since the database is not site specific but simply allows for characterization of the avian community on a regional basis only. The iNaturalist database is a crowdsourced identification system used by the public. Data are not considered verified on the platform and the database is not typically used as part of CEQA analysis.</p> <p>It should be noted that Dr. Smallwood’s biological comments implies that the Biological Assessment prepared by Precision Civil Engineering, Inc., failed to detect many species that could be present.</p> <p>Upon close examination of the extensive list of roughly 82 species listed included in the ebird and iNaturalist list of species (found in Dr. Smallwood’s report), only roughly 3 were actually observed onsite. These 3 species are all birds. The remaining species are either recorded to occur nearby or in the region or were observed near the site. A similar result could be found in any urbanized park or housing complex. A nearby occurrence is not indicative of occurrence within the</p>
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	<p><i>interpretation of survey outcomes for the purpose of characterizing the wildlife community as part of the current environmental setting.</i> (Ex. A, p. 21 (emphasis added).)</p> <p>Moreover, Dr. Smallwood also found that the following factors necessitate the preparation of an EIR:</p> <ul style="list-style-type: none"> • The biological surveys at the Project site reveal an incomplete characterization of the environmental setting, and hence a misleading analysis of impacts from the Project. (Ex. A, pp. 10-25.) 	<p>Study Area. Dr. Smallwood’s list includes species such as golden eagle, Peregrine falcon, long-billed curlew – species that would not be present because of the lack of suitable habitat. Including these species in the comment letter is, at best, simply an attempt to cast the widest net to create the impression that the site supports high quality or unique habitat, when in fact, the site habitat is farmland, annually disked, and provides bird habitat, but little in the way of nesting habitat.</p>
A-5	<ul style="list-style-type: none"> • The IS/ND and the related biological survey report failed to address habitat loss and habitat fragmentation as a result of the Project, which would further permanently diminish the productive capacity of nesting birds in the area. (Ex. A, p. 26.) Specifically, Dr. Smallwood predicted that the Project would deny California 21,500 birds over the next century due solely to loss of terrestrial habitat. (Id.) According to Dr. Smallwood, “[t]he project’s denial to California of 215 birds per year is not been analyzed as a potential impact in the IS/ND, nor does the IS/ND provide any compensatory mitigation for this impact.” (Id. (emphasis added).) 	<p>The commenter indicates that the IS/ND did not address the potential impacts of habitat loss and fragmentation to breeding birds and provides numerical projections of California’s loss of birds per year due to terrestrial habitat loss.</p> <p>First, CEQA standards of significance do not include a specific standard of significance for the loss of bird breeding habitat. Instead, the loss of breeding habitat is generally included within the standard of significance for impacts on special status species. That said, Dr. Smallwood’s projections assume there is, in fact, breeding habitat for a wide range of avian species within the Study Area. The biological study performed by Precision Engineering, Inc., that served as the basis for the IS/MND indicates that the Study Area does not support any shrubs or trees. The lack of suitable nesting habitat (“complex vegetation cover” or “grassland, wetland, and woodland” from the studies that were used by Dr. Smallwood to estimate bird nest capacity on the Project site) precludes nesting by many bird species. Thus, projections of the potential future loss of successful nesting by species is not applicable to this Study Area, regardless of all the</p>

		<p>statistical analysis presented that is, purportedly, designed to prove otherwise. In addition, as implied by Dr. Smallwood, the study sites used for projecting were much less disturbed than the Project site.</p> <p>The commenter indicates that since the IS/MND did not address habitat loss that will affect bird species, the City must prepare an EIR (based on a fair argument). The IS/ND does address habitat impacts and acknowledges habitat loss, but the finding is that the loss does not result in “substantial adverse effect” based on both the quality of the habitat, habitat unit, and impacts on special status species. As a result, the impact does not rise to the level of significance under CEQA. CEQA does not require a finding of significance for impacts that are speculative based, especially those based on flawed assumptions.</p>
A-6	<ul style="list-style-type: none"> The IS/ND and the related biological survey report failed to consider impacts caused to wildlife movement in the region as a result of the proposed Project. (Ex. A, pp. 26-27.) 	<p>The commenter indicates that the IS/ND improperly dismisses the Project’s potential to impact wildlife movement because it relies on a flawed reading of the CEQA standard that focuses on the presence of a wildlife corridor. The commenter asserts that the site is “critically important for wildlife movement” because it is within an area of diminishing open space. Urbanization results in a cumulative impact on wildlife movement. Those cumulative impacts were taken into consideration by the City of Fresno as part of their Southwest Fresno Specific Plan EIR (2017) and acknowledged that the planned development would result in a less than significant impact to wildlife movement due to existing development and fragmentation. The Study Area is located within a substantially commercially/industrially developed area along major roadways, West Church Avenue and</p>

		South West Avenue, that is consistent with those General Plan policies and avoids removal of habitat near or adjacent to sensitive areas (waterways) that are critically important for wildlife movement.
A-7	<ul style="list-style-type: none"> The IS/ND and related biological survey report failed to consider impacts caused by project-generated traffic from the proposed Project, including the fact that “[o]perations over 50 years would accumulate 198,100 wildlife fatalities.” (Ex. A, pp. 27-30 (emphasis in the original).) 	The commenter provides a plethora of information, data, and statistical analysis regarding the potential impacts of traffic on wildlife. CEQA standards of significance for biological resources does not specifically address impacts to wildlife from traffic generation. Thus, there is no clear standard of significance for evaluation, nor does CEQA require such an analysis. That said, without a doubt, traffic does, unfortunately, result in the loss of wildlife every year but whether the projected loss as a direct result of this project is a significant impact is speculative at best.
A-8	<ul style="list-style-type: none"> The IS/ND and related biological survey report fails to adequately address cumulative impacts to wildlife from the Project. (Ex. A, p. 30.) 	Neither the scale of the proposed project nor the anticipated impacts to wildlife or birds warrants preparation of the EIR. The IS/ND’s “interpretation” of the CEQA standards for cumulative impacts is consistent with the City of Fresno’s “interpretation” of cumulative impacts used in the Southwest Fresno Specific Plan EIR. The unfortunate fact that North America has lost nearly a third of its birds over the past half century appears to be more attributable to domestic cats than any other factor. This is not intended to minimize the potential impacts of the proposed project, but to merely highlight that there are other more injurious factors unrelated to the proposed project to be considered when assessing cumulative loss of birds.

<p>A-9</p>	<p>Lastly, Dr. Smallwood notes that the mitigation measures for impacts to biological resources, including Mitigation Measure BIO-1.1a; BIO-1.1b; BIO-1.1c; BIO-1.2; BIO-1.6; BIO-1.8, are inadequate. (Ex. A, pp. 30-32.) Instead, Dr. Smallwood recommends several new mitigation measures, such as detection surveys for special-status species, compensatory measures for impacts to wildlife movement and road mortality, and funding wildlife rehabilitation facilities. (Id., pp. 32-33.) An EIR is required to analyze these feasible mitigation measures.</p>	<p><i>BIO-1.1a: "Construction of a proposed project should avoid, where possible, vegetation communities that provide suitable habitat for a special-status species known to occur within the Plan Area. ..."</i> <i>BIO-1.1c: "Development within the Plan Area should avoid, where possible, special-status natural communities and vegetation communities that provide suitable habitat for special-status species. If a proposed project will result in the loss of a special-status natural community or suitable habitat for special-status species, ..."</i> Dr. Smallwood indicates that vegetation communities would be irrelevant since the site serves as a special-status species habitat. For BIO-1.1b, Dr. Smallwood indicates that detection surveys are needed for Swainson's hawk and burrowing owls by qualified biologists.</p> <p>BIO-1.1a, BIO-1.1b, and BIO-1.1c are mitigation measures established by the Fresno General Plan Update MEIR and incorporated in the Specific Plan EIR as a feasible combination of measures that are effective to mitigate for the loss of rare plant species. As such, the presence of vegetation communities is an appropriate indicator of whether further action should be taken under BIO-1.1a and BIO-1.1c. In this case, the Study Area does not include vegetation communities or critical habitats.</p> <p><i>BIO-1.2: "If trees suitable for Swainson's hawk nesting are to be removed during the Swainson's hawk nesting season (March through August), a qualified biologist knowledgeable of the species will conduct a Swainson's hawk survey ..."</i> Dr. Smallwood comments that the IS/ND remains incomplete without the survey.</p>
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		<p>There are no trees present on the Project site and site surveys conducted did not find Swainson's hawk or its nest. As such, since no trees exist on site, the Swainson's hawk survey is not required under BIO-1.2.</p> <p>The commenter indicates that mitigation measure BIO-1.6 survey guidelines are obsolete and CDFW guidelines are more adequate. However, this is a mitigation measure established by the Specific Plan EIR and is assessed to have a less than significant impact on burrowing owls after implementation. As such, the IS/ND has incorporated this measure and similarly, would result in a less than significant impact on burrowing owls with implementation. This is similar for mitigation measure BIO-1.8, which focuses on nesting birds.</p>
A-10	<p>B. The IS/ND's Analysis of Energy Impacts Is Conclusory and Fails to Provide Substantial Evidence that the Project's Energy Impacts are Less than Significant.</p> <p>Contrary to IS/ND, the construction of the Project could potentially cause wasteful, inefficient, and unnecessary consumption of energy. (See, IS/ND, pp. 101-103.)</p> <p>The standard under CEQA is whether the Project would result in wasteful, inefficient, or unnecessary consumption of energy resources. Failing to undertake "an investigation into renewable energy options that might be available or appropriate for a project" violates CEQA. (<i>California Clean Energy Committee v. City of Woodland</i> (2014) 225 Cal.App.4th 173, 213.)</p> <p>Energy conservation under CEQA is defined as the "wise and efficient use of energy." (CEQA Guidelines, app. F, § I.) The "wise and efficient use of energy" is achieved by "(1) decreasing overall per capita energy consumption, (2) decreasing reliance on fossil fuels such as coal, natural gas and oil, and (3) increasing reliance on renewable energy resources." (Id.)</p> <p>Noting compliance with the California Building Energy Efficiency Standards (Cal.Code Regs., tit. 24, part 6 (Title 24) does not constitute an adequate analysis of energy.</p>	<p>The commenter implies that there was no discussion of the project's cost effectiveness in terms of energy requirements, energy consuming equipment and processes during construction or operation, peak and base period electricity demands, and energy conservation.</p> <p>According to Appendix F: Energy Conservation of the CEQA Guidelines, energy impacts shall be considered to the extent relevant and applicable to the project. In other words, a quantitative analysis is not required under CEQA. Further, according to Appendix F, consideration of energy impacts may include the degree to which the project complies with existing energy standards. Thus, it is appropriate to include compliance with various energy efficiency regulations and policies. As discussed above, the Project is compliant with the Title 24 Energy Code, which is the</p>

