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Final Environmental Impact Report

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SOLUTIONS, INC

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1. Introduction

This Final Environmental Impact Report (FEIR; Final EIR) has been prepared in conformance with the environmental policy guidelines for the implementation of the California Environmental Quality Act (CEQA) to evaluate the environmental effects that may result from construction and operation of the proposed Mesa Linda Street Development (proposed Project).

Project Overview

The proposed Project would include development of a one-story, 408,997 SF warehouse building on the 18.16-acre site. The proposed warehouse building would have a building footprint of 402,997 SF and a mezzanine of 6,000 SF. The building would include 54 loading dock doors along the north side of the Project site and 57 trailer stalls opposite of the loading dock doors on the south side of the Project site. Additionally, the building would provide 213 vehicle parking stalls with 7 electric vehicle/clean air/carpool spaces. The proposed building would result in an FAR of 0.47. Additional improvements would include landscaping, sidewalks, utility connections, implementation of stormwater facilities, and pavement of parking areas and driveways. A detailed description of the Project is contained in the Draft EIR in Chapter 3, Project Description. As described below, the Draft EIR is incorporated herein as part of the FEIR but provided under a separate cover.

1.1 Contents and Use of Final EIR

As described in CEQA and the CEQA Guidelines, public agencies are charged with the duty to avoid or substantially lessen significant environmental effects, with consideration of other conditions, including economic, social, technological, legal, and other benefits. As required by CEQA, this FEIR assesses the significant direct and indirect environmental effects of the Project, as well as the significant cumulative impacts that could occur from implementation of the Project. This FEIR is an informational document only, the purpose of which is to identify the significant effects of the Project on the environment; to indicate how those significant effects could be avoided or significantly lessened, including feasible mitigation measures; to identify any significant and unavoidable adverse impacts that cannot be mitigated to less than significant; and to identify reasonable and feasible alternatives to the Project that would avoid or substantially lessen any significant adverse environmental effects associated with the Project and achieve the fundamental objectives of the Project.

According to CEQA Guidelines Section 15132, the FEIR shall consist of:

- (a) The Draft Environmental Impact Report (DEIR; Draft EIR) or a revision of the Draft EIR;
- (b) Comments and recommendations received on the Draft EIR, either verbatim or in summary;
- (c) A list of persons, organizations, and public agencies commenting on the Draft EIR;
- (d) The responses of the lead agency to significant environmental points raised in the review and consultation process;
- (e) Any other information added by the lead agency.

This document contains responses to comments received on the Draft EIR during the public review period, which began June 2, 2023, and ended on July 17, 2023. This document has been prepared in accordance with CEQA, the State CEQA Guidelines, and represents the independent judgment of the lead agency, the City of Riverside. This document and the circulated Draft EIR comprise the Final EIR in accordance with CEQA Guidelines, Section 15132.

1.2 Format of the Final EIR

The following chapters are contained within this document:

Chapter 1, Introduction. This chapter describes CEQA requirements and the content of the Final EIR.

Chapter 2, Response to Comments. This chapter provides a list of agencies, organizations and/or members of the public who commented on the Draft EIR, as well as copies of their comment letters received during and following the public review period, and individual responses to their comments.

Chapter 3, Mitigation, Monitoring, and Reporting Program. This chapter includes the Mitigation Monitoring and Reporting Program (MMRP). CEQA requires lead agencies to “adopt a reporting and mitigation monitoring program for the changes to the project which it has adopted or made a condition of project approval in order to mitigate or avoid significant effects on the environment” (CEQA Section 21081.6, CEQA Guidelines Section 15097). The MMRP was prepared based on the mitigation measures included in this Final EIR and has been included as Chapter 3.0.

1.3 CEQA Requirements Regarding Comments and Responses

CEQA Guidelines Section 15204(a) outlines parameters for submitting comments and reminds persons and public agencies that the focus of review and comment of Draft EIRs should be “*on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible ... CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.*”

CEQA Guidelines Section 15204(c) further advises, “Reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.” Section 15204 (d) also states, “Each responsible agency and trustee agency shall focus its comments on environmental information germane to that agency’s statutory responsibility.” Section 15204 (e) states, “This section shall not be used to restrict the ability of reviewers to comment on the general adequacy of a document or of the lead agency to reject comments not focused as recommended by this section.”

In accordance with CEQA, Public Resources Code (PRC) Section 21092.5, copies of the written responses to public agencies are being forwarded to those agencies at least 10 days prior to certification of the Final EIR, with copies of this Final EIR document, which conforms to the legal standards established for response to comments on the Draft EIR pursuant to CEQA.

2. Errata

2.1 Introduction

As provided in Section 15088(c) of the CEQA Guidelines, responses to comments may take the form of a revision to a Draft EIR or may be a separate section in the Final EIR. This section complies with the latter option and provides changes to the Draft EIR in this chapter shown as strikethrough text (i.e., ~~strikethrough~~) signifying deletions and red underlined text (i.e., underline) signifying additions. These changes are meant to provide clarification, corrections, or minor revisions made to the Draft EIR initiated by the Lead Agency, City of Hesperia, reviewing agencies, the public, and/or consultants based on their review. Text changes are presented in the section and page order in which they appear in the Draft EIR. None of the corrections or additions constitutes significant new information or substantial project changes that, in accordance with CEQA Guidelines Section 15088.5, would trigger the need to recirculate portions or all of the Draft EIR.

2.2 Changes to the Draft Environmental Impact Report

2.2.1 SECTION 1.2 PROJECT DESCRIPTION SUMMARY

Location: Executive Summary, pp. 1-1

Explanation for Change and Discussion:

The Project Description Summary provided in the Executive Summary included a typo stating that the Project would result in an FAR of 0.52; however, the Project would result in a FAR of 0.47.

Changes to DEIR:

Building and Architecture. The proposed Project consists of a single-story, approximately 55-foot-tall warehouse building. The Project building would include 396,997 square feet of warehouse space, 6,000 square feet of office space, and 6,000 square feet mezzanine for additional office use. The building would also include 54 dock doors along the south side of the building. ~~The building would result in a floor area ratio (FAR) of 0.52.~~ The City calculates the allowable floor area ratio (FAR) based on the gross lot acreage. The gross lot acreage is defined in the City municipal code to include the property dimensions up to the centerline of the street. Therefore, based upon the gross lot acreage of 861,785 SF, the FAR for the Project would be 0.47. The building would be joined by an outdoor, concrete truck court which would include 57 trailer stalls for loading and unloading.

2.2.2 SECTION 5.0 ENVIRONMENTAL IMPACT ANALYSIS

Location: Executive Summary, pp. 5-2

Explanation for Change and Discussion:

The cumulative projects list was mistakenly not carried over to the Environmental Impact Analysis Section from the environmental technical studies prepared for the Project, including the most robust list from the Traffic Impact Analysis (Appendix I of the DEIR). Therefore, the cumulative project table has been included.

Changes to DEIR:

Cumulative Project Analysis

The Project utilizes a hybrid methodology of project list and summary of projections. Cumulative impacts have been analyzed by environmental topic area within each respective environmental topic section (e.g. cumulative air quality impacts under Section 5.4, Air Quality etc.). The list of cumulative projects considered for the Project are included below within Table 5-1.

Table 5-1: Cumulative Projects List

<u>#</u>	<u>Project</u>	<u>Land Use</u>	<u>Quantity</u>
<u>1</u>	<u>I-15 Industrial Park A - CUP21-00005</u>	<u>General Light Industrial</u>	<u>647.5 TSF</u>
<u>2</u>	<u>I-15 Industrial Park B - CUP21-00004</u>	<u>High Cube Fulfillment Warehouse</u>	<u>1202.5 TSF</u>
<u>3</u>	<u>U.S Cold Storage (CUP21-00003)</u>	<u>High Cube Cold Storage Warehouse</u>	<u>491 TSF</u>
<u>4</u>	<u>Pixior Warehouse (CUP20-00006)</u>	<u>High Cube Fulfillment Warehouse</u>	<u>440 TSF</u>
<u>5</u>	<u>Hesperia Commerce Center II (CUP19-00010)</u>	<u>General Light Industrial/High Cube Fulfillment Warehouse</u>	<u>3,745.43 TSF</u>
<u>6</u>	<u>Hesperia Commerce Center (CUP11-10229)</u>	<u>High Cube Fulfillment Warehouse</u>	<u>3,500 TSF</u>
<u>7</u>	<u>Poplar 18 (CUP21-00010)</u>	<u>General Light Industrial/High Cube Fulfillment Warehouse</u>	<u>414.7 TSF</u>
<u>8</u>	<u>CUP22-00003</u>	<u>High Cube Fulfillment Warehouse</u>	<u>750 TSF</u>
<u>9</u>	<u>CUP22-00006</u>	<u>Mini-Warehouse</u>	<u>428 TSF</u>
<u>10</u>	<u>KISS Logistics Center</u>	<u>High Cube Transload and Short-Term Storage</u>	<u>655.468 TSF</u>
<u>11</u>	<u>Hesperia/Dara Industrial Center</u>	<u>High Cube Fulfillment Warehouse/ High Cube Cold Storage Warehouse</u>	<u>750 TSF</u>

TSF=Thousand Square Feet

2.2.3 SECTION 5.3 BIOLOGICAL RESOURCES

Location: Environmental Setting, Jurisdictional Waters, (pp. 5.3-9)

Explanation for Change and Discussion:

The United States Army Corps of Engineers (USACE) has determined that the drainage that comes onto the proposed Project site is not considered Waters of United States and is not under USACE jurisdiction, only Waters of the State (under CDFW and Regional Board jurisdiction) (see Attachment 2-A, Approved Jurisdictional Determination). Therefore, the 0.30 acre of ephemeral stream that was identified in the Jurisdictional Delineation report (Appendix C) would no longer be considered WUS and the proposed Project would no longer require a USACE Nationwide Permit or mitigate impacts related to WUS.

Changes to DEIR:

Jurisdictional Waters

The approximately 18.16-acre Project site contains 2.95 acres of ephemeral stream and associated rabbitbrush dominant riparian habitat that falls under CDFW jurisdiction, as well as 0.30 acre of ephemeral stream that falls under-Waters of the United States and ~~Waters of the State jurisdiction.~~

Location: Section 5.3, Biological Resources (p. 5.3-11)

Explanation for Change and Discussion:

In response to Comment 3.3, the commenter notes that the DEIR conclusion regarding “no special status plant species determined to have the potential to be present within the Project site” is incorrect. This is due to misplaced text within the EIR. The text has been revised accordingly to reflect accurate findings from the biological study and analysis throughout the remainder of Section 5.3, Biological Resources.

Changes to DEIR:

Plant Species

As described above, the Project site contains Western Joshua trees, which are a listed Candidate Species under CESA. Further, there are no other special status plant species determined to have the potential to be present within the Project site. ~~The Project would result in no impact on special status plant species.~~

A total of 25 protected Joshua trees (*Yucca brevifolia*) are located within the Project site, as shown in Figure BIO-1. Impacts to Joshua trees are analyzed based on guidance from CDFW and a literature review completed by CDFW (Vander Wall et al. 2006). Guidance from CDFW states that western Joshua tree locations, where Joshua trees are larger than 6.6 feet tall, should be buffered by 186 feet to account for the impacts of seed bank for western Joshua tree and their associated habitat. Joshua trees smaller than 6.6 feet tall should be buffered by 36 feet. Therefore, these are the appropriate buffers (or radii) applied to each western Joshua tree location. The combined Project site and buffer areas encompass approximately 12.6 acres (see Figure 5.3-1). The Project site includes 25 Joshua trees within the Project boundaries and five Joshua trees outside of the Project site within the buffer area. The Project site and buffer area lie within the buffer areas of two other development projects. While a total of 25 trees have the potential to be directly impacted as part of the proposed Project, several of those trees within the Project's buffer area may overlap with and may be considered directly impacted as part of the construction of the two adjacent properties. As such, the Project would directly impact 25 Joshua trees. As described in Mitigation Measure BIO-6, boundaries of the Project site shall be clearly delineated prior to Project construction, in consultation with the designated botanist, prior to project activities with posted signs, posting stakes, flags, and/or rope or cord and the designated botanist shall be responsible for monitoring Project activities to help minimize and fully mitigate or avoid incidental take of Joshua trees.

Joshua trees are a listed species under CESA and the Project applicant would be required to obtain an Incidental Take Permit under Section 2081 of the Fish and Game Code prior to removal of any Joshua trees. As outlined in Mitigation Measure BIO-6, mitigation for direct impacts to western Joshua trees shall be fulfilled through conservation of western Joshua trees at a 1:1 habitat replacement ratio, of equal or better functions and values to those trees impacted by the Project. Mitigation can be through purchases of credits at a CDFW or State of California-approved mitigation bank for western Joshua tree or through permit and payment of fees under the Western Joshua Tree Conservation Act. Additionally, no take of western Joshua tree will occur without authorization from CDFW in the form of an Incidental Take Permit pursuant to Fish and Game Code 2081 while it is being considered as a candidate or if it is listed under the CESA. Through conservation of western Joshua trees at a 1:1 habitat replacement ratio, of equal or better functions and values to those trees impacted by the Project, impacts would be less than significant.

Additionally, Project applicants are required to submit an application and pay applicable fees to the City of Hesperia for removal or relocation of protected native desert plants under Hesperia Municipal Code Chapter 16.24. Requirements also include a preconstruction Project site inspection with the Planning Division and the Building Division. The Project impacts to Western Joshua Trees regarding Hesperia Municipal Code Chapter 16.24 would be fulfilled through the fulfillment of mitigation under CESA and/or WJTCA, per City policy. Therefore the Project would result in a less than significant impact on special-status plant species with the implementation of Mitigation Measure BIO-6.

Location: Environmental Impacts, Impact BIO-2 (pp. 5.3-13)*Explanation for Change and Discussion:*

As explained above, the proposed project would no longer impact WUS. It was determined that the 0.30-acre (712.14 linear feet) of ephemeral stream drainage is not under USACE jurisdiction and would not require USACE Nationwide Permit. Therefore, the proposed Project would no longer be required or conditioned to mitigate impacts to WUS through In Lieu Programs (ILFP) or through fees per acre credit.

Changes to DEIR:

~~The Project site contains approximately 0.30-acre (712.14 linear feet) of ephemeral stream that is considered non-wetland Waters of the United States (WUS) which is regulated by the United States Army Corps of Engineers (USACE) Section 404 of the CWA (Figure 5.3-2). The stream located on site is tributary to the Oro Grande Wash and to the Mojave River, draining into Soda Dry Lake. The proposed development is expected to impact 0.30-acre of ephemeral stream that is considered WUS. Impacts to WUS will require a USACE Nationwide Permit for industrial projects. The WUS are located within the ephemeral feature located in the center of the study area. WUS were delineated by identifying the ordinary high water mark (OHWM). Waters of the United States will be mitigated either through In Lieu Fee Programs (ILFP) or fees per acre credit. The Project would result in a less than significant impact with Mitigation Measure BIO-4.~~

Location: Environmental Impacts, Impact BIO-2 (pp. 5.3-13)*Explanation for Change and Discussion:*

Comment 3.3 states that the DEIR fails to consider Joshua Tree habitat when analyzing the Project's impacts on sensitive natural communities. The DEIR adequately analyzes the Project impact on Joshua Tree woodland habitat throughout Section 5.3.6, Environmental Impacts of Section 5.3, Biological Resources, through identification of direct impacts on Western Joshua tree alliance habitat, and the potential indirect impacts on special status wildlife species that have the potential to occur in the habitat as a result. However, the impact analysis was not carried forward regarding sensitive habitat under Impact BIO-2, beginning on page 5.3-12 of the DEIR.

Therefore, additional text has been included to discuss Joshua Tree woodland habitat, as provided below and within Chapter 2, Errata. Deletions are shown in strikethrough and addition are red shown in bold underlined.

Changes to DEIR:

Less Than Significant Impact With Mitigation. As discussed above, the Project would result in the disturbance of 18.16 acres. Biological research and site surveys conducted for the Project identified two habitat types within the Project site and 500-foot buffer: 20.07 acres of disturbed ~~Joshua Tree woodland alliance area~~ and 2.95 acres of rabbitbrush (*Ericameria nauseosa*) dominant riparian habitat. **The Project would result in the disturbance of 18.62 total acres, which includes 15.71 acres of disturbed Joshua tree woodland alliance habitat. State rankings of 1, 2, or 3 are considered high priority for inventory or special-status and impacts to these communities typically require mitigation Joshua Tree woodland is ranked as S3, or "vulnerable to extirpation or extinction", by the California Natural Community List. All other communities listed are ranked as S4 or S5, or unranked, which are not considered sensitive vegetation communities. Mitigation for direct impacts to 25 western Joshua tree individuals will also mitigate for impacts to Joshua tree woodland. As outlined in Mitigation Measure BIO-6, mitigation for direct impacts to western Joshua trees shall be fulfilled through conservation of western Joshua trees at a 1:1 habitat replacement ratio, of equal or better functions and values to those trees impacted by the Project.**

Mitigation can be through purchases of credits at a CDFW or State of California-approved mitigation bank for western Joshua trees or through permit and payment of fees under the Western Joshua Tree Conservation Act. Conservation efforts for western Joshua tree will focus on the conservation of large, interconnected Joshua tree woodlands on lands where edge effects are limited, versus lands in urban settings that are subject to habitat fragmentation and edge effects, such as the Project site. Thus, mitigation for impacts to western Joshua tree will also mitigate for impacts to the 15.71 acres of disturbed Joshua tree woodland alliance habitat.

The approximately 2.95 acres (1,377.62 linear feet) of ephemeral stream, and associated riparian habitat dominated by rabbitbrush, would be regulated under Section 1602 of the Fish and Game Code. The proposed Project is expected to impact 2.95 acres of ephemeral stream and associated riparian habitat that is regulated under Section 1602 of the Fish and Game Code (Figure 5.3-2). Impacts to this drainage will require a 1602 Streambed Alteration Agreement from the CDFW. Impacts to Waters of the State will be mitigated through land credits at a CDFW or State of California-approved mitigation bank for ephemeral stream at a 2:1 ratio (Mitigation Measure BIO-4).

Therefore, ~~the~~ Project would result in a less than significant impact **on riparian habitat and other sensitive natural communities** with Mitigation Measure BIO-4 **and Mitigation Measure BIO-6.**

Location: Cumulative Impacts, Special-Status Species, (pp. 5.3-24)

Special-Status Species.

Explanation of Change and Discussion:

In continuation with the changes to the special status species analysis in Section 5.3, Biological Resources (p. 5.3-11), to incorporate impacts to Joshua trees under special status plant species discussion, the cumulative analysis has been updated accordingly to reflect these changes as well.

Changes to DEIR:

As described above, there are no special status plant species determined to have the potential to be present within the Project site, **with the exception of Western Joshua trees.** The Project would result in ~~no~~ **a less than significant** impact **with mitigation** on special status plant species. **Western Joshua trees are a state candidate species for listing under CESA and are locally protected by the City of Hesperia and by the CDNPA. Joshua tree woodlands are considered a sensitive natural community by CDFW (CDFW 2020). As required by MM-BIO-6, mitigation for direct impacts to 25 western Joshua trees will be fulfilled through purchase of credits at a CDFW-approved mitigation bank or implementation of the Western Joshua Tree Conservation Act mitigation fees, as approved by the City of Hesperia and CDFW. Additionally, as required by MM-BIO-5 has been included to be implemented as necessary in fulfillment of Chapter 16.24 of the Hesperia Municipal Code. This measure would require the preparation of a Joshua tree and desert native plants relocation plan.** Therefore, cumulative impacts related to special status species and sensitive natural communities would be less than cumulatively significant.

Location: Cumulative Impacts, Riparian Habitat, (pp. 5.3-24)

Explanation of Change and Discussion:

As explained above, the proposed project would no longer impact WUS as determined by USACE, and the proposed Project would no longer be required or conditioned to mitigate impacts to WUS. However, the proposed Project still contains Waters of the State that require mitigation and must be considered for cumulative impacts. Therefore, the Cumulative impact discussion for Jurisdictional waters and Riparian Habitat has been changed to no longer include discussion of WUS.