	<p>(Ukiah Citizens for Safety First v. City of Ukiah (2016) 248 Cal.App.4th 256, 264-65 (Ukiah Citizens).) Similarly, the court in City of Woodland held unlawful an energy analysis that relied on compliance with Title 24, that failed to assess transportation energy impacts, and that failed to address renewable energy impacts. (City of Woodland, supra, 225 Cal.App.4th at pp. 209-13.) As such, the IS/ND's reliance on Title 24 compliance does not satisfy the requirements for an adequate discussion of the Project's energy impacts.</p> <p>The IS/ND summarily concludes that the project would not result in the inefficient, wasteful and unnecessary consumption of energy. There is no discussion of the project's cost effectiveness in terms of energy requirements. There is no discussion of energy consuming equipment and processes that will be used during the construction or operation of the project, including the energy necessary to maintain freezer storage. The Project's energy use efficiencies by amount and fuel type for each stage of the project including construction, operation, and maintenance were not identified. The effect of the project on peak and base period demands for electricity has not been addressed. The greenhouse gas (GHG) discussion in the EIR addresses GHG emissions resulting from energy production and energy savings measures, but it does not analyze energy conservation. As such, the IS/ND conclusions are unsupported by the necessary discussions of the Project's energy impacts under CEQA.</p>	<p>CA Energy Commission's standards. In addition, the project estimated energy outputs using CalEEMod, further demonstrating that the project, as proposed, would not result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation.</p>
A-11	<p>IV. CONCLUSION</p> <p>For the foregoing reasons, the IS/ND is inadequate and an EIR is required to analyze and mitigate the Project's potentially significant environmental impacts. LIUNA reserves the right to supplement these comments in advance of and during public hearings concerning the Project. (<i>Galante Vineyards v. Monterey Peninsula Water Management Dist.</i>, 60 Cal. App. 4th 1109, 1121 (1997).) Thank you for your attention to these comments.</p>	<p>The comment provides conclusion of the comment letter. No further comment is required.</p>
B	COMMENT LETTER #2: San Joaquin Air Pollution Control District, Dated April 14, 2022	
B-1	<p>Dear Mr. Siegrist:</p> <p>The San Joaquin Valley Unified Air Pollution Control District (District) has reviewed</p>	<p>The comment provides opening remarks and an introduction to the proposed project. No additional</p>

	<p>the Draft Initial Study/Negative Declaration (Draft ND) for the project referenced above from the City of Fresno (City). The project consists of constructing a 477,470 square foot two story, food processing, warehousing, and distribution facility for manufacturing and marketing Italian-style specialty meats (Project). The Project is located at 2325 South West Avenue, in Fresno, CA (APN 477-030-20/477-030-21) and lies within one of the communities in the State selected by the California Air Resources Board (CARB) for investment of additional air quality resources and attention under Assembly Bill (AB) 617 (2017, Garcia) in an effort to reduce air pollution exposure in impacted disadvantaged communities.</p> <p>The District offers the following comments:</p>	<p>action is necessary.</p>
B-2	<p><u>1) Assembly Bill 617</u></p> <p>Assembly Bill 617 requires CARB and air districts to develop and implement Community Emission Reduction Programs (CERPs) in an effort to reduce air pollution exposure in impacted disadvantaged communities, like those in which the Project is located. The South Central Fresno AB 617 community is one of the three Valley communities selected by CARB for investment of additional air quality resources and attention under AB 617.</p> <p>The CERP for the South Central Fresno was developed through an extensive community engagement process, which included input from members of a Community Steering Committee. The South Central Fresno CERP was adopted by the District's Governing Board in September 2019 and by CARB in February 2020. The CERP identifies a wide range of measures designed to reduce air pollution and exposure, including a number of strategies to be implemented in partnership between agencies and local organizations. The Community Steering Committee has developed, through a collaborative process, a series of emission reduction strategies with the goal to improve community health by reducing exposure to air pollutants. Such emission reduction strategies include, but are not limited to, enhanced community participation in land use processes, the deployment of zero and near-zero emission Heavy Heavy-Duty (HHD) trucks, HHD truck rerouting analyses, and incorporating vegetative barriers and urban greening. The District appreciates the City's involvement in this program, and encourages the City to further assess the emission reductions measures and strategies included in the CERP, and address</p>	<p>The District's comments on Assembly Bill 617 and the Community Emission Reduction Program (CERPs) is acknowledged. The California Air Resources Board's (CARB) Land Use Handbook provides siting guidance for locating sensitive receptors near facilities that have more 100 trucks per day or 200 truck trips or more than 40 trucks or 80 truck trips for truck refrigeration units (TRUs). The project will locate into an area where there is open space or similar land uses. The project involves a minimal number of Heavy Heavy Duty Diesel (HHD) truck trips per day, ranging from 10 to 13 truck trips per day.</p> <p>As described in the Draft Negative Declaration (ND), the project will serve to consolidate all Fresno-based Busseto Foods facilities under one roof. As discussed in the Draft ND, the proposed site circulation will reduce surface vehicular traffic in Southwest Fresno by consolidating four (4) existing locations into one combined facility/campus. The net effect is the permanent elimination of at least 40 truck trips per week and consequently, improve air quality, reduce noise impact, and elevate livability. All new arriving</p>

	<p>them in the Project as appropriate.</p>	<p>truck traffic will be required to travel on Jensen Avenue towards West Avenue (existing designated truck routes, City of Fresno 2005), then turn northbound on West into the Project site. All new departing truck traffic will be required to exit the site onto West Avenue, turn southbound and travel to Jensen Avenue. Although the air quality and transportation assessment did not quantify the benefits specifically, consolidating facilities would reduce vehicle miles (VMT) and emissions and have a net benefit to air quality by reducing emissions consistent with the CERPs. The project will also incorporate landscaping that will serve as vegetative barriers consistent with best management practices for reducing pollutant exposure. Lastly, as the District has noted in their comment letter, HHD truck regulations are becoming more stringent with the CARB Statewide Truck and Bus Regulation which generates significant new reductions by 2023, the first year assumed for the project's operations. Trucks used by the facility would be required to comply with the new regulatory standards that would serve to reduce emissions.</p> <p>The project would reduce HHD trucks by consolidating uses, would locate in an area where there are similar land uses and open space to create a buffer between these types of land uses, would include vegetative landscaping, and HHD trucks accessing the site would follow designated truck routes and be subject to increased regulations reducing emissions. In summary, the project would be consistent with CERPs strategies to reduce emissions.</p>
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<p>B-3</p>	<p><u>2) Project Emissions</u></p> <p>2a) Construction Emissions</p> <p>The District recommends the City consider the feasibility of utilizing the cleanest reasonably available off-road construction fleets and practices (i.e. eliminating unnecessary idling) to further reduce impacts from construction-related exhaust emissions and activities.</p>	<p>The City acknowledges the District’s recommendation to use clean offroad construction equipment and minimize idling. CEQA requires lead agencies to impose feasible mitigation measures as part of the approval of a “project” in order to substantially lessen or avoid the significant adverse effects of the project on the physical environment. The project’s construction emissions were determined to be less than significant based on the District’s thresholds of significance, as such no mitigation was required under CEQA.</p> <p>The project will be required to comply with the District’s Rule 9510, which requires a 20 percent reduction in onsite construction NOx emissions and a 45 percent reduction in PM10 exhaust emissions either through clean construction equipment or payment of offsite mitigation fees. The District developed Rule 9510 to achieve reductions in the ozone and PM10 attainment plans. Compliance with Rule 9510 will ensure that the appropriate emission reductions are achieved to facilitate future ozone attainment and maintain PM10 attainment.</p> <p>Unnecessary idling will be addressed through State regulations that prohibit idling for more than five minutes and through best management practices on a construction site. Excessive idling results in increased fuel waste and costs to the contractors, as such idling is limited for both environmental and financial reasons.</p>
<p>B-4</p>	<p>2b) Operational Emissions</p> <p>Based on the Draft ND specifically pages 12 and 13 state the Project is “to facilitate the development of a food processing, warehousing, and distribution facility for</p>	<p>As discussed in the Draft ND, the project would generate between 10 to 13 truck trips per day and would operate Monday through Friday. Project-</p>

Busseto Foods, Inc... in the city of Fresno” with truck trips to be between 10 and 13 trips per day. The California Emissions Estimator Model (CalEEMod) air quality modeling results in the Draft ND includes a 7.3 mile trip length for quantifying Project operational air quality emissions from HHD Truck travel. This value represents the default CalEEMod trip length. It is important to note, projects that consist of warehouse or distribution have the ability generate HHD truck trips that generally travel further distances (e.g. trip length) for distribution. Therefore, the District recommends the Draft ND be revised to justify the use of the default 7.3 mile trip length for this Project. If the default value is determined not appropriate, the Draft ND and supporting CalEEMod air quality modeling results should be revised to reflect an appropriate trip length distance that is supported by the project- specific factors.

specific trip generation rates were applied to the CalEEMod modeling using the default fleet mix and trip length. Additionally, the CalEEMod default trip rates for light industrial were used for Saturday and Sunday, thus generating additional emissions for worker trips and truck trips.

The default CalEEMod fleet mix assumes approximately two percent of the fleet mix is HHD, additionally another four percent is assumed to be composed of Light Heavy-Duty Trucks (LHD1) to Medium Heavy-Duty (MHD) Trucks. As such, the CalEEMod estimates of vehicle types overestimates the number of truck trips, thus the default trip length is appropriate (see Table 1 below). Notably, although the project description describes the project as warehouse distribution, it is primarily a food processing plant with some local distribution as compared to a traditional warehouse distribution project that would have a many more truck trips. Additionally, the proposed project will result in the elimination of at least 40 truck trips per week through the consolidation of facilities, which was not reflected in the emissions estimate. As such the emissions estimate provided a conservative analysis by overestimating the number of HHD and LHD1 to MHD vehicle trips, thus the default trip length is appropriate. No revisions to the modeling is required.