*Changes to DEIR:***Riparian Habitat and Sensitive Natural Habitat.**

The Project site is currently undeveloped and contains approximately 2.95 acres of CDFW jurisdictional waters and 0.3 acre of Waters of the State, ~~and 0.3 acre of WUS.~~ The Project would impact existing riparian communities through development of the Project. However, Mitigation Measure BIO-4 would reduce these impacts to less than significant. These less than significant impacts from the Project are not anticipated to combine with other development projects to substantially affect riparian habitat to a point where the total regional habitat is considerably decreased. Therefore, cumulative impacts related to riparian habitat and jurisdictional waters would not be cumulatively significant.

Biological research and site surveys conducted for the Project identified two habitat types within the Project site and 500-foot buffer: 20.07 acres of disturbed Joshua Tree woodland alliance area and 2.95 acres of rabbitbrush (*Ericameria nauseosa*) dominant riparian habitat. The Project would result in the disturbance of 18.62 total acres, which includes 15.71 acres of disturbed Joshua tree woodland alliance habitat. As outlined in Mitigation Measure BIO-6, mitigation for direct impacts to western Joshua trees shall be fulfilled through conservation of western Joshua trees at a 1:1 habitat replacement ratio, of equal or better functions and values to those trees impacted by the Project. Mitigation for impacts to western Joshua tree will also mitigate for impacts to the 15.71 acres of disturbed Joshua tree woodland alliance habitat. Therefore, the Project would result in a less than significant impact on riparian habitat and other sensitive natural communities with Mitigation Measure BIO-4 and Mitigation Measure BIO-6.

Location: 5.3.10 Mitigation Measures, (pp. 5.3-27)*Explanation of Change and Discussion:*

CDFW has proposed deletion of text regarding passive relocation and the preparation of a Determination of Biologically Equivalent or Superior Preservation (DBESP) Report. A DBESP would not be applicable to the Project site, as it falls within San Bernardino County, and therefore, has been removed from Mitigation Measure BIO-1 as recommended by CDFW. The language for passive relocation has been removed as well. The mitigation measure has been revised consistent with CDFW's recommendations.

*Changes to DEIR:***Mitigation Measure BIO-1: Preconstruction Burrowing Owl Surveys**

- A preconstruction survey for resident burrowing owls shall be conducted by a qualified biologist within 30 days prior to commencement of grading and construction activities to ensure that no owls have colonized the site in the days or weeks preceding project activities. If ground disturbing activities in these areas are delayed or suspended for more than 30 days after the preconstruction survey, the area shall be resurveyed for owls. The preconstruction survey and any relocation activity shall be conducted in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012).
- If active nests are identified on an implementing project site during the preconstruction survey, the nests shall be avoided, or the owls actively or passively relocated. To adequately avoid active nests, no grading or heavy equipment activity shall take place within at least 250 feet of an active nest during the breeding season (February 1 through August 31), and 160 feet during the non-breeding season.
- If burrowing owls occupy any implementing portion of the Project site and cannot be avoided, active or passive relocation shall be used to exclude owls from their burrows, as agreed to by the City of Hesperia Planning Department and the CDFW. Relocation shall be conducted outside the breeding season or once the young are able to leave the nest and fly. ~~Passive relocation is the exclusion of owls from their burrows (outside the breeding season or once the young are able to leave the nest and fly) by installing one-way doors in burrow entrances. These one-way doors allow the owl to exit the burrow, but not enter it. These doors shall be left in place 48 hours to ensure owls have left the~~

~~burrow. Artificial burrows shall be provided nearby. The implementing project area shall be monitored daily for one week to confirm owl use of burrows before excavating burrows in the impact area. Burrows shall be excavated using hand tools and refilled to prevent reoccupation. Sections of flexible pipe shall be inserted into the tunnels during excavation to maintain an escape route for any animals inside the burrow. The CDFW shall be consulted prior to any active relocation to determine acceptable receiving sites available where this species has a greater chance of successful long-term relocation. If avoidance is infeasible, then a Determination of Biologically Equivalent or Superior Preservation (DBESP) Report shall be required, including associated relocation of burrowing owls. If conservation is not required, then owl relocation shall still be required following accepted protocols. Take of active nests shall be avoided, so it is strongly recommended that any relocation occur outside of the nesting season.~~

Location: 5.3.10 Mitigation Measures, (pp. 5.3-27)

Explanation of Change and Discussion:

As explained above, the proposed project would no longer impact Waters of the United States. It was determined that the 0.30-acre (712.14 linear feet) of ephemeral stream drainage is not under US Army Corps of Engineers jurisdiction and would not require USACE Nationwide Permit. Therefore, the proposed Project would no longer be required or conditioned to mitigate impacts to WUS through In Lieu Programs (ILFP) or through fees per acre credit. Thus, Mitigation Measure BIO-4 has been changed to removed language involving WUS.

Changes to DEIR:

Mitigation Measure BIO-4: Jurisdictional Waters

Impacts to jurisdictional waters require mitigation through habitat creation, restoration, or enhancement as determined by consultation with the regulatory agencies during the permitting process:

- Impacts to the 2.95 acres of CDFW jurisdictional waters will require a 1602 Streambed Alteration Agreement from the CDFW.
- Impacts to the 0.30 acres of Waters of the State would require a Section 401 State Water Quality Certification from the RWQCB.
- Impacts to Waters of the State will be mitigated through land credits through purchases of credits at a California Department of Fish and Wildlife (CDFW)-approved mitigation bank for ephemeral stream at a 2:1 ratio.
- ~~Impacts to the 0.30 acres of Waters of the U.S. would qualify for a Section 404 USACE Nationwide Permit. Waters of the United States will be mitigated either through In Lieu Fee Programs (ILFP) or fees per acre credit.~~

Location: 5.3.10 Mitigation Measures, (pp. 5.3-27)

Explanation of Change and Discussion:

The California Department of Fish and Wildlife requested revisions to Mitigation Measure BIO-5 to ensure special status native plant species are protected during Project construction. Language in the measure was revised to clarify that preconstruction surveys would be conducted and would include survey for all special status native plant species that have potential to occur within the Project site.

Changes to DEIR:

Mitigation Measure BIO-5: Relocation of Desert Native Plants (Hesperia Municipal Code Chapter 16.24).

In compliance with City Municipal Code 16.24.040 E., the building official shall require a preconstruction inspection prior to approval of development permits. Plant survey shall be completed prior to ground disturbance on the site. If any of the eight special status native desert plant species known to occur in the Project area are found on site during the surveys, the population size of the species and importance to the overall population should be determined. If a rare plant species occurs on the site and cannot be avoided, it should be transplanted and/or have seeds/topsoil collected in a manner approved by the county agricultural commissioner or other reviewing authority. Prior to the issuance of grading permits, the Project Applicant shall submit an application and applicable fee paid to the City of Hesperia for removal or relocation of protected native desert plants under Hesperia Municipal Code Chapter 16.24 as required and schedule a preconstruction site inspection with the Planning Division and the Building Division. The application shall include certification from a qualified Joshua tree and native desert plant expert(s) to determine that proposed removal or relocation of protected native desert plants are appropriate, supportive of a healthy environment, and in compliance with the City of Hesperia Municipal Code. Protected plants subject to Hesperia Municipal Code Chapter 16.24 may be relocated on-site, or within an area designated as an area for species to be adopted later. The application shall include a detailed plan for the removal of all protected plants on the Project site. The plan shall be prepared by a qualified Joshua tree and native desert plant expert(s). The plan shall include, but not be limited to, the following measures:

- Salvaged plants shall be transplanted expeditiously to either their final on-site location, or to an approved off-site area. If the plants cannot be expeditiously taken to their permanent relocation area at the time of excavation, they may be transplanted in a temporary area (stockpiled) prior to being moved to their permanent relocation site(s).
- ~~Western Joshua trees shall be marked on their north facing side prior to excavation. Transplanted western Joshua trees shall be planted in the same orientation as they currently occur on the Project site, with the marking on the north side of the trees facing north at the relocation site(s).~~
- Transplanted plants shall be watered prior to and at the time of transplantation. The schedule of watering shall be determined by the qualified tree expert and desert native plant expert(s) to maintain plant health. Watering of the transplanted plants shall continue under the guidance of qualified tree expert and desert native plant expert(s) until it has been determined that the transplants have become established in the permanent relocation site(s) and no longer require supplemental watering.

Location: 5.3.10 Mitigation Measures, (pp. 5.3-27)

Explanation of Change and Discussion:

CDFW requested revisions to Mitigation Measure BIO-6 to remove speculative language referring to the listing of the Western Joshua tree under CESA (or Western Joshua Tree Conservation Act [WJTCA] as referred to within Mitigation Measure BIO-6). Additionally, the CDFW proposes removal of the statement “to ensure no Joshua trees are mitigated twice”. The Project DEIR public circulation period began on June 2, 2023. The Western Joshua Tree Conservation Act was passed on June 27, 2023. The Project DEIR adequately reflected the status of the proposed act at the time of circulation. Under the act, all in-lieu fees collected will be deposited into the Western Joshua Tree Conservation Fund for appropriation to CDFW solely for the purposes of acquiring, conserving, and managing western Joshua tree conservation lands and completing other activities to conserve the western Joshua tree. The mitigation measure has been revised consistent with CDFW’s recommendations and has been updated to reflect the current status of the specie’s listing under CESA and the Western Joshua Tree Conservation Act

Changes to DEIR:

Mitigation Measure BIO-6: Western Joshua Tree Lands (CESA)

~~In the case that the California Fish and Game Commission lists western Joshua trees as threatened under the California Endangered Species Act, the following measure will be implemented~~ **The western Joshua tree is a candidate threatened species under the California Endangered Species Act, and the following measures will be implemented:**

- Prior to the initiation of Joshua tree removal, obtain California Endangered Species Act (CESA) Incidental Take Permit under Section 2081 of the Fish and Game Code. The Project Applicant will adhere to measures and conditions set forth within the Incidental Take Permit.
- Mitigation for direct impacts to western Joshua trees shall be fulfilled through conservation of western Joshua trees at a 1:1 habitat replacement ratio, of equal or better functions and values to those impacted by the Project. Mitigation can be through purchases of credits at a California Department of Fish and Wildlife (CDFW)-approved mitigation bank for western Joshua tree. Additionally, no take of western Joshua tree will occur without authorization from CDFW in the form of an Incidental Take Permit pursuant to Fish and Game Code 2081.
- Name, qualifications, business address, and contact information of a biological monitor (designated botanist) shall be submitted to CDFW at least 30 days prior to Project activities. The designated botanist shall be responsible for monitoring Project activities to help minimize and fully mitigate or avoid incidental take of Joshua trees.
- An education program (Worker Environmental Awareness Program) shall be conducted for all persons employed or working in the project area before performing any work.
- A trash abatement program shall be in place before starting project activities and throughout the duration of the Project to ensure that trash and food are contained in animal proof containers.
- The boundaries of the Project site shall be clearly delineated, in consultation with the designated botanist, prior to project activities with posted signs, posting stakes, flags, and/or rope or cord.
- Project-related personnel shall access the Project area using existing routes, or routes identified in the Project description, and shall not cross Joshua tree habitat outside or on route to the Project area.
- The designated botanist shall have authority to immediately stop any activity that does not comply with the ITP, and/or to order any reasonable measure to avoid unauthorized take of an individual Joshua tree.
- The Project analyzed impacts to western Joshua trees by applying the 186-foot and 36-foot buffer zone overlap with the project boundaries of two adjacent proposed developments. Any impacts to overlapping Joshua trees will be analyzed by CDFW ~~to ensure no Joshua trees are mitigated twice.~~
- The Western Joshua Tree Conservation Act is ~~currently under consideration~~ **has been signed and put into effect** by the California Governor's Office. In the event that the Western Joshua Tree Conservation Act is implemented **for the project**, effectively ~~replacing the function of species protection~~ **providing a streamlined mitigation approach** under CESA **and Western Joshua tree conservation**, alternative habitat replacement mechanisms, providing equal or better function and value to existing mechanisms under CESA, will be implemented as required under state law.

2.2.4 CHAPTER 7.0 EFFECTS FOUND NOT SIGNIFICANT

Location: 7.0 Effects Found Not Significant (pp. 7.0-2)

Explanation for Change and Discussion:

The DEIR excluded findings from the Initial Study and Notice of Preparation regarding several environmental topics found to be not significant, and therefore, were not included in the DEIR analysis. These sections have been included. Additionally, the Project's consistency with the goals and policies of the City's General Plan and the Main Street and Freeway Corridor Specific Plan (MSFC-SP) have been compiled from the various environmental topic sections and provided in a summary table. Additional goals and policies have been added in response to Comment 1.20, Comments 4.23-4.24, and Comments 4.28-4.29.

*Changes to DEIR:***7.6 Hazards and Hazardous Materials**

Heavy construction equipment (e.g., dozers, excavators, tractors) would be operated for development of the Project. The equipment would be fueled and maintained by petroleum-based substances such as diesel fuel, gasoline, oil, and hydraulic fluid, which are considered hazardous if improperly stored, handled, or transported. Other materials used—such as paints, adhesives, and solvents—could also result in accidental releases or spills that could pose risks to people and the environment. Construction contractors would be required to comply with federal, state, and local laws and regulations regarding the transport, use, and storage of hazardous materials. Applicable laws and regulations include CCR, Title 8 Section 1529 (pertaining to ACM) and Section 1532.1 (pertaining to LBP); CFR, Title 40, Part 61, Subpart M (pertaining to ACM); CCR, Title 23, Chapter 16 (pertaining to UST); CFR, Title 29 - Hazardous Waste Control Act; CFR, Title 49, Chapter I; and Hazardous Materials Transportation Act requirements as imposed by the USDOT, CalOSHA, CalEPA and DTSC. Additionally, construction activities would require a SWPPP, which is mandated by the National Pollution Discharge Elimination System General Construction Permit (included as PPP WQ-1 herein) and enforced by the Lahontan RWQCB. The SWPPP will include strict onsite handling rules and BMPs to minimize potential adverse effects to workers, the public, and the environment during construction.

Project operations would require the use of various types and quantities of hazardous materials, including lubricants, solvents, cleaning agents, wastes, paints and related wastes, petroleum, wastewater, batteries, (lead acid, nickel cadmium, nickel, iron, carbonate), scrap metal, and used tires. These hazardous materials would be used, stored, and disposed of in accordance with applicable regulations and standards (such as CFR, Title 49, Chapter I; CCR, Title 8; CFR, Title 40, Part 263) that are enforced by the USEPA, USDOT, CalEPA, CalOSHA, DTSC, and County of San Bernardino Environmental Health Services. Under California Health and Safety Code Section 25531 et seq., CalEPA requires businesses operating with a regulated substance that exceeds a specified threshold quantity to register with a managing local agency, known as the Certified Unified Program Agency (CUPA), who would impose additional requirements and oversight to avoid potential hazards.

Additionally, in October 2021, Hillman Consulting completed a Phase I Environmental Assessment (Phase I ESA) of the Project site (Appendix B). The Phase I ESA did not identify any recognized environmental conditions (RECs), controlled RECs, or historic RECs. The Phase I ESA did not identify any de minimis conditions for the Project site or significant data gaps.

The Project site would not handle hazardous materials within one quarter mile of a school. The Project site is not included on a list of hazardous materials sites pursuant to Government Code Section 65962.5 (Phase I 2021). The Project site is not located within any airport “referral area” or “safety zone”. The proposed Project is within the City’s planning area (entire city) of their local Hazard Mitigation Plan (December 2010) would construct and operate an industrial warehouse that would be permitted and approved in compliance with existing safety regulations, such as the CBC and California Fire Code (included in the Municipal Code as Chapter 15.04) to ensure that it would not conflict with implementation of the Hazard Mitigation Plan. Finally, according to the CalFire Fire Hazard Severity Zone Map for San Bernardino County and the Fire Hazards Map in the City’s Safety Element, the Project site is not within a Very High Fire Hazard Severity Zone.

Therefore, mandatory compliance with applicable laws and regulations would ensure the Project results in less than significant impacts on any less than significant potential hazard and hazardous material impacts.

7.7 Land Use and Planning

The proposed Project includes construction and operation of a warehouse on site zoned for Commercial/Industrial Business Park (CIBP) uses. The new use would be consistent with the planned land uses identified by the Main Street and Freeway Corridor Specific Plan and would be developed within the existing roadway system. The Project would improve the existing roadways adjacent to and within the site, and the Project would not result in lack of access to adjacent services. Therefore, the Project would not physically divide an established community.

Additionally, the Project would be consistent with the applicable goals and policies included under the MSFC-SP and City's General Plan as provided below in Table 7.7-1 and 7.7-2.

Table 7.7-1. Main Street and Freeway Corridor Specific Plan Consistency Analysis

Specific Plan Policy or Goal	Project Consistency
Land Use Element	
<u>Goal LU-1a: Respond to market trends and development pressures by creating a forward looking and responsible development plan for the Specific Plan area.</u>	<u>Consistent. The Project would include construction of an industrial warehouse. The Project site would be designated as CIBP and would support the expansion of regional commercial and industrial development. Additionally, the Project would support the City's goal of increasing jobs within the City and balancing the job to housing ratio promoting regional economic growth.</u>
<u>Policy LU-1.3: Mix land uses to create a vibrant and more active environment and make the most efficient use of available land.</u>	<u>Consistent. The Project site is located on vacant land within the MSFC-SP area. The Project involves the construction of an industrial warehouse in an area zoned for CIBP. Further, the Project would be developed to comply with the City's Municipal Code.</u>
<u>Policy LU-2.3: Maximize the economic impact of available industrial land by careful use of industrial properties, giving priority to clean enterprises that yield large numbers of highly skilled high-paying jobs relative to site size.</u>	<u>Consistent. The proposed Project would be an industrial warehouse located in Main Street/I-15 District. According to the Specific Plan, the Main Street/Interstate-15 District is the district in the Specific Plan Area that takes advantage of the intersection of the two important corridors in the City: the I-15 Freeway Corridor and Main Street. The Main Street/Interstate-15 District takes advantage of the regional freeway accessibility and visibility through high quality development and streetscape enhancements. This district is a mixed-use district emphasizing large-scale employment uses, regional retail uses, entertainment uses, hotels, and higher density residential uses near the interchange along U.S. Highway 395. The Project site would be designated as CIBP and would support the expansion of regional commercial and industrial development. Additionally, the Project would support the City's goal of increasing jobs within the City and balancing the job to housing ratio promoting regional economic growth.</u>
<u>Goal LU-3: Create a regional shopping draw of development at the intersection of Interstate-15 and Main Street.</u>	<u>Consistent. The proposed Project is not in the area around the intersection of I-15 and Main Street.</u>
<u>Policy LU-3.1: Designate areas around the intersection of Interstate-15 and Main Street for commercial and retail development.</u>	<u>Consistent. The proposed Project is not in the area around the intersection of I-15 and Main Street.</u>

<u>Policy LU-3.2: Attract high quality retail, office, hotel and mixed-use projects near the intersection of Interstate-15 and Main Street where freeway visibility and accessibility are highest.</u>	<u>Consistent. The Project site is located on vacant land within the Specific Plan area. The Project involves the construction of an industrial warehouse in an area designated for commercial and industrial uses. Therefore, the Project would be not be inconsistent with LU-3.2.</u>
<u>Circulation</u>	
<u>Goal C-2: Explore and provide the highest level of access for all modes of transportation and maintains efficient circulation in the Specific Plan area throughout the day</u>	<u>Consistent. The Project would include construction and operation of an industrial warehouse building that would be easily and efficiently accessible to I-15 and U.S. Highway 395, which would help to facilitate regional goods movement throughout Southern California.</u>