Table 1: CalEEMod Modeling Truck Trips

Total Vehicle Trips		CalEEMod HHD Truck Trips	CalEEMod LHD1, LHD2, MHD VehicleTrips
Monday – Friday	2,368.25	52	113

		<table><tr><td>Saturday</td><td>3065.35</td><td>68</td><td>146</td></tr><tr><td>Sunday</td><td>2,430.2</td><td>54</td><td>113</td></tr></table> <p>Notes: Monday through Friday trip rate from JLB Traffic Engineering Traffic Study, 2021 ITE Light Industrial trip rate used for Saturday and Sunday</p>	Saturday	3065.35	68	146	Sunday	2,430.2	54	113
Saturday	3065.35	68	146							
Sunday	2,430.2	54	113							
B-5	<p>2c) Recommended Feasible Mitigation for Operational Air Quality Impacts</p> <p>The San Joaquin Valley will not be able to attain stringent health-based federal air quality standards without significant reductions in emissions from HHD trucks, the single largest source of NOx emissions in the San Joaquin Valley. The District recently adopted the 2018 PM2.5 Plan, which includes significant new reductions from HHD trucks, including emissions reductions by 2023 through the implementation of the California Air Resources Board (CARB) Statewide Truck and Bus Regulation, which requires truck fleets operating in California to meet the 2010 0.2 g/bhp-hr NOx standard by 2023. Additionally, to meet the federal air quality standards by the 2020 to 2024 attainment deadlines, the District’s Plan relies on a significant and immediate transition of heavy duty truck fleets to zero or near-zero emissions technologies, including the near-zero truck standard of 0.02 g/bhp-hr NOx established by the California Air Resources Board.</p> <p>The Project consists of processing, warehousing, distribution, and is expected to generate 10-13 HHD truck trips per day. To reduce impacts from operational mobile source emissions, the District recommends that the following mitigation measures be considered for inclusion in the Draft ND:</p> <ul style="list-style-type: none">• Require fleets associated with Project operational activities to utilize the cleanest available HHD truck technologies, including zero and near-zero (0.02 g/bhp-hr NOx) technologies as feasible.• Require all on-site service equipment (cargo handling, yard hostlers, forklifts, pallet jacks, etc.) to utilize zero-emissions technologies as feasible.	<p>The City appreciates the District’s comments on the challenges the Air Basin faces to meet health-based federal air quality standards and the focus on reducing NOx emissions from HHD.</p> <p>As discussed previously, CEQA requires lead agencies to impose feasible mitigation measures as part of the approval of a “project” to substantially lessen or avoid the significant adverse effects of the project on the physical environment. When imposing mitigation, lead agencies must ensure there is a “nexus” and “rough proportionality” between the measure and the significant impacts of the project. (CEQA Guidelines Section 15126.4, subd.(a)(4)(A)–(B), citing <i>Nollan v. Ca. Coastal Commission</i> (1987) 483 U.S. 825, <i>Dolan v. City of Tigard</i> (1994) 512 U.S. 374.)</p> <p>The proposed project would have a less than significant impact on air quality based on the District’s thresholds of significance, as such no mitigation is required under CEQA.</p> <p>The District has adopted Rule 9510 to assist with attainment of ozone and PM10. The project would comply with Rule 9510 through submission of an air impact assessment application and will be required to achieve the operational emission reductions from NOx and PM10 of 33 percent and 50 percent, respectively either through on-site measures or payment of offsite fees. Accordingly, although the project would have</p>								

		less than significant impacts under CEQA it would still assist with attainment of ozone and PM10 health-based standards through compliance with District regulations.
B-6	<p><u>3) Health Risk Assessment</u></p> <p>In order for the District to provide a complete review of the Project's Health Risk Assessment (HRA), the District requests the City provide the electronic modeling files (input and output). As such, the District is unable to verify the Project HRA results, and could not confirm the Project-related health impacts.</p>	The Health Risk Assessment (HRA) was prepared in conformance with the District and the Office of Environmental Health Hazard Assessment (OEHHA) guidance. The modeling files have been provided to the District for verification of results.
B-7	<p><u>4) Truck Routing</u></p> <p>There are sensitive receptors (e.g. single family residence) located southeast and west of the Project. Truck routing involves the path/roads heavy-duty trucks take to and from their destination. The air emissions from heavy-duty trucks can impact residential communities and sensitive receptors.</p> <p>The District recommends the Draft ND evaluate Project heavy-duty truck routing patterns to help limit emission exposure to residential communities and sensitive receptors. More specifically, this measure would require study of current truck routes, in consideration of the number and type of each vehicle, destination/origin of each vehicular trip, time of day/week analysis, vehicle miles traveled and emissions. The truck routing study would also identify alternative truck routes and their impacts on VMT and air quality.</p>	<p>As described in the Draft ND, trucks would access the project via Jensen and West Avenues, which are existing truck routes in the City of Fresno (City of Fresno, 2005). The Draft ND evaluated the potential impact of diesel particulate matter (DPM) from trucks traveling to and from the project site. As discussed in the air quality study prepared for the project, the project site is located within 1,000 feet from existing sensitive receptors that could be exposed to diesel emission exhaust during the construction and operational periods. The nearest sensitive receptors are residents occupying a single-family home approximately 150 feet east of the project site. To estimate the potential cancer risk associated with the proposed project from equipment exhaust (including DPM), a dispersion model was used to translate an emission rate from the source location to concentrations at the receptor locations of interest (i.e., receptors at nearby residences).</p> <p>The location of the maximally exposure individual receptor (MEIR) is located on West Ave., east of the project site. The AERMOD dispersion model was used to predict concentrations of DPM and PM2.5 at</p>

		sensitive receptors within 1,000 feet of the project site, as recommended by the SJVAPCD.
B-8	<p><u>5) Electric Vehicle Chargers</u></p> <p>Based on the Draft ND, electric vehicle chargers will be incorporated into the Project for employee to use. To support the installation of electric vehicle charging infrastructure and development of required infrastructure, the District offers incentives to public agencies, businesses, and property owners of multi-unit dwellings to install electric charging infrastructure (Level 2 and 3 chargers). The purpose of the District's Charge Up! Incentive program is to promote clean air alternative-fuel technologies and the use of low or zero-emission vehicles. Please visit: www.valleyair.org/grants/chargeup.htm for more information.</p>	The District's comment regarding incentives for the installation of electric vehicle charging facilities is appreciated. The information has been distributed to the applicant for consideration.
B-9	<p><u>6) Vegetative Barriers and Urban Greening</u></p> <p>Based on the Draft ND, the Project will include shrubs, trees, and ground cover along South West Avenue and West Church Avenue. While various emission control techniques and programs exist to reduce air quality emissions from mobile and stationary sources, vegetative barriers have been shown to be an additional measure to potentially reduce a population's exposure to air pollution through the interception of airborne particles and the uptake of gaseous pollutants. Examples of vegetative barriers include, but are not limited to the following: trees, bushes, shrubs, or a mix of these. Generally, a higher and thicker vegetative barrier with full coverage will result in greater reductions in downwind pollutant concentrations. In the same manner, urban greening is also a way to help improve air quality and public health in addition to enhancing the overall beautification of a community with drought tolerant, low maintenance greenery.</p>	The District's comment regarding the benefit of vegetative barriers is acknowledged. Studies have shown that landscaping and barriers can reduce roadway-generated pollutant exposure for nearby people in two main ways: deposition and dispersion. Vegetation reduces exposure by both capturing pollutants and by forcing particles vertically up the barrier, potentially reducing the concentration of a given pollutant. Although incorporation of vegetation has been shown to reduce exposure, the air quality assessment for the project did not take any reductions for the inclusion of landscaping and vegetative barriers as part of the project design.
B-10	<p><u>7) District Rules and Regulation</u></p> <p>The District issues permits for many types of air pollution sources and regulates some activities not requiring permits. A project subject to District rules and regulation would reduce its impacts on air quality through compliance with regulatory requirements. In general, a regulation is a collection of rules, each of which deals with a specific topic. Here are a couple of example, Regulation II</p>	The comment regarding the District's Rules and Regulations is acknowledged. The City appreciates the information regarding potential rules that the project may be subject and has provided the information on permitting and rules that may be applicable to the project to the applicant.

	<p>(Permits) deals with permitting emission sources and includes rules such as District permit requirements (Rule 2010), and New and Modified Stationary Source Review (Rule 2201).</p> <p>The list of rules below is neither exhaustive nor exclusive. Current District rules can be found online at: www.valleyair.org/rules/1ruleslist.htm. To identify other District rules or regulations that apply to this Project or to obtain information about District permit requirements, the applicant is strongly encouraged to contact the District's Small Business Assistance (SBA) Office at (559) 230-5888.</p>	
B-11	<p>7a) District Rule 9410 (Employer Based Trip Reduction)</p> <p>The Project may be subject to District Rule 9410 (Employer Based Trip Reduction) if the Project would result in employment of 100 or more "eligible" employees. District Rule 9410 requires employers with 100 or more "eligible" employees at a worksite to establish an Employer Trip Reduction Implementation Plan (eTRIP) that encourages employees to reduce single-occupancy vehicle trips, thus reducing pollutant emissions associated with work commutes. Under an Etrip plan, employers have the flexibility to select the options that work best for their worksites and their employees.</p> <p>Information about how District Rule 9410 can be found online at: www.valleyair.org/tripreduction.htm</p> <p>For additional information, you can contact the District by phone at 559-230-6000 or by e-mail at etrip@valleyair.org</p>	<p>The comment regarding the applicability of the District's Rule 9410 Employer Based Trip Reduction is acknowledged. The project is estimated to employ approximately 160 employees, including 20-50 temporary/part-time employees and is classified as a Tier 1 facility under Rule 9410. Prior to operation, the facility will register with the District and submit an Employer Trip Reduction Implementation Plan (ETRIP).</p>
B-12	<p>7b) District Rule 9510 – Indirect Source Review</p> <p>The purpose of District Rule 9510 is to reduce the growth in both NOx and PM emissions associated with development and transportation projects from mobile and area sources; specifically, the emissions associated with the construction and subsequent operation of development projects. The Rule requires developers to mitigate their NOx and PM emissions by incorporating clean air design elements into their projects. Should the proposed development project clean air design elements be insufficient to meet the required emission reductions, developers must pay a fee that ultimately funds incentive projects to achieve off-site emissions reductions.</p>	<p>The comment regarding the applicability of the District's Rule 9510 Indirect Source Review is acknowledged. The project will submit an Air Impact Assessment application before the final discretionary approval from the City is requested.</p>