Table 7.7-2. General Plan Consistency Analysis

<u>General Plan Policy or Goal</u>	<u>Project Consistency</u>
<u>Land Use Element</u>	
<u>Goal LU-1 Regulate development so that the density of residential development and the intensity of non-residential development are appropriate to the property, surrounding properties, and the general neighborhood.</u>	<u>Consistent. The Project would include construction of an industrial warehouse. The Project site would be designated as CIBP and would support the expansion of regional commercial and industrial development. Additionally, the Project would support the City's goal of increasing jobs within the City and balancing the job to housing ratio promoting regional economic growth.</u>
<u>Policy LU-1.1 Require that new construction, additions, renovations, and infill developments be sensitive to neighborhood context and building form and scale.</u>	<u>Consistent. The Project site is located on vacant land within the MSFC-SP area. The Project involves the construction of an industrial warehouse in an area zoned for CIBP. Further, the Project would be developed to comply with the City's Municipal Code.</u>
<u>Policy LU-1.3 Require that new construction, additions, renovations, and infill developments be sensitive to the intent of the land use designations, incorporating neighborhood context as well as building form and scale.</u>	<u>Consistent. The proposed Projects use of landscaping, building layout, finish materials, and accenting on the Project site would create a quality architectural presence along Mesa Linda Street. The Project involves the construction of an industrial warehouse in an area zoned for CIBP. Further, the Project would be developed to comply with the City's Municipal Code.</u>
<u>Policy LU-1.4 Encourage architecture which breaks massive buildings into smaller parts. Focus on maintaining a human scale when creating common spaces or amenities.</u>	<u>Consistent. The Project would be developed to comply with the City's Municipal Code and would include design elements consistent with the standards set forth in the MSFC-SP.</u>
<u>Goal LU-3 Promote balanced, efficient commercial development that is functional, safe, attractive and convenient to users, and which will strengthen the local economy.</u>	<u>Consistent. The Project would directly add to the City's industrial land base through the development of a warehouse building.</u>
<u>Implementation Policy LU-3.1 Encourage a diverse mix of commercial and service businesses that support the local tax base, are beneficial to residents, and support the economic need of the community.</u>	<u>Consistent. The Project site is located on vacant land within the Specific Plan area. The Project involves the construction of an industrial warehouse in an area designated for commercial and industrial uses. Therefore, the Project would be adequately buffered from surrounding residential uses.</u>

<u>Implementation Policy LU-3.2 Sufficient lands should be designated to provide a full range of commercial services to the community and surrounding areas to serve the residential properties at build-out.</u>	<u>Consistent. The Project site is located on vacant land within the Specific Plan area. The Project involves the construction of an industrial warehouse in an area designated for commercial and industrial uses. Therefore, the proposed Project is consistent with the land use designation for the site and would not prevent sufficient lands from being designated to provide commercial services to the residential population at buildout.</u>
<u>Implementation Policy LU-3.5 Require the separation or buffering of residential areas from businesses which produce noise, odors, high traffic volumes, light or glare, and parking through the use of landscaping, setbacks, and other techniques.</u>	<u>Consistent. The Project site is located on vacant land within the Specific Plan area. The Project involves the construction of an industrial warehouse in an area designated for commercial and industrial uses. Therefore, the Project would be adequately buffered from surrounding residential uses. Additionally, the proposed building would also be set back from both street frontages and landscaping would be provided along Sultana Street, Mesa Linda Street, Lassen Street and along the southern property line. The proposed Project also includes approximately 117,306 SF of ornamental landscaping that would cover approximately 15.35 percent of the site.</u>
<u>Goal LU-7 Facilitate a self-contained community with a well-designed and maintained community with a full range of densities and uses within the capacity of infrastructure and services.</u>	<u>Consistent. As discussed in Section 5.1, Aesthetics, the proposed Project would comply with the applicable FAR for the CIBP. Additionally, the Project would include MM-AES-1 which would ensure the proposed building is aesthetically pleasing and complimentary to the surrounding setting.</u>
<u>Implementation Policy LU-7.2 Promote sustainable building practices that go beyond the requirements of Title 24 of the California Administrative Code, and encourage energy efficient design elements, consistent with Policy LU-6.1.</u>	<u>Consistent. The proposed Project would not conflict with or obstruct opportunities to use renewable energy, such as solar energy. In addition, the proposed Project would provide a solar-ready roof. Future building tenants could install solar panels in order to offset the Project's energy demands. Thus, the Project would not obstruct use of renewable energy or energy efficiency.</u>
Circulation Element	
<u>Implementation Policy CI-1.10 Ensure that new development provides for adequate road improvements to serve internal circulation needs, as well as to mitigate impacts of increased traffic on the existing road system.</u>	<u>Consistent. As Consistent. As determined by the Project's VMT Analysis (Appendix H), the proposed Project would not result in significant traffic.</u>
<u>Implementation Policy CI-2.1 Strive to achieve and maintain a LOS D or better on all roadways and intersections: LOS E during peak hours shall be considered acceptable through freeway interchanges and major corridors (Bear Valley Road, Main Street/Phelan Road, Highway 395).</u>	<u>Consistent. The Project would include construction and operation of an industrial warehouse building that would be easily and efficiently accessible to I-15 and U.S. Highway 395, which would help to facilitate regional goods movement throughout Southern California. The Project would also include construction of the east side of Lassen Street to its half width in compliance with the City's General Plan Circulation element. The west side of Lassen Street would be constructed as part of the neighboring I-15 Industrial Park project. The Project would include building the half width of Sultana Street and Mesa Linda Street along the Project's frontage.</u>

<u>Implementation Policy CI-2.2 Work with regional agencies which have authority over roadways within the City to ensure a minimum Level of Service D for roadways and a minimum Level of Service E for intersections.</u>	<u>Consistent. The Project would include construction and operation of an industrial warehouse building that would be easily and efficiently accessible to I-15 and U.S. Highway 395, which would help to facilitate regional goods movement throughout Southern California. The Project would also include construction of the east side of Lassen Street to its half width in compliance with the City's General Plan Circulation element. The west side of Lassen Street would be constructed as part of the neighboring I-15 Industrial Park project. The Project would include building the half width of Sultana Street and Mesa Linda Street along the Project's frontage. Proposed infrastructure improvements are described in Section 3.0 Project Description.</u>
<u>CI Policy 2.4 Develop policies and regulations to ensure that future development does not reduce the Level of Service of roadways and intersections below the minimum Levels of Service goals.</u>	<u>Consistent. As discussed in Section 5., Transportation, the proposed Project would be consistent with applicable policies in the City's General Plan, MSFCSP, and the SCAG RTP/SCS. Therefore, the Project would be consistent with all applicable programs, plans, ordinances, or policies addressing the circulation system.</u>
<u>Conservation Element</u>	
<u>Goal: CN-7 Develop, promote and implement policies to reduce and limit Greenhouse Gas Emissions.</u>	<u>Consistent. According to Section 5.7, Greenhouse Gas Emissions, the proposed Project would incorporate various measures related to building design, landscaping, and energy systems to promote the efficient use of energy, pursuant to Title 24 CALGreen Code and Building Energy Efficiency Standards. The project would also have a solar-ready roof in order to promote utilization of solar energy.</u>
<u>Goal: CN- 8 Implement policies and measures to reduce air pollution and emissions of pollutants.</u>	<u>Consistent. According to Section 5.2, Air Quality, the proposed project would comply with all applicable MDAQMD Rules and Regulations.</u>
<u>Policy: CN- 8.5 Minimize exposure of sensitive receptor land uses and sites to health risks related to air pollution.</u>	<u>Consistent. According to the Health Risk Assessment discussed in Section 5.2, Air Quality, the project would not cause a significant human health risk to adjacent land uses as a result of Project construction or operation.</u>

7.8 Public Services

Construction and operation of the proposed Project would increase the number of structures and employees in the Project area, which could nominally increase the need for police and fire protection; however, as previously analyzed under Population and Housing (Section 5.14 of the Initial Study), the Project would not directly or indirectly induce unplanned population growth in the City. Overall, it is anticipated that the Project would be adequately served by existing San Bernardino County Fire Department and San Bernardino County Sheriff's Department. The Project applicant would pay necessary development fees into funding to support City services. Schools, parks, and other facilities would not be impacted by the proposed warehouse use.

**Attachment 2-A:
Approved Jurisdictional
Delineation**



**DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT
915 WILSHIRE BOULEVARD, SUITE 1109
LOS ANGELES, CALIFORNIA 90017-3409**

March 16, 2023

SUBJECT: Approved Jurisdictional Determination

Dana Whitmer
Poplar 18, LLC
14180 Dallas Parkway Suite 730
Dallas, Texas 75254

Dear Ms. Whitmer:

I am responding to your request dated December 21, 2022, for an approved Department of the Army jurisdictional determination (JD) for the Poplar 18 Project site (File No. SPL-2022-00743-SLP). The proposed project is located in the city of Hesperia, San Bernardino County, California (Latitude 34.416294°, Longitude -117.393089°).

The Corps' evaluation process for determining whether or not a Department of the Army permit is needed involves two tests. If both tests are met, a permit would likely be required. The first test determines whether or not the proposed project is located within the Corps' geographic jurisdiction (i.e., it is within a water of the United States). The second test determines whether or not the proposed project is a regulated activity under Section 10 of the Rivers and Harbors Act or Section 404 of the Clean Water Act. This evaluation pertains only to geographic jurisdiction.

Based on available information, I have determined waters of the United States do not occur on the project site. The basis for our determination can be found in the enclosed Approved Jurisdictional Determination (JD) form.

The aquatic resource, an unnamed ephemeral stream, identified in the documentation you provided is excluded from Clean Water Act Section 404 jurisdiction. As such, the aquatic resource is not currently regulated by the Corps of Engineers. This disclaimer of jurisdiction is only for Section 404 of the Clean Water Act. Other federal, state, and local laws may apply to your activities. In particular, you may need authorization from the California State Water Resources Control Board, the California Department of Fish and Wildlife, and/or the U.S. Fish and Wildlife Service.

This letter includes an approved jurisdictional determination for the Poplar 18 Project site. If you wish to submit new information regarding this jurisdictional determination, please do so within 60 days. We will consider any new information so submitted and respond within 60 days by either revising the prior determination, if appropriate, or reissuing the prior determination. If you object to this or any revised or reissued

jurisdictional determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) and Request for Appeal (RFA) form. If you wish to appeal this decision, you must submit a completed RFA form within 60 days of the date on the NAP to the Corps South Pacific Division Office at the following address:

Travis Morse
Administrative Appeal Review Officer
U.S. Army Corps of Engineers
South Pacific Division, CESPDPDO
450 Golden Gate Ave.
San Francisco, CA 94102

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5 (see below), and that it has been received by the Division Office by May 15, 2023.

This determination has been conducted to identify the extent of the Corps' Clean Water Act jurisdiction on the particular project site identified in your request and is valid for five years from the date of this letter, unless new information warrants revision of the determination before the expiration date. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

Thank you for participating in the regulatory program. If you have any questions, please contact Shannon Pankratz at (213) 452-3412 or via email at Shannon.L.Pankratz@usace.army.mil. Please help me to evaluate and improve the regulatory experience for others by completing the customer survey form at <https://regulatory.ops.usace.army.mil/customer-service-survey/>.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron O. Allen".

Aaron O. Allen, Ph.D.
Chief, North Coast Branch
Regulatory Division

Enclosure

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Poplar 18, LLC, Attn: Dana Whitmer	File Number: SPL-2022-00743-SLP	Date: MARCH 16, 2023
Attached is:		See Section below
☐	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
☐	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
☐	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
☐	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/cecw/pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Shannon Pankratz
U.S. Army Corps of Engineers
Los Angeles District
915 Wilshire Boulevard, Suite 1109
Los Angeles, California 90017-3409
Phone: (213) 452-3412
Email: Shannon.L.Pankratz@usace.army.mil

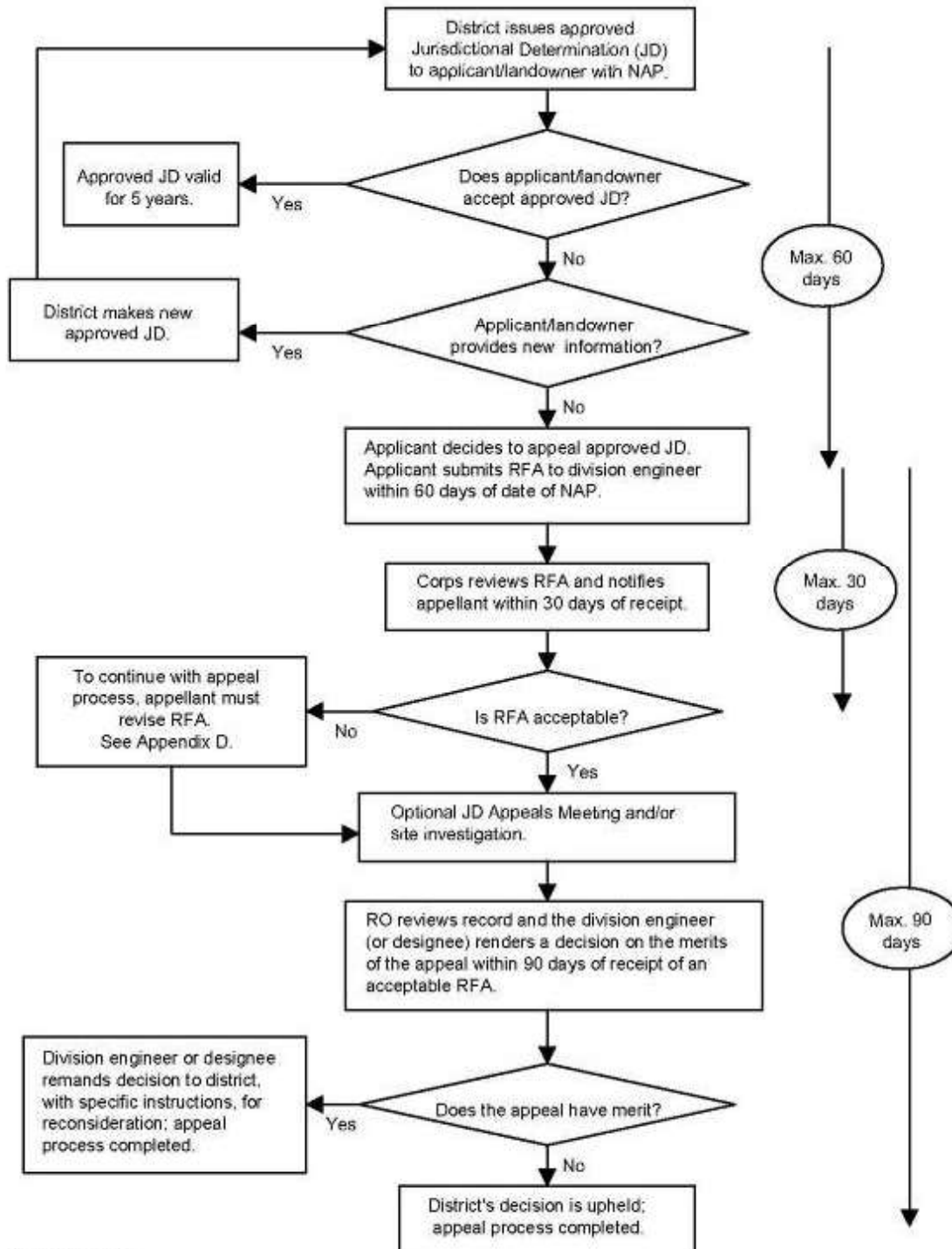
If you only have questions regarding the appeal process you may also contact:

Travis Morse
Administrative Appeal Review Officer
U.S. Army Corps of Engineers
South Pacific Division
450 Golden Gate Ave.
San Francisco, CA 94102
Phone: (213) 452-3146
Email: w.travis.morse@usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.	Date:	Telephone number:
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Administrative Appeal Process for Approved Jurisdictional Determinations



§ 331.5 Criteria.

(a) *Criteria for appeal* —(1) *Submission of RFA*. The appellant must submit a completed RFA (as defined at §331.2) to the appropriate division office in order to appeal an approved JD, a permit denial, or a declined permit. An individual permit that has been signed by the applicant, and subsequently unilaterally modified by the district engineer pursuant to 33 CFR 325.7, may be appealed under this process, provided that the applicant has not started work in waters of the United States authorized by the permit. The RFA must be received by the division engineer within 60 days of the date of the NAP.

(2) *Reasons for appeal*. The reason(s) for requesting an appeal of an approved JD, a permit denial, or a declined permit must be specifically stated in the RFA and must be more than a simple request for appeal because the affected party did not like the approved JD, permit decision, or the permit conditions. Examples of reasons for appeals include, but are not limited to, the following: A procedural error; an incorrect application of law, regulation or officially promulgated policy; omission of material fact; incorrect application of the current regulatory criteria and associated guidance for identifying and delineating wetlands; incorrect application of the Section 404(b)(1) Guidelines (see 40 CFR Part 230); or use of incorrect data. The reasons for appealing a permit denial or a declined permit may include jurisdiction issues, whether or not a previous approved JD was appealed.

(b) *Actions not appealable*. An action or decision is not subject to an administrative appeal under this part if it falls into one or more of the following categories:

(1) An individual permit decision (including a letter of permission or a standard permit with special conditions), where the permit has been accepted and signed by the permittee. By signing the permit, the applicant waives all rights to appeal the terms and conditions of the permit, unless the authorized work has not started in waters of the United States and that issued permit is subsequently modified by the district engineer pursuant to 33 CFR 325.7;

(2) Any site-specific matter that has been the subject of a final decision of the Federal courts;

(3) A final Corps decision that has resulted from additional analysis and evaluation, as directed by a final appeal decision;

(4) A permit denial without prejudice or a declined permit, where the controlling factor cannot be changed by the Corps decision maker (e.g., the requirements of a binding statute, regulation, state Section 401 water quality certification, state coastal zone management disapproval, etc. (See 33 CFR 320.4(j));

(5) A permit denial case where the applicant has subsequently modified the proposed project, because this would constitute an amended application that would require a new public interest review, rather than an appeal of the existing record and decision;

(6) Any request for the appeal of an approved JD, a denied permit, or a declined permit where the RFA has not been received by the division engineer within 60 days of the date of the NAP;

(7) A previously approved JD that has been superseded by another approved JD based on new information or data submitted by the applicant. The new approved JD is an appealable action;

(8) An approved JD associated with an individual permit where the permit has been accepted and signed by the permittee;

(9) A preliminary JD; or

(10) A JD associated with unauthorized activities except as provided in §331.11.

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): February 24, 2023

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Los Angeles District, Poplar 18 Project, SPL-2022-00743-SLP

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: CA County/parish/borough: San Bernardino City: Hesperia
Center coordinates of site (lat/long in degree decimal format): Lat. 34.41629° **N**, Long. -117.3931° **W**.
Universal Transverse Mercator:

Name of nearest waterbody: Onsite unnamed ephemeral drainage NWW-1

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: N/A

Name of watershed or Hydrologic Unit Code (HUC): Mojave Subbasin HUC 8 (18090208), Bell Mountain Wash-Mojave River HUC 10 (1809020807)

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

☒ Office (Desk) Determination. Date: January 10, 2023

☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Pick List** “navigable waters of the U.S.” within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

☐ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Pick List** “waters of the U.S.” within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- ☐ TNWs, including territorial seas
- ☐ Wetlands adjacent to TNWs
- ☐ Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- ☐ Non-RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- ☐ Impoundments of jurisdictional waters
- ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet: width (ft) and/or acres.
Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: **Pick List**

Elevation of established OHWM (if known): .

2. Non-regulated waters/wetlands (check if applicable):³

☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain:

The unnamed ephemeral drainage NWW-1 is defined as a non-RPW ranging in width from 1-2 feet. The unvegetated project water is situated within the Mojave River watershed, approximately 6-aerial miles southwest of the Mojave River. Surface flows within the project area travel in a general northwest direction, with the non-RPW typically conveying flows only in response to major storm events. Typical annual rainfall totals average less than 2-inches in this area. The subject drainage originates in the southern area of the project immediately north of Poplar Street, and it flows northward for approximately 396 feet until dissipating as sheet

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least “seasonally” (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

flow across the landscape.

The predominant soil type in the project area is Hesperia loamy fine sand, which is characterized as well-drained soil with moderate to high rates of permeability. The project area is also relatively flat, ranging from 2-5% in slope, with slightly higher elevations in the southern portion of the project area. The subject drainage broadens out and dissipates into general sheetflow before leaving the project site. The area north of the project site was examined for any potential re-emergence of channel form with an ordinary high watermark. No evidence of channel reformation was observed within or past 500 feet from the project footprint, including up to and after Sultana Road to the north. Thus, the subject drainage has no downstream surface connectivity within the watershed.

The review of aerials (Google Earth) and on-ground photographs also did not depict surface water usage of this distributary ephemeral drainage. Therefore, the subject drainage is NOT an (a)(3) water as defined by 33 CFR 328.3(a)(3)(i-iii), as it: i) DOES NOT have use for surface water recreation or other purposes by foreign or interstate travelers, ii) DOES NOT have harvesting activities of fish or shellfish that may be sold in interstate or foreign commerce, and iii) DOES NOT have surface water industrial usage by industries in interstate commerce. Therefore, the subject drainage is an isolated water without a surface water connection to commerce.