	<p>The Project is subject to District Rule 9510 when it receives a project-level discretionary approval from a public agency and will equal or exceed 2,000 square feet of commercial space. When subject to the rule, an Air Impact Assessment (AIA) application is required no later than applying for project-level approval from a public agency. In this case, if not already done, please inform the project proponent to immediately submit an AIA application to the District to comply with District Rule 9510.</p> <p>Information about how to comply with District Rule 9510 can be found online at: http://www.valleyair.org/ISR/ISRHome.htm.</p> <p>The AIA application form can be found online at: http://www.valleyair.org/ISR/ISRFormsAndApplications.htm.</p> <p>District staff is available to provide assistance with determining if future development projects will be subject to Rule 9510, and can be reached by phone at (559) 230-5900 or by email at ISR@valleyair.org.</p>	
B-13	<p>7c) Other District Rules and Regulations</p> <p>The Project may also be subject to the following District rules: Regulation VIII, (Fugitive PM10 Prohibitions), Rule 4102 (Nuisance), Rule 4601 (Architectural Coatings), and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations). In the event an existing building will be renovated, partially demolished or removed, the project may be subject to District Rule 4002 (National Emission Standards for Hazardous Air Pollutants).</p>	<p>The comment regarding other District rules that the project may be subject to is acknowledged. The project does not involve the demolition of an existing building. The project will prepare a dust control plan in conformance with the District's Regulation VIII. Building paint and paving of the parking lot will also be done in compliance with District Regulations.</p>
B-14	<p>8) District Comment Letter</p> <p>The District recommends that a copy of the District's comments be provided to the Project proponent.</p> <p>If you have any questions or require further information, please contact Harout Sagherian by e-mail at Harout.Sagherian@valleyair.org or by phone at (559) 230-5860.</p>	<p>The comment regarding providing this comment letter to the project proponent is acknowledged by the City. The comment letter from the SJVAPCD was provided to the project proponent on April 14, 2022; therefore, no additional action is necessary. The City acknowledges and appreciates SJVAPCD's contact information regarding further questions on the comment letter.</p>

C	COMMENT LETTER #3: Laborers International Union of North America, Local Union No. 294, Dated May 18, 2022	
C-1	<p>Dear Honorable Chairperson Vang, Vice Chair Hardie, and Commissioners Criner, Wagner, and Diaz, and Mr. Siegrist:</p> <p>I am writing on behalf of Laborers International Union of North America, Local Union No. 294 (“LIUNA”) regarding the Initial Study and Negative Declaration (“IS/ND”) prepared for the proposed Busseto Processing, Warehousing, and Distribution Project, Development Application No. P20-04211 and Plan Amendment and Rezone Application No. P20-0409, including all actions related or referring to the proposed construction, use, and maintenance of a new food processing, warehousing, and distribution facility for Busseto Foods, Inc., a manufacturer and marketer of Italian-style specialty meats, totaling 477,470-square feet, at 2325 South West Avenue and 995 West Church Avenue in Fresno, California (“Project”).</p> <p>After reviewing the IS/ND, we submitted comments on April 4, 2022, which concluded that the IS/ND fails as an informational document, and that there is a fair argument that the Project may have adverse environmental impacts. Therefore, we requested that the City of Fresno (“City”) prepare an environmental impact report (“EIR”) for the Project pursuant to the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000, et seq.</p> <p>LIUNA submits the following supplemental comment and related exhibits to inform the Planning Commission of the new, significant impacts that the proposed Project will have on individuals living and working in the City of Fresno that were neither addressed in the IS/ND, nor adequately mitigated. Specifically, the comment and related exhibits address the Project’s potentially significant air quality impacts, greenhouse gas emissions, and hazards and hazardous materials impacts. As evidenced by the expert comments submitted by environmental consulting firm Soil/Water/Air Protection Enterprise (“SWAPE”), CEQA requires that an EIR, rather than an ND, be prepared for the Project. SWAPE’s comment and curriculum vitae are attached as Exhibit A hereto and is incorporated herein by reference in its entirety.</p> <p>As discussed below, SWAPE reported several issues related to the IS/ND requiring that the City prepare an EIR for the proposed Project.</p>	<p>The comment provides opening remarks and an introduction to the proposed project. LIUNA retained Lozeau Drury LLP and Soil/Water/Air Protection Enterprises (“SWAPE”) to review the Draft Negative Declaration (ND). SWAPE’s comments on hazards, air quality, and greenhouse gas impacts are included as Exhibit A of the document. No additional action is necessary.</p>

C-2	<p>I. ANALYSIS</p> <p>A. The IS/ND Fails to Adequately Analyze Hazards and Hazardous Materials Impacts and Thus the Project May Result in Significant Hazards and Hazardous Impacts Requiring an EIR.</p> <p>The IS/ND does not rely on any substantial evidence to support its conclusion that the Project will not expose the public, workers, or the environment to potentially hazardous materials. In preparing the IS/MND, neither the City nor the Applicant prepared a Phase I Environmental Site Assessment (“ESA”) for the Project site. According to SWAPE, “[t]he preparation of a Phase I ESA is a common practice in CEQA matters to aid in the identification of hazardous materials impacts that may pose a risk to the public, workers, or the environment, and which may require further investigation through the conduct of a Phase II ESA.” Ex. A, p. 1. Standards for performing a Phase I ESA have been established by the US EPA and the American Society for Testing and Materials Standards (“ASTM”). <i>Id.</i>, p. 2. Phase I ESAs include a review of all known sites in the vicinity of the subject property that are on regulatory agency databases undergoing assessment or cleanup activities; an inspection; interviews with people knowledgeable about the property; and recommendations for further actions to address potential hazards. <i>Id.</i> “Phase I ESAs conclude with the identification of any ‘recognized environmental conditions’ (RECs) and recommendations to address such conditions.” <i>Id.</i></p> <p>It is well-established that CEQA requires analysis of toxic soil contamination that may be disturbed by a Project, and that the effects of this disturbance on human health and the environment must be analyzed. The IS/ND’s baseline for this potential impact is flawed for failure to identify existing soil conditions at the Project site. Without knowing the presence and levels of these chemicals, the IS/ND cannot justify its conclusion that human exposure impacts are unlikely, and that the Project poses no significant risks from the release of hazardous materials into the environment. Thus, SWAPE’s following recommendations should be implemented prior to the approval of the proposed Project:</p> <p>Consistent with professional due diligence procedures commonly used in CEQA proceedings, a Phase I ESA, completed by a licensed environmental professional is necessary for inclusion in an EIR to identify recognized environmental conditions, if</p>	<p>Response to this comment is provided in Response to C-7.</p>
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	<p>any, at the proposed Project site. If a REC is identified, a Phase II should be conducted to sample for potential contaminants in soil, including pesticides. Any contamination that is identified above regulatory screening levels, including California Department of Toxics Substances Control recommended screening levels, should be further evaluated and cleaned up, if necessary, in coordination with the Regional Water Quality Control Board and the California Department of Toxics Substances Control.</p>	
<p>C-3</p>	<p>B. The IS/ND Relied on Unsubstantiated Input Parameters to Estimate Project Emissions and Thus the Project May Result in Significant Air Quality Impacts Requiring an EIR.</p> <p>SWAPE reviewed the Project's CalEEMod output files, provided in the Air Quality and Greenhouse Gas Report ("AQ & GHG Report") as Appendix A to the IS/ND, and found that several model inputs used to generate a project's construction and operation emissions were not consistent with information disclosed in the IS/ND. See Ex. A, pp. 2-6. As a result, SWAPE concludes that the Project's construction and operational emissions are underestimated. An EIR should be prepared to include an updated air quality analysis that adequately evaluates the impacts that construction and operation of the Project will have on local and regional air quality.</p> <p>Specifically, SWAPE found that several values used in the IS/ND and AQ & GHG Report's air quality analysis were either inconsistent with information provided in the IS/ND or otherwise unjustified (Ex. A, pp. 3-6), including:</p> <ol style="list-style-type: none"> 1. Underestimated Parking Land Use Size. Ex. A, p. 3. 2. Unsubstantiated Reduction to Acres of Grading Value. Ex. A, pp. 3-4. 3. Incorrect Application of Construction-Related Mitigation Measures. Ex. A, pp. 4-6. <p>Significantly, SWAPE points out that because the IS/ND includes project design features intended to mitigate construction-related emissions that are not formally included as mitigation measures, they may be eliminated from the Project's design altogether. Ex. A, pp. 4-6. As a result, there is no guarantee that any of the IS/ND's construction-related measures will be implemented, monitored, and enforced on the Project site. Id., p. 5. Therefore, in incorrectly including several construction-related mitigation measures without properly committing to their implementation, the Project's construction emissions were underestimated and should not be relied</p>	<p>Responses to this comment is provided in Response to C-8 through C-11.</p>