Based on the above information, the Corps concludes that unnamed ephemeral drainage NWW-1 (isolated non-RPW) is a non-jurisdictional aquatic feature since it is not tributary to either a TNW or an (a)(3) water and is not an (a)(3) water itself. The Corps makes such a conclusion since the water is a distributary drainage lacking any downstream watershed surface connectivity, and since the aquatic feature also does not qualify as an (a)(3) water.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**

Identify TNW: _____.

Summarize rationale supporting determination: _____.

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is “adjacent”: _____.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

(i) **General Area Conditions:**

Watershed size: **Pick List**

Drainage area: **Pick List**

Average annual rainfall: _____ inches

Average annual snowfall: _____ inches

(ii) **Physical Characteristics:**

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: _____.

Identify flow route to TNW⁵: _____.

Tributary stream order, if known: _____.

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☐ Natural

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

- ☐ Artificial (man-made). Explain: .
- ☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):

Average width: feet
 Average depth: feet
 Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

- | | | |
|--|--|-----------------------------------|
| ☐ Silts | ☐ Sands | ☐ Concrete |
| ☐ Cobbles | ☐ Gravel | ☐ Muck |
| ☐ Bedrock | ☐ Vegetation. Type/% cover: | |
| ☐ Other. Explain: . | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .

Presence of run/riffle/pool complexes. Explain: .

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): %

(c) **Flow:**

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime: .

Other information on duration and volume: .

Surface flow is: **Pick List**. Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

☐ Dye (or other) test performed: .

Tributary has (check all that apply):

- | | |
|---|---|
| ☐ Bed and banks | |
| ☐ OHWM ⁶ (check all indicators that apply): | |
| ☐ clear, natural line impressed on the bank | ☐ the presence of litter and debris |
| ☐ changes in the character of soil | ☐ destruction of terrestrial vegetation |
| ☐ shelving | ☐ the presence of wrack line |
| ☐ vegetation matted down, bent, or absent | ☐ sediment sorting |
| ☐ leaf litter disturbed or washed away | ☐ scour |
| ☐ sediment deposition | ☐ multiple observed or predicted flow events |
| ☐ water staining | ☐ abrupt change in plant community |
| ☐ other (list): | |
| ☐ Discontinuous OHWM. ⁷ Explain: . | |

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- | | |
|--|--|
| ☐ High Tide Line indicated by: | ☐ Mean High Water Mark indicated by: |
| ☐ oil or scum line along shore objects | ☐ survey to available datum; |
| ☐ fine shell or debris deposits (foreshore) | ☐ physical markings; |
| ☐ physical markings/characteristics | ☐ vegetation lines/changes in vegetation types. |
| ☐ tidal gauges | |
| ☐ other (list): | |

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: .

Identify specific pollutants, if known: .

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- ☐ Riparian corridor. Characteristics (type, average width): .
- ☐ Wetland fringe. Characteristics: .
- ☐ Habitat for:
 - ☐ Federally Listed species. Explain findings: .
 - ☐ Fish/spawn areas. Explain findings: .
 - ☐ Other environmentally-sensitive species. Explain findings: .
 - ☐ Aquatic/wildlife diversity. Explain findings: .

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is: **Pick List**

Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

☐ Directly abutting

☐ Not directly abutting

☐ Discrete wetland hydrologic connection. Explain: .

☐ Ecological connection. Explain: .

☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- ☐ Riparian buffer. Characteristics (type, average width): .
- ☐ Vegetation type/percent cover. Explain: .
- ☐ Habitat for:
 - ☐ Federally Listed species. Explain findings: .
 - ☐ Fish/spawn areas. Explain findings: .
 - ☐ Other environmentally-sensitive species. Explain findings: .
 - ☐ Aquatic/wildlife diversity. Explain findings: .

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed: .

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- ☐ TNWs: linear feet width (ft), Or, acres.
- ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**

- ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
- ☐ Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☐ Tributary waters: linear feet width (ft).
- ☐ Other non-wetland waters: acres.

Identify type(s) of waters: .

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- ☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.

Identify type(s) of waters: .

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- ☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
☐ Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- ☐ Demonstrate that impoundment was created from “waters of the U.S.,” or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Identify type(s) of waters: .
☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☒ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - ☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- ☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
- ☐ Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- ☒ Non-wetland waters (i.e., rivers, streams): **396** linear feet, **1-2** width (ft).
- ☐ Lakes/ponds: acres.
- ☒ Other non-wetland waters: 0.06 acres. List type of aquatic resource: ephemeral stream.
- ☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: "Aquatic Resources Delineation Report for the Poplar 18 Project, Hesperia, San Bernardino County, California" (prepared by Dudek, dated August 15, 2022).
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - ☐ Office concurs with data sheets/delineation report.
 - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps: .
- ☐ Corps navigable waters' study: .
- ☐ U.S. Geological Survey Hydrologic Atlas: .
 - ☐ USGS NHD data.
 - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: 7.5 Minute Quadrangle Baldy Mesa Series.
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: USDA SSURGO 2020.
- ☐ National wetlands inventory map(s). Cite name: .
- ☐ State/Local wetland inventory map(s): .
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Bing Maps; Google Earth.
 - or ☒ Other (Name & Date): .
- ☐ Previous determination(s). File no. and date of response letter: .
- ☐ Applicable/supporting case law: .
- ☐ Applicable/supporting scientific literature: .
- ☒ Other information (please specify): Lahontan Regional Water Quality Control Board staff site visit.

B. ADDITIONAL COMMENTS TO SUPPORT JD: N/A.

August 15, 2022

13727

Dana Whitmer
Poplar 18, LLC
14180 Dallas Parkway, Suite 730
Dallas, Texas 75254

Subject: Aquatic Resources Delineation Report for the Poplar 18 Project, Hesperia, San Bernardino County, California

Dear Mr. Whitmer:

This Aquatic Resources Delineation Report is being provided for the Poplar 18 Project (Project) to the U.S. Army Corps of Engineers (USACE) in accordance with the Minimum Standards for Acceptance of Aquatic Resources Delineation Reports (USACE 2016). This report and supporting attachments provide the 20 items listed in the Minimum Standards for Acceptance of Aquatic Resources Delineation Reports (USACE 2016).

Item 1: Request for a Jurisdictional Determination

Attachment A contains the USACE Regulatory Program Approved Jurisdictional Determination Form and Request for a Jurisdictional Determination.

Item 2: Contact Information

Applicant	Poplar 18, LLC	Agent	Dudek
Contact Name	Dana Whitmer	Contact Name	Britney Strittmater
Address	14180 Dallas Parkway, Suite 730 Dallas, Texas 75254	Address	78-075 Main Street, Suite G-203 La Quinta, California 92253
Phone	949.514.0274	Phone	760.341.6660
Fax	None	Fax	760.346.6118
Email	dana@mcwhitproperties.com	Email	bstrittmater@dudek.com

Item 3: Site Access

The applicant or agent will accompany USACE staff to the Project site (review area) if site visits are deemed necessary.

Item 4: Directions to the Review Area

The review area is located at the southwest quadrant of Interstate (I) 15 and Main Street, specifically, south of Main Street, west of Cataba Road and Mesa Linda Street, north of I-15 and Poplar Street, and east of U.S. Highway 395 and Lassen Road in Hesperia, California (Figure 1, Project Location; all figures are provided in Attachment B). Specifically, the review area is located in in Section 22, Township 4 North, Range 5 West, as depicted on the U.S. Geological Survey Baldy Mesa, California 7.5-minute topographic quadrangle map (Figure 2, USGS Topographic Map).

Regional access to the review area is provided via I-15, directly east of the review area, and U.S. Highway 395, directly west of the review area. Local access to the review area is provided via Poplar Street to Lassen Road or off Mesa Linda Street. Heading north on I-15, take exit 141 to U.S. Highway 395 North, continue north on U.S. Highway 395 approximately 1.1 miles, turn right on Poplar Street continuing east approximately 0.5 miles; the review area is north of Poplar Street.

Item 5: Aquatic Resources Delineation Methods

The USACE Regulatory Program regulates activities pursuant to Section 404 of the Clean Water Act. USACE regulates “discharge of dredged or fill material” into “waters of the United States.” The limits of USACE jurisdiction in non-tidal waters, such as intermittent streams, extend to the “ordinary high water mark” (OHWM), which is defined in 33 Code of Federal Regulations 328.3(c)(7) as “that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.” The term “adjacent wetlands” (a subset of waters of the United States) is defined in 33 Code of Federal Regulations 328.3(c)(16) as “areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.”

USACE defines wetlands as areas that contain hydrophytic vegetation, hydric soils, and wetland hydrology, in accordance with the procedures established in the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual (USACE 1987) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (USACE 2008a). This aquatic resources delineation followed these two manuals, plus the additional information from A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States: A Delineation Manual (USACE 2008b).

An Antecedent Precipitation Tool was used to document the climatological data around the delineation dates (see Attachment C). The review area received rainfall in early September and late October 2021, and the conditions were considered “wetter than normal”; however, the drought index is considered “severe.”

Item 6: Aquatic Resources Narrative

Overall, the review area landscape drains water in a northeasterly direction. One unvegetated ephemeral drainage (NWW-1) is present within the review area, specifically within the central portion of the review area, north of Poplar Street. This feature bisects the review area flowing south to north, and likely originates from stormwater flows/runoff from Poplar Street. A culvert and storm drain are located north and south of Poplar Street. This feature flows approximately 396 feet until dissipating as sheet flow across the landscape. Therefore, these features do not meet the relatively permanent or significant nexus standard as a waters of the United States. Therefore, no potential USACE jurisdictional aquatic resources (i.e., USACE regulated non-wetland waters or wetlands) were delineated within the review area, as shown in Figure 3, Aquatics Resource Delineation. The review area did not contain any features that met the USACE three-parameter wetland criteria, and lacked riparian or hydrophytic vegetation; therefore, wetland determination data forms were not completed. A discussion of the USACE jurisdictional aquatic resources is described below.

Wetlands

No riparian or hydrophytic vegetation occurs within the review area, and no hydric soils are mapped within the review area; therefore, there are no wetlands with the review area.

Non-Wetland Waters

As described above, there are no non-wetland waters of the United States with the review area because these features do not meet the relatively permanent or significant nexus standard.