	<p>upon to determine Project significance.</p> <p>As a result of these errors in the IS/ND, the Project's construction and operational emissions were underestimated and cannot be relied upon to determine the significance of the Project's air quality impacts. Thus, an EIR is needed to adequately address the air quality impacts of the proposed Project, and to mitigate those impacts accordingly.</p>	
C-4	<p>C. The IS/ND Failed to Adequately Analyze Greenhouse Gas Impacts and Thus the Project May Result in Significant Greenhouse Gas Emissions Requiring an EIR.</p> <p>SWAPE's review of the IS/ND and AQ & GHG Report found that the IS/ND fails to adequately evaluate the greenhouse gas (GHG) impacts of the proposed Project. Ex. A, pp. 6-8 (citing IS/ND, p. 133, Table 4-15). However, SWAPE concludes that the IS/ND's GHG analysis and subsequent less-than-significant impact conclusion is incorrect, because the IS/ND's quantitative analysis relies upon an incorrect and unsubstantiated air model. Ex. A, pp. 6-7. As a result, GHG emissions are underestimated and the IS/ND's quantitative GHG analysis should not be relied upon to determine Project significance. Id. Thus, an EIR should be prepared to adequately assess the Project's potential GHG impacts on the surrounding environment from construction and operation.</p>	Responses to this comment is provided in Response to C-12 through C-15.
C-5	<p>II. CONCLUSION</p> <p>For the foregoing reasons, the IS/ND is inadequate and an EIR is required to analyze and mitigate the Project's potentially significant environmental impacts. LIUNA reserves the right to supplement these comments in advance of and during public hearings concerning the Project. <i>Galante Vineyards v. Monterey Peninsula Water Management Dist.</i>, 60 Cal. App. 4th 1109, 1121 (1997). Thank you for your attention to these comments.</p>	The comment provides conclusionary remarks and the commenter asserts their right to supplement their comments. No additional action is necessary.
C-6	<p>EXHIBIT A</p> <p>We have reviewed the March 2022 Initial Study / Negative Declaration ("IS/ND") for the Busseto Foods Processing, Warehousing, and Distribution Facility Project ("Project") located in the City of Fresno ("City"). The Project proposes to construct a 477,470-square-foot ("SF") industrial facility and 204 parking spaces on the 18.9-acre</p>	The comment is an introduction to SWAPE's comments on the proposed project. SWAPE provides comments on the proposed project's hazards and hazardous materials, air quality, and greenhouse gas analyses. No additional action is necessary.

	<p>site.</p> <p>Our review concludes that the IS/ND fails to adequately evaluate the Project's hazards and hazardous materials, air quality and greenhouse gas impacts. As a result, emissions associated with construction and operation of the proposed Project are underestimated and inadequately addressed. An Environmental Impact Report ("EIR") should be prepared to adequately assess and mitigate the potential air quality and greenhouse gas impacts that the project may have on the environment.</p>	
C-7	<p>Hazards and Hazardous Materials</p> <p>Inadequate Disclosure and Analysis of Impacts</p> <p>A Phase I Environmental Site Assessment (ESA) was not prepared for the Project site. Instead, the IS/ND relied on a search of the online regulatory databases "Geotracker" and "Envirostor" in order to determine hazards and hazardous materials impacts were less than significant (p. 143). The preparation of a Phase I ESA is a common practice in CEQA matters to aid in the identification of hazardous materials impacts that may pose a risk to the public, workers, or the environment, and which may require further investigation through the conduct of a Phase II ESA. The IS/ND commits only to the preparation of a Phase I ESA and Phase II ESA after project approval and prior to grading via Mitigation Measure HAZ-4a and HAZ-4b as included in the October 15, 2021 Southwest Fresno Specific Plan EIR Mitigation Monitoring and Reporting Program. This constitutes deferred mitigation and does not allow for disclosure of possible impacts and the identification of any mitigation that may be necessary. Standards for performing a Phase I ESA have been established by the US EPA and the American Society for Testing and Materials Standards (ASTM). Phase I ESAs are conducted to identify conditions indicative of releases of hazardous substances and include:</p> <ul style="list-style-type: none"> • a review of all known sites in the vicinity of the subject property that are on regulatory agency databases undergoing assessment or cleanup activities; • an inspection; • interviews with people knowledgeable about the property; and • recommendations for further actions to address potential hazards. 	<p>SWAPE states that the ND should have prepared a Phase I Environmental Site Assessment (ESA). As discussed in the ND, a records search of the California Department of Toxic Substance Control's EnviroStor database and the State Water Resources Control Board's GeoTracker database was conducted on September 20, 2021. The search revealed no hazardous material release sites on the Project Site. The project would also comply with all local, state, and federal rules and regulations pertaining to the storage and transport of hazardous materials in the event any are used or stored on-site or transported from the site and found impacts to be less than significant. The project site is located within the Southwest Fresno Specific Plan Area and, as a result, is subject to the Specific Plan's Environmental Impact Report (EIR) Mitigation Monitoring and Reporting Program (MMRP) which requires projects within the Specific Plan Area to implement Mitigation Measures HAZ-4. Even though the ND found hazardous impacts to be less than significant, these measures are still required. Therefore, a Phase 1 ESA is not being deferred as the project will be consistent with the Specific Plan EIR MMRP which requires a Phase I ESA be prepared prior to the issuance of the grading permit.</p>

	<p>Phase I ESAs conclude with the identification of any “recognized environmental conditions” (RECs) and recommendations to address such conditions. A REC is the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, groundwater, or surface water of the property. If RECs are identified, then a Phase II ESA generally follows, which includes the collection of soil, soil vapor and groundwater samples, as necessary, to identify the extent of contamination and the need for cleanup to reduce exposure potential to the public.</p> <p>Consistent with professional due diligence procedures commonly used in CEQA proceedings, a Phase I ESA, completed by a licensed environmental professional is necessary for inclusion in an EIR to identify recognized environmental conditions, if any, at the proposed Project site. If a REC is identified, a Phase II should be conducted to sample for potential contaminants in soil, including pesticides. Any contamination that is identified above regulatory screening levels, including California Department of Toxics Substances Control recommended screening levels², should be further evaluated and cleaned up, if necessary, in coordination with the Regional Water Quality Control Board and the California Department of Toxics Substances Control.</p>	
C-8	<p>Air Quality</p> <p>Unsubstantiated Input Parameters Used to Estimate Project Emissions</p> <p>The IS/ND’s air quality analysis relies on emissions calculated with the California Emissions Estimator Model (“CalEEMod”) Version 2020.4.0 (p. 67). CalEEMod provides recommended default values based on site-specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type. If more specific project information is known, the user can change the default values and input project-specific values, but the California Environmental Quality Act (“CEQA”) requires that such changes be justified by substantial evidence. Once all of the values are inputted into the model, the Project's construction and operational emissions are calculated, and "output files" are generated. These output files disclose to the reader what parameters are utilized in calculating the Project's air pollutant emissions and make known which</p>	<p>SWAPE states that the project modeling is inconsistent with information provided in the Draft ND. The air quality and greenhouse gas modeling was conducted using the SJAVPCD-approved California Emissions Estimator Model (CalEEMod) relying on default model inputs and site-specific information provided by the project applicant and consistent with the ND. Additional information is provided in Response to C-9 through C-11.</p>

	<p>default values are changed as well as provide justification for the values selected.</p> <p>When reviewing the Project’s CalEEMod output files, provided in the Air Quality and Greenhouse Gas Analysis Report (“AQ & GHG Report”) as Appendix A to the IS/ND, we found that several model inputs were not consistent with information disclosed in the IS/ND. As a result, the Project’s construction and operational emissions are underestimated. An EIR should be prepared to include an updated air quality analysis that adequately evaluates the impacts that Project construction and operation will have on local and regional air quality.</p>																
C-9	<p><i>Underestimated Parking Land Use Size</i></p> <p>According to the IS/ND:</p> <p>“The Project proposes 204 total parking spaces, including accessible (six spaces), van accessible (two spaces), and clean air/vanpool (16 spaces, 16 chargers) spaces” (p. 16).</p> <p>As such, the model should have included 204 parking spaces. However, review of the CalEEMod output files demonstrates that the “Bussetto Foods New Campus” model includes only 190 parking spaces (see excerpt below) (Appendix A, pp. 323, 356, 386).</p> <table><tr><th>Land Uses</th><th>Size</th><th>Metric</th><th>Lot Acreage</th><th>Floor Surface Area</th></tr><tr><td>General Heavy Industry</td><td>477.47</td><td>1000sqft</td><td>10.96</td><td>477,470.00</td></tr><tr><td>Parking Lot</td><td>190.00</td><td>Space</td><td>1.71</td><td>76,000.00</td></tr></table> <p>As demonstrated in the excerpt above, the proposed parking lot is underestimated by 14 spaces. This underestimation presents an issue, as the square footage of parking land uses is used for certain calculations such as determining the area to be painted and stripped (i.e., VOC emissions from architectural coatings) and volume to be ventilated (i.e., energy impacts). Thus, by underestimating the number of proposed parking spaces, the model underestimates the Project’s construction-related and operational emissions and should not be relied upon to determine Project significance.</p>	Land Uses	Size	Metric	Lot Acreage	Floor Surface Area	General Heavy Industry	477.47	1000sqft	10.96	477,470.00	Parking Lot	190.00	Space	1.71	76,000.00	<p>SWAPE states that the parking land use is underestimated. The CalEEMod modeling assumed a total of 190 parking spaces will be provided in an outdoor parking lot. The addition of 14 parking spaces will result in a minor increase in pavement to be constructed. The commenter asserts that the underestimation results in underestimated volatile organic compound (VOC) emissions and underestimated energy impacts from ventilation. VOCs are typically produced from painting, architectural coatings, and household cleaners. Fourteen additional parking spaces would result in a minor increase in parking area to be painted. Furthermore, during operation the CalEEMod modeling assumes a 10% reapplication rate per year. SJVAPCD’s Rule 4601 limits the VOC content of architectural coatings to reduce off-gassing. All paintings and architectural coatings for the proposed project would be subject to this rule. The proposed parking lot would be an outdoor parking lot, therefore no ventilation would be required that would increase energy impacts.</p> <p>As demonstrated in the Air Quality and Greenhouse Gas Study, included as Appendix A in the Draft ND, the</p>
Land Uses	Size	Metric	Lot Acreage	Floor Surface Area													
General Heavy Industry	477.47	1000sqft	10.96	477,470.00													
Parking Lot	190.00	Space	1.71	76,000.00													

		proposed project’s construction and operational emissions for air quality fall significantly below thresholds. The addition of 14 parking spaces would create a negligible increase in emissions. Therefore, the impacts would continue to be less than significant.																
C-10	<p><i>Unsubstantiated Reduction to Acres of Grading Value</i></p> <p>Review of the CalEEMod output files demonstrates that the “Bussetto Foods New Campus” model includes manual reductions to the default acres of grading values (see excerpt below) (Appendix A, pp. 324, 357, 387).</p> <table><tr><th>Table Name</th><th>Column Name</th><th>Default Value</th><th>New Value</th></tr><tr><td>tblGrading</td><td>AcresOfGrading</td><td>69.00</td><td>18.89</td></tr><tr><td>tblGrading</td><td>AcresOfGrading</td><td>69.00</td><td>18.89</td></tr><tr><td>tblGrading</td><td>AcresOfGrading</td><td>30.00</td><td>18.89</td></tr></table> <p>As previously mentioned, the CalEEMod User’s Guide requires any changes to model defaults be justified. According to the “User Entered Comments & Non-Default Data” table, the justification provided for these changes is:</p> <p>“Project site is relatively flat, no grading material will need to be haul on or off-site” (Appendix A, pp. 323, 356, 386).</p> <p>However, these changes remain unsupported. According to the CalEEMod User’s Guide:</p> <p>“[T]he dimensions (e.g., length and width) of the grading site have no impact on the calculation, only the total area to be graded. In order to properly grade a piece of land multiple passes with equipment may be required. The acres is based on the equipment list and days in grading or site preparation phase according to the anticipated maximum number of acres a given piece of equipment can pass over in an 8-hour workday.”</p> <p>As demonstrated above, the acres of grading values are based on construction equipment and the length of the grading or site preparation phases. As such, whether the Project site is level has no impact on the acres of grading values, and therefore the above reductions remain unsupported.</p>	Table Name	Column Name	Default Value	New Value	tblGrading	AcresOfGrading	69.00	18.89	tblGrading	AcresOfGrading	69.00	18.89	tblGrading	AcresOfGrading	30.00	18.89	<p>SWAPE states that the acres of grading is underestimated. CalEEMod default construction schedule, construction equipment, and usage hours were used to determine the Project’s emissions. The graded acres are based on the construction equipment and length of construction which calculates the total area to be graded based on the assumption that a piece of land may require multiple passes with equipment. However, the site is relatively flat. If any grading is required, it will be minimal and will likely only occur in pockets on the site. As stated, the construction schedule, equipment, and usage hours are based on modeling defaults, which have been acknowledged by the CalEEMod User’s Guide to be conservative. As such, the graded acreage defaults are also conservative estimates.</p> <p>Using the more conservative default graded acreages would not change the assumption of the equipment, days of construction, or usage hours. Therefore, only fugitive dust emissions would be impacted by the increase of graded acres modeled. However, the proposed project’s construction would be subject to SJVAPCD Regulation 8, Rule 8021 which limits fugitive dust emissions from construction activities through required control measures.</p> <p>As stated in Response to LIUNA-9, the proposed project’s construction and operational emissions for</p>
Table Name	Column Name	Default Value	New Value															
tblGrading	AcresOfGrading	69.00	18.89															
tblGrading	AcresOfGrading	69.00	18.89															
tblGrading	AcresOfGrading	30.00	18.89															

	<p>These unsubstantiated reductions present an issue, as CalEEMod uses the acres of grading values to estimate the dust emissions associated with grading. Thus, by including unsubstantiated reductions to the default acres of grading values, the model may underestimate the Project's construction-related emissions and should not be relied upon to determine Project significance.</p>	<p>air quality fall significantly below thresholds. Application of Regulation 8, Rule 8021 would reduce any additional fugitive dust emissions from the assumed default graded acreage. Therefore, the impacts would continue to be less than significant.</p>
C-11	<p><i>Incorrect Application of Construction-Related Mitigation Measures</i></p> <p>Review of the CalEEMod output files demonstrates that the "Bussetto Foods New Campus" model includes the following construction-related mitigation measures (see excerpt below) (Appendix A, pp. 329, 363, 393).</p> <p style="text-align: center;">3.1 Mitigation Measures Construction</p> <div style="border: 2px solid red; padding: 5px; margin: 10px auto; width: fit-content;"> <p>Water Exposed Area</p> <p>Reduce Vehicle Speed on Unpaved Roads</p> </div> <p>As previously mentioned, the CalEEMod User's Guide requires any changes to model defaults be justified. According to the "User Entered Comments & Non-Default Data" table, the justification provided for the inclusion of these measures is:</p> <p>"SJVAPCD Rule 8021" (Appendix A, pp. 323, 356, 386).</p> <p>Furthermore, regarding Project compliance with fugitive dust regulations, the IS/ND states:</p> <p>"Regulation VIII – Fugitive PM10 Prohibitions. Rule 8011-8081 are designed to reduce PM10 emissions (predominantly dust/dirt) generated by human activity, including construction and demolition activities, road construction, bulk materials storage, paved and unpaved roads, carryout and trackout, etc. All development projects that involve soil disturbance are subject to at least one provision of the Regulation VIII series of rules" (p. 64).</p> <p>However, the inclusion of the above-mentioned construction-related mitigation measures remains unsupported for two reasons.</p> <p>First, simply because the IS/ND references San Joaquin Valley Air Pollution Control District ("SJVAPCD") Rules 8011 through 8081 does not justify the inclusion of the</p>	<p>SWAPE states that the CalEEMod modeling incorrectly characterized regulatory requirements as construction mitigation measures. Consistent with SJVAPCD Regulation 8, Rule 8021, the modeling included measures to water exposed areas twice per day and to reduce the vehicle speed on unpaved roads. All construction is required to apply dust control measures as set forth in Rule 8021 to reduce the potential for fugitive dust emissions across the Basin. Rule 8021 provides a list of control measures including watering or applying chemical stabilizers to limit visible dust emissions by 20% opacity. Rule 8021, Section 5.3.1 also specifically requires owners/operators to limit the speed of vehicles traveling on unpaved roads to 15 miles per hour. Therefore, the measures in the model are correctly applied to be consistent with the requirements of the Air District.</p> <p>The commenter also incorrectly asserts that these measures are mitigation. The CalEEMod modeling platform does not allow users to differentiate between regulatory and mitigation measures. Therefore, while they are listed as "mitigation" in the modeling, as outlined in the Air Quality and Greenhouse Gas Technical Study, Rule 8021 is required by the District.</p> <p>Finally, in determining the proposed project's air</p>

	<p>above-mentioned construction-related mitigation measures in the model. Specifically, according to SJVAPCD Rule 8021, Projects can either apply water, stabilizers, or ground cover to unpaved roads.¹⁰ Thus, as neither of the measures included in the CalEEMod model are explicitly required by SJVAPCD Rule 8021, we cannot verify their inclusion in the model.</p> <p>Second, the inclusion of the construction-related mitigation measures, based on the Project's compliance with SJVAPCD Rule 8021, is unsupported. According to the Association of Environmental Professionals ("AEP") CEQA Portal Topic Paper on mitigation measures:</p> <p>"By definition, mitigation measures are not part of the original project design. Rather, mitigation measures are actions taken by the lead agency to reduce impacts to the environment resulting from the original project design. Mitigation measures are identified by the lead agency after the project has undergone environmental review and are above-and-beyond existing laws, regulations, and requirements that would reduce environmental impacts."</p> <p>As demonstrated above, mitigation measures "are not part of the original project design" and are intended to go "above-and-beyond" existing regulatory requirements. As such, the inclusion of these measures, based solely on SJVAPCD Rule 8021, are unsubstantiated. By incorrectly including two construction-related mitigation measures without properly committing to their implementation, the model may underestimate the Project's construction-related emissions and should not be relied upon to determine Project significance.</p>	<p>quality impacts, the unmitigated emissions were compared to thresholds and do not include any of the regulatory reduction measures. Therefore, the impacts would continue to be less than significant.</p>
C-12	<p>Greenhouse Gas</p> <p>Failure to Adequately Evaluate Greenhouse Gas Impacts</p> <p>The IS/ND estimates that the Project would generate net annual greenhouse gas ("GHG") emissions of 4,137 metric tons of carbon dioxide equivalents per year ("MT CO₂e/year") (see excerpt below) (p. 133, Table 4-15).</p>	<p>SWAPE states that the greenhouse gas (GHG) impacts are not adequately addressed because of an unsubstantiated air model and failure to consider performance-based standards under the Scoping Plan. See Responses to LIUNA-13 and LIUNA-14.</p>

Table 4-15 Operational Greenhouse Gas Emissions

Source	Emissions (MTCO ₂ e per year)
Area	0.01
Energy	917
Mobile	2,690
Waste	298
Water	206
Amortized Construction Emissions	26
Total	4,137

Source: Stantec 2021, CalEEMod 2020.4.0 (Appendix A).

However, the IS/ND elects not to apply a quantitative GHG threshold. Rather, the IS/ND concludes:

“The proposed project’s GHG impact is determined by its consistency with applicable statewide and regional GHG reduction plans. As shown in Impact GHG-2, the proposed project would be consistent with the CARB’s 2017 Scoping Plan, City of Fresno CAP, Fresno County COG’s RTP/SCS, and the City’s General Plan goals that aim to reduce air quality and energy (which in turn reduce GHG emissions), as such the Project will comply with applicable reduction plans and GHG emissions are less than significant” (p. 133).

However, the IS/ND’s analysis, as well as the subsequent less-than-significant impact conclusion, is incorrect for two reasons.

(1) The IS/ND’s quantitative GHG analysis relies upon an incorrect and unsubstantiated air model;

and

(2) The IS/ND fails to consider the performance-based standards under CARB’s Scoping Plan.

C-13 *1) Incorrect and Unsubstantiated Quantitative Analysis of Emissions*

As previously stated, the IS/ND estimates that the Project would generate net annual GHG emissions of 4,137 MT CO₂e/year (p. 133, Table 4-15). However, the IS/ND’s quantitative GHG analysis is unsubstantiated. As previously discussed, review the Project’s CalEEMod output files, provided in the AQ & GHG Report as Appendix A to

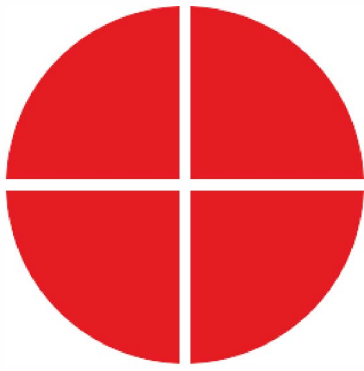
SWAPE states that the modeling underestimates the Project’s emissions. See Responses to LIUNA-8 through LIUNA-11 regarding CalEEMod model inputs used in the CalEEMod modeling.

	<p>the IS/ND, demonstrated that several of the values inputted into the model are not consistent with information disclosed in the IS/ND. As a result, the model underestimates the Project’s emissions, and the IS/ND’s quantitative GHG analysis should not be relied upon to determine Project significance. An EIR should be prepared that adequately assesses the potential GHG impacts that construction and operation of the proposed Project may have on the environment.</p> <p><i>2) Failure to Consider Performance-based Standards Under CARB’s 2017 Scoping Plan</i></p> <p>As previously discussed, the IS/ND concludes that the Project would be consistent with CARB’s 2017 Climate Change Scoping Plan (p. 133). However, this is incorrect, as the IS/ND fails to consider performance-based measures proposed by CARB.</p>																																										
C-14	<p><i>i. Passenger & Light Duty VMT Per Capita Benchmarks per SB 375</i></p> <p>In reaching the State’s long-term GHG emission reduction goals, CARB’s 2017 Scoping Plan explicitly cites SB 375 and the VMT reductions anticipated under the implementation of Sustainable Community Strategies. CARB has identified the population and daily VMT from passenger autos and light-duty vehicles at the state and county level for each year between 2010 to 2050 under a “baseline scenario” that includes “current projections of VMT included in the existing Regional Transportation Plans/Sustainable Communities Strategies (RTP/SCSs) adopted by the State’s 18 Metropolitan Planning Organizations (MPOs) pursuant to SB 375 as of 2015.”¹³ By dividing the projected daily VMT by population, we calculated the daily VMT per capita for each year at the state and county level for 2010 (baseline year), 2023 (Project operational year), and 2030 (target year under SB 32) (see table below).</p> <table><tr><th colspan="7">2017 Scoping Plan Daily VMT Per Capita</th></tr><tr><th rowspan="2">Year</th><th colspan="3">Fresno County</th><th colspan="3">State</th></tr><tr><th>Population</th><th>LDV VMT Baseline</th><th>VMT Per Capita</th><th>Population</th><th>LDV VMT Baseline</th><th>VMT Per Capita</th></tr><tr><td>2010</td><td>932,501</td><td>19,867,519.34</td><td>21.31</td><td>37,335,085</td><td>836,463,980.46</td><td>22.40</td></tr><tr><td>2023</td><td>1,066,815</td><td>22,316,705.80</td><td>20.92</td><td>41,659,526</td><td>924,184,228.61</td><td>22.18</td></tr><tr><td>2030</td><td>1,145,673</td><td>24,471,130.02</td><td>21.36</td><td>43,939,250</td><td>957,178,153.19</td><td>21.78</td></tr></table> <p>As the IS/ND fails to evaluate the Project’s consistency with the performance-based daily VMT per capita projections from CARB’s 2017 Scoping Plan, the IS/ND’s claim</p>	2017 Scoping Plan Daily VMT Per Capita							Year	Fresno County			State			Population	LDV VMT Baseline	VMT Per Capita	Population	LDV VMT Baseline	VMT Per Capita	2010	932,501	19,867,519.34	21.31	37,335,085	836,463,980.46	22.40	2023	1,066,815	22,316,705.80	20.92	41,659,526	924,184,228.61	22.18	2030	1,145,673	24,471,130.02	21.36	43,939,250	957,178,153.19	21.78	<p>SWAPE states that the Draft ND fails to consider CARB performance-based measures resulting in an inconsistency with CARB’s 2017 Scoping Plan. Senate Bill (SB) 375 aims to reduce GHG emissions from cars and light duty trucks by requiring integration of the planning process for transportation, land-use, and housing. Under SB 375, CARB is tasked with developing regional reduction targets for car and light duty trucks GHG emissions. The regions, in turn, create sustainable communities strategies to combine the transportation and land use element of planning to achieve CARB’s regional GHG reduction targets. Within the project region, the Fresno County Council of Governments (COG) is responsible for preparing the Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) that creates a plan to reach CARB’s 2020 and 2035 reduction targets under SB 375. Fresno County COG released its Draft 2022 RTP/SCS in April 2022. The Fresno County COG determines vehicle miles travelled (VMT) projections and associated GHG emissions based on land uses from city and county General Plans within the COG’s</p>
2017 Scoping Plan Daily VMT Per Capita																																											
Year	Fresno County			State																																							
	Population	LDV VMT Baseline	VMT Per Capita	Population	LDV VMT Baseline	VMT Per Capita																																					
2010	932,501	19,867,519.34	21.31	37,335,085	836,463,980.46	22.40																																					
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2030	1,145,673	24,471,130.02	21.36	43,939,250	957,178,153.19	21.78																																					

	<p>that the proposed Project would not conflict with the Scoping Plan is unsupported. An EIR should be prepared for the proposed Project to provide additional information and analysis to conclude less-than-significant GHG impacts.</p> <p>Furthermore, we recommend the IS/ND demonstrate consistency with the SJVAPCD's 29% reduction threshold by incorporating Project Design Features ("PDFs") to reduce the Project's GHG emissions.</p>	<p>jurisdiction. The RTP/SCS Draft Programmatic Environmental Impact Report (PEIR) concluded that the RTP would meet CARB's per capita emissions targets set pursuant to SB 375.</p> <p>As described in the Draft ND, the project will serve to consolidate all four (4) Fresno-based Busseto Foods facilities under one roof reducing surface vehicular traffic in Southwest Fresno. The net effect is the permanent elimination of at least 40 truck trips per week.</p> <p>In summary, Fresno County COG determined that the region is consistent with SB 375 and the project itself will result in an overall reduction in vehicle trips and associated VMT in the region. As such the project will comply with CARB's 2017 Scoping Plan.</p>
C-15	<p>Specifically, to be determined to have a less-than-significant impact, the Project must reduce or mitigate GHG emissions by 29% as compared to Business-as-Usual ("BAU"), consistent with GHG emission reduction targets established in Air Resources Board's AB 32 Scoping Plan. As such, an EIR should be prepared to include a quantitative GHG analysis and incorporate additional mitigation measures to reduce the Project's GHG emissions by 29% to less-than-significant levels.</p>	<p>SWAPE states that the Draft ND should demonstrate consistency with SJVAPCD's Business-As-Usual (BAU) reduction thresholds. SJVAPCD's Guidance for Assessing and Mitigating Air Quality Impacts (GAMAQI) was released in 2015 and recommends that individual projects either demonstrate compliance with an approved GHG emission reduction plan or achieve at a minimum a 29% reduction in GHG emissions when compared to BAU emissions. Since the release of the GAMAQI, the California Supreme Court ruled in the Center for Biological Diversity v. California Department of Fish and Wildlife, commonly known as "Newhall Ranch," that demonstrating a 29% reduction in BAU emissions would be insufficient to conclude that the project's individual GHG impacts would be less than significant. Since the SJVAPCD has not provided an updated GHG threshold consistent with</p>

		<p>court findings and SB 32, a numerical threshold was not used in the analysis. Using the BAU methodology stated in the comment is incorrect.</p> <p>CEQA Guidelines 15064.4 provides guidance for determining the significance of GHG impacts. CEQA Guidelines 15064.4(b)(3) allows a lead agency to determine the extent a project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction of greenhouse gas emissions (see e.g., section 15183.5(b)). As discussed in Impact GHG-1, the significance of GHG impacts is based on consistency with applicable statewide, regional, and local GHG reduction plans.</p> <p>The City of Fresno's GHG Reduction Plan provides strategies and guidelines for the reduction of GHG emissions in accordance with CEQA Guidelines 15183.5. A GHG Reduction Plan Consistency Checklist was specifically developed by the City to provide a streamlined review process for proposed new development projects that are subject to discretionary review and trigger environmental review pursuant to CEQA. Impact GHG-2 provides a consistency analysis of the project in accordance with the GHG Reduction Plan Consistency Checklist. As such, the adopted GHG project threshold and analysis are consistent with CEQA Guidelines and the City's intent to mitigate GHG impacts from buildout of the General Plan through the horizon year of 2035.</p>
C-16	<p>Disclaimer</p> <p>SWAPE has received limited discovery regarding this project. Additional information may become available in the future; thus, we retain the right to revise or amend this</p>	<p>SWAPE's comment that they reserve the right to amend the report has been acknowledged. No further comment is required.</p>

	<p>report when additional information becomes available. Our professional services have been performed using that degree of care and skill ordinarily exercised, under similar circumstances, by reputable environmental consultants practicing in this or similar localities at the time of service. No other warranty, expressed or implied, is made as to the scope of work, work methodologies and protocols, site conditions, analytical testing results, and findings presented. This report reflects efforts which were limited to information that was reasonably accessible at the time of the work, and may contain informational gaps, inconsistencies, or otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.</p>	
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BONIQUE EMERSON, MAUP, AICP

VICE PRESIDENT OF PLANNING | SENIOR PROJECT MANAGER

PROFILE

Bonique Emerson, MAUP, AICP is the Vice President of Planning Division for Precision Civil Engineering. Bonique brings 18 years of experience as an urban and environmental planner. As the former division manager of the City of Fresno's Current Planning Division, she has substantial experience preparing and overseeing CEQA documents for hundreds of development projects, including several for City of Fresno street widening, facilities, and trail projects. In addition, Mrs. Emerson has managed several Environmental Impact Reports for large scale development projects during her career. She currently assists several local communities with various planning and environmental needs, including preparation of CEQA documents.

AREAS OF EXPERTISE

- Preparation of Environmental Documents (exemptions, IS/MNDs, EIRs)
- CEQA Training and CEQA Process Management
- VMT Screening and Trip Generation Analysis
- Oversight and Management of Environmental Consultants

ENVIRONMENTAL PLANNING EXPERIENCE

- Bert Crane Solar Facility, IS/MND, Atwater, CA
- Bliss Avenue Plan Amendment, IS/MND, Fresno, CA
- Busseto Foods Processing, Warehousing, and Distribution Facility Project, IS/ND, Fresno, CA
- City Planning and Environmental Services – City of Clovis; Contract Planner.
- Contract Planning and Environmental Services – City of Hanford and City of Atwater; Contract Planner (ongoing).
- Fresno State Campus Pointe, EIR Addendum, Fresno, CA
- Lennar Residential Subdivision, IS/MND, Hanford, CA
- Links Ranch Subdivision, IS/MND, Madera, CA
- Mixed Use Zoning Density Increase Text Amendment, IS/MND, Fresno, CA

CEQA/NEPA Program | Fresno, CA

- Provided oversight, direction, training, and management for all CEQA documents prepared for private development projects processed by the City of Fresno Planning and Development Department
- Responsible for oversight and preparation of certain CEQA documents prepared for other Departments in the City of Fresno including Public Works, Public Utilities, and the City Manager's Office
- Assisted preparation of NEPA documents for the Housing Division

Oversight & Management of Environmental Consultants

Mrs. Emerson managed the work of several environmental consultants for large-scale controversial development projects. Mrs. Emerson provided guidance, format, and standard procedures for the preparation of documents, including environmental justice issues and air quality.

TRAININGS

- How to Write an EIR, Association of Environmental Professionals (AEP), California (July 2022)
- CEQA Advanced Workshop, AEP, California (various)
- California LTAP: Federal Requirements for Local Agency Transportation Projects "OFF" the State Highway System (November 2020)

EDUCATION

Master of Arts Urban Planning,
University of California, Los
Angeles with an emphasis in
transportation planning

Bachelor of Arts, Political
Science with minor in Public
Policy, University of California,
Los Angeles

YEARS OF EXPERIENCE

18 years

CERTIFICATION

Certified Planner through the
American Institute of Certified
Planners (AICP)

PROFESSIONAL ORG

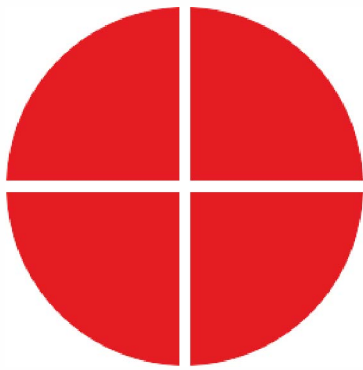
American Planning Association,
California Chapter, Central
Section (Member)

Association of Environmental
Professionals, California, Central
Chapter (Member)

Institute of Transportation
Engineers (member)

CONTACT

Precision Civil Engineering
1234 "O" Street
Fresno, CA 93721
bemerson@precisioneng.net
559-449-4500



RYAN BROSIUS

PARTY CHEIF/BIOLOGIST

EDUCATION

Graduate Classes, Environmental Science, California State University, Chico

Bachelor of Science, Biology, California State University, Stanislaus;

YEARS OF EXPERIENCE

20

CERTIFICATION

OSHA 40-Hour HAZWOPER, NES (2004)

38 Hour Army Corps of Engineers Wetland Delineation & Management Training Program
Richard Chinn Environmental Training, Inc. (2006)

Northwest Environmental Training Center, Erick McWayne

Storm Water Pollution Prevention for Construction sites (2007)

Fresno Metropolitan Flood Control District

PROFESSIONAL ORG

Association of Environmental Professionals, California, Central Chapter (Member)

CONTACT

Precision Civil Engineering
1234 "O" Street
Fresno, CA 93721
rbrosius@precisioneng.net
559-449-4500

PROFILE

Ryan Brosius brings to Precision Civil Engineering, Inc. his knowledge of working with local, statewide, and nationwide environmental rules and regulations, resulting in his extensive background in preparing environmental assessments including CEQA/NEPA compliance documentation and project site assessments. Mr. Brosius' expertise also extends into conducting wetland delineations to identify and define wetlands and waters of the United States, conducting preconstruction surveys, and providing construction monitoring for a variety of projects involving listed or special-status species and sensitive habitats. He also assists in the preparation of permit applications and agency permits, including Clean Water Act Section 404 nationwide and individual wetlands permits (U.S. Army Corps of Engineers), Clean Water Act Section 401 water quality certifications (Regional Water Quality Control Board), and Streambed Alteration Agreements (California Fish and Game Code Sections 1601 and 1602). Mr. Brosius earned a bachelor's degree in general biology from California State University, Stanislaus, and completed graduate course work in environmental science at California State University, Chico.

ENVIRONMENTAL EXPERIENCE

Phase I Environmental Site Assessment | Firebaugh, CA

Mr. Brosius aided the preparation of a Phase I Environmental Site Assessment completed in accordance with the ASTM E1527-05 standards. The assessment included investigating approximately 900 acres of agricultural land, residential and agricultural staging areas.

CEQA Compliance- MOUREN 1 Solar Site | Fresno County, CA

PCE prepared the Biological Survey for a 159-acre solar project site in Fresno County. The scope consisted of Preliminary Biological Assessment, CEQA Compliance-Initial Study Checklist; Cultural Resources Survey-Records Research, Field Survey, Field Report and Findings.

Habitat Assessment/ Biological Resources Study for CEQA:

- Amound World Cold Storage Warehouse ISMND, Madera, CA
- Busseto Foods Processing, Warehousing, and Distribution Facility Project, IS/ND, Fresno, CA

TRAININGS

- California Environmental Quality Act (CEQA) Training Workshop (2007)

ELENA NUÑO

PROFILE Experienced California Environmental Quality Act (CEQA) practitioner/Project Manager with a technical specialty in air quality and greenhouse gas assessments.

EXPERIENCE 18 YEARS OF AIR QUALITY/ENVIRONMENTAL ASSESSMENT EXPERIENCE

**AIR QUALITY SPECIALIST/PROJECT MANAGER/TECHNICAL RESOURCE GROUP LEADER
STANTEC CONSULTING SERVICES INC.
FRESNO, CA**

2016 - Present

- Manage the preparation of environmental impact assessments for CEQA and National Environmental Policy Act (NEPA) compliance.
- Prepare air quality and greenhouse gas technical studies to support CEQA and NEPA assessments.
- Prepare air impact assessment applications for San Joaquin Valley Air Pollution Control District (SJVAPCD), Rule 9510 Indirect Source Review compliance.
- Prepare SJVAPCD Regulation VIII, Dust Control Plans
- Prepare agricultural land conversion studies.
- Respond to scope of work requests for air quality and greenhouse gas services from multiple project managers.
- Coordinate air quality workload for staff across multiple business centers.
- Lead proposal/marketing efforts for projects in Central California and Northern California.
- Supervise environmental services and community development staff.

REPRESENTATIVE PROJECT EXPERIENCE

City of Santa Rosa, Caritas Village

Environmental Impact Report (AEP Award 2020) and HUD EA

Type of Project: Affordable Housing/Emergency Housing

Role: Project Manager/Air Quality Specialist

City of Daly City, Midway Village Redevelopment (AEP Award 2022)

Sustainable Communities Environmental Assessment (SCEA)

Type of Project: Affordable Housing

Role: Air Quality Specialist

Friant Water Authority/U.S. Bureau of Reclamation
Friant-Kern Canal Middle Reach Capacity Correction Project
Environmental Impact Report/Environmental Impact Statement
Type of Project: Water Infrastructure
Role: Air Quality Specialist

City of Vacaville, LDK Logistics Center
Initial Study/Mitigated Negative Declaration
Type of Project: Logistics
Role: Air Quality Specialist

City of Redwood City, 1125 Arguello
Environmental Impact Report
Type of Project: Mixed Use
Role: Air Quality Specialist

City of Antioch, AMPORTS Antioch Vehicle Processing Facility
Initial Study/Mitigated Negative Declaration
Type of Project: Automotive logistics and processing facility
Role: Project Manager/Air Quality Specialist

City of Antioch, Acorn Business Park
Initial Study/Mitigated Negative Declaration
Type of Project: Commercial Planned Development
Role: Project Manager/Air Quality Specialist

City of San Jose, Leo Recycling
Initial Study/Mitigated Negative Declaration
Type of Project: Recycling facility expansion
Role: Project Manager/Air Quality Specialist

County of Fresno, Fifth Standard Solar Complex Project
Environmental Impact Report
Type of Project: 1,800-acre solar facility and battery energy storage facility
Role: Project Manager/Air Quality Specialist

County of Kern, Confidential Client
Air Quality and Greenhouse Gas Technical Study
Type of Project: Solar development
Role: Air Quality Specialist

Caltrans District 3, State Route 51 Managed Lanes
Environmental Impact Report
Type of Project: State Highway
Role: Air Quality Specialist

City of Fresno, Regional Wastewater Reclamation Facility Waste Gas Flare and Facility Modifications
Initial Study/Mitigated Negative Declaration
Type of Project: Wastewater Facility
Role: Project Manager/Air Quality Specialist

Confidential Client, Martinez, CA
Initial Study/Mitigated Negative Declaration

Type of Project: Refinery Site Remediation

Role: Air Quality Specialist

*U.S. Department of the Air Force, Joint Base Langley – Eustis, Fort Eustis, Virginia
Environmental Assessment*

Type of Project: NEPA

Role: Air Quality Specialist

FIRSTCARBON/MICHAEL BRANDMAN ASSOCIATES

SEVEN YEARS

FRESNO, CA

Worked as an air quality specialist and project manager on a variety of projects. Helped to coordinate work among air quality staff. Supervised entry-level and intern staff and conducted training.

QUAD KNOPF

THREE YEARS

FRESNO, CA

Worked as an environmental planner and air quality specialist on a variety of land development projects.

SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT

TWO YEARS

FRESNO, CA

Worked as an air quality specialist focused on attainment planning, CEQA commenting and CEQA Lead Agency document preparation. Served as the coordinator of the Agriculture Technical Advisory Committee developing emission factors for newly permitted Confined Animal Facility Operations.

EDUCATION

MASTERS, PUBLIC ADMINISTRATION

CALIFORNIA STATE UNIVERSITY, FRESNO

BACHELOR OF SCIENCE, GEOLOGICAL & ENVIRONMENTAL SCIENCES

STANFORD UNIVERSITY

MEMBERSHIPS

Central Chapter, California Association of Environmental Professionals, 2007-Present; President (2015-2021); Director (2022-Present)

WTS Advancing Women Advancing Transportation, Central Chapter, 2021-Present