Non-USACE Jurisdictional Aquatics Resources

See Attachment D for a discussion of areas under the jurisdiction of the California Department of Fish and Wildlife and Regional Water Quality Control Board.

Item 7: Delineation Maps

All maps of delineated aquatic resources are provided in Attachment B.

Item 8: Dates of Fieldwork

Dudek biologist Tracy Park conducted an aquatic resources delineation for the review area in November 2021. Table 1 provides the survey date and conditions for the survey.

Table 1. Schedule of the Aquatic Resources Delineation

Date	Hours	Personnel	Conditions
11/11/2021	9:58 AM–12:15 PM	Tracy Park	71°F – 72°F; 0% cloud cover; 1–5 mph wind

Item 9: Table of Aquatic Resources

No potential USACE jurisdictional aquatic resources (i.e., USACE regulated non-wetland waters or wetlands) were delineated within the review area; therefore, no table is provided. Attachment A includes the Approved Jurisdictional Determination Form, which describes that aquatic resources do not meet the relatively permanent or significant nexus standard.

Item 10: Review Area Description

The review area consists of Assessor's Parcel Numbers 3064-581-04-0000 and 3064-581-05-0000, and is located in the western part of the City of Hesperia, within the Victor Valley region of San Bernardino County (see Figure 1). The review area is located on the southwest quadrant of I-15 and Main Street. The Project site is located south of Main Street, west of Cataba Road and Mesa Linda Street, north of I-15 and Poplar Street, and east of U.S. Highway 395 and Lassen Road. The review area is currently open, vacant desert lands with surface elevation ranging between approximately 3,600 and 3,630 feet above mean sea level. The review area is located in in Section 22, Township 4 North, Range 5 West, as depicted on the U.S. Geological Survey Baldy Mesa, California 7.5-minute topographic quadrangle map (see Figure 2). The approximate center of the review area corresponds to 34.416294 latitude and -117.393089 longitude.

Within the review area, vegetation communities and land cover types include rubber rabbitbrush (*Ericameria nauseosa*) scrub, Joshua tree (*Yucca brevifolia*) woodland, upland mustards, non-native grasslands, disturbed habitat, and urban/developed lands. The review area is dominated by upland plant species, including rubber rabbitbrush, creosote bush (*Larrea tridentata*), Cooper's goldenbush (*Ericameria cooperi* var. *cooperi*), California buckwheat (*Eriogonum fasciculatum* var. *polifolium*), and Mexican bladdersage (*Scutellaria mexicana*), along with non-native grasses including ripgut brome (*Bromus diandrus*), soft brome (*Bromus hordeaceus*), cheatgrass (*Bromus tectorum*), and common Mediterranean grass (*Schismus barbatus*).

Item 11: Hydrology

The review area is within the South Lahontan Basin, specifically within the Mojave Hydrologic Unit (628.00) and Upper Mojave Hydrologic Area (628.20) (RWQCB 2021). Additionally, the review area is within the Mojave Subbasin Hydrologic Unit Code (HUC) 8 (18090208), Bell Mountain Wash-Mojave River HUC 10 (1809020807), and Oro Grande Wash HUC 12 (180902080704) watersheds. The Mojave Subbasin HUC 8 watershed is approximately 4,618 square miles and consists of several waterbodies, waterways, dry washes, and valleys (UCD SIG 2021). The Mojave River is approximately 8.5 miles to the east. The Oro Grande Wash is a tributary to the Mojave River and is located approximately 0.25 miles west of the review area, and the California Aqueduct is 1 mile to the north (USGS 2022). See Figure 4, Hydrologic Setting.

Item 12: Remote Sensing

No remote sensing was used for this aquatic resources delineation.

Item 13: Soils

According to the U.S. Department of Agriculture Natural Resource Conservation Service's Web Soil Survey (USDA 2022), the review area occurs within the San Bernardino County, Mojave River Area (CA671). The review area consists of one soil type: Hesperia loamy fine sand (2% to 5% slopes). This soil type is shown in Figure 5, Soils, and presented in Table 2. There are no hydric soils within the review area (USDA 2022).

Table 2. Soils within the Review Area

Soil Code	Soil Name	Hydric Rating	Acreage
134	Hesperia loamy fine sand, 2% to 5% slopes	Not Hydric	29.2
Total			29.2

Item 14: Site Location Maps

All maps are provided in Attachment B.

Item 15: Aquatic Features Spreadsheet

A copy of the ORM Bulk Upload Aquatic Resources or Consolidated Excel spreadsheet is not submitted with this report because there are no waters of the United States.

Item 16: Delineation Maps

All maps are provided in Attachment B.

Item 17: Photographs

Photos of the review area are provided in Attachment E.

Item 18: Data Forms

The OHWM datasheets are provided in Attachment F. Wetland determination data forms were not completed because the review area lacked hydrophytic vegetation.

Item 19: Methods

Jurisdictional boundaries were mapped in the field using an ESRI Collector mobile application with sub-meter accuracy and aerial imagery. Following the fieldwork, aquatic resources were digitized using ArcGIS.

Additionally, the delineation defined areas under the jurisdiction of the California Department of Fish and Wildlife pursuant to California Fish and Game Code Sections 1600–1603, and the Regional Water Quality Control Board pursuant to Clean Water Act Section 401 and the Porter–Cologne Water Quality Control Act. See Attachment D for additional detail regarding California Department of Fish and Wildlife and Regional Water Quality Control Board jurisdictional areas.

Item 20: Digital Data

GIS data of the review area and potential aquatic resources regulated by USACE will be shared via a zip file.

Sincerely,



Britney Strittmater
Biologist

Atts.: A, USACE Regulatory Program Approved Jurisdictional Determination Form and Request for a Jurisdictional Determination
B, Figures
C, Antecedent Precipitation Tool
D, California Department of Fish and Wildlife and Regional Water Quality Control Board Jurisdictional Resources
E, Photographs
F, OHWM Datasheets

References Cited

- RWQCB (State of California, Regional Water Quality Control Board, Lahontan Region). 2021. *Water Quality Control Plan for the Lahontan Region North and South Basins*. Effective March 31, 1995; last amended September 22, 2021. https://www.waterboards.ca.gov/lahontan/water_issues/programs/basin_plan/references.html.
- UCD SIG (University of California Davis Sustainability Indicators Group). 2021. “Oro Grande Wash.” California Water Sustainability. Accessed July 2021. <https://indicators.ucdavis.edu/cwip/huc/180902080704>.
- USACE (U.S. Army Corps of Engineers). 1987. *Corps of Engineers Wetlands Delineation Manual*. Online ed. Environmental Laboratory, Wetlands Research Program Technical Report Y-87-1. Vicksburg, Mississippi: U.S. Army Engineer Waterways Experiment Station. January 1987. <http://www.cpe.rutgers.edu/Wetlands/1987-Army-Corps-Wetlands-Delineation-Manual.pdf>.
- USACE. 2008a. *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region* (Version 2.0). Environmental Laboratory, ERDC/EL TR-08-28. Vicksburg, Mississippi: U.S. Army Engineer Research and Development Center. September 2008. https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1046489.pdf.

- USACE. 2008b. *A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States: A Delineation Manual*. ERDC/CRREL TR-08-12. Prepared by R.W. Lichvar and S.M. McColley. Hanover, New Hampshire: U.S. Army Engineer Research and Development Center, Cold Regions Research and Engineering Laboratory. August 2008. <https://apps.dtic.mil/dtic/tr/fulltext/u2/a486603.pdf>.
- USACE. 2016. *Minimum Standards for Acceptance of Aquatic Resources Delineation Reports*. Sacramento, California: USFWS, Sacramento District. January 2016. https://www.spk.usace.army.mil/Portals/12/documents/regulatory/jd/minimum-standards/Minimum_Standards_for_Delineation_with_Template-final.pdf.
- USDA (U.S. Department of Agriculture). 2022. Web Soil Survey. USDA Natural Resources Conservation Service, Soil Survey Staff. Accessed May 2022. <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>.
- USGS (U.S. Geological Survey). 2022. Flow Lines, Water Points, Watershed Boundaries for Hydrologic Units, Water Bodies (GIS data). National Hydrology Dataset. Last accessed November 2021. <http://nhd.usgs.gov/>.

Attachment A

USACE Regulatory Program Approved Jurisdictional
Determination Form and Request for a
Jurisdictional Determination

Appendix 1 - REQUEST FOR CORPS JURISDICTIONAL DETERMINATION (JD)

To: District Name Here

- I am requesting a JD on property located at: NE of 12221 Poplar St.
(Street Address)
City/Township/Parish: Hesperia County: San Bernardino State: CA
Acreage of Parcel/Review Area for JD: 160
Section: 22 Township: 4N Range: 5W
Latitude (decimal degrees): 34.416859 Longitude (decimal degrees): -117.392611
(For linear projects, please include the center point of the proposed alignment.)
- Please attach a survey/plat map and vicinity map identifying location and review area for the JD.
- ☐ I currently own this property. ☐ I plan to purchase this property.
☒ I am an agent/consultant acting on behalf of the requestor.
☐ Other (please explain): _____.
- Reason for request: (check as many as applicable)
☐ I intend to construct/develop a project or perform activities on this parcel which would be designed to avoid all aquatic resources.
☒ I intend to construct/develop a project or perform activities on this parcel which would be designed to avoid all jurisdictional aquatic resources under Corps authority.
☐ I intend to construct/develop a project or perform activities on this parcel which may require authorization from the Corps, and the JD would be used to avoid and minimize impacts to jurisdictional aquatic resources and as an initial step in a future permitting process.
☐ I intend to construct/develop a project or perform activities on this parcel which may require authorization from the Corps; this request is accompanied by my permit application and the JD is to be used in the permitting process.
☐ I intend to construct/develop a project or perform activities in a navigable water of the U.S. which is included on the district Section 10 list and/or is subject to the ebb and flow of the tide.
☐ A Corps JD is required in order to obtain my local/state authorization.
☒ I intend to contest jurisdiction over a particular aquatic resource and request the Corps confirm that jurisdiction does/does not exist over the aquatic resource on the parcel.
☐ I believe that the site may be comprised entirely of dry land.
☐ Other: _____
- Type of determination being requested:
☒ I am requesting an approved JD.
☐ I am requesting a preliminary JD.
☐ I am requesting a "no permit required" letter as I believe my proposed activity is not regulated.
☐ I am unclear as to which JD I would like to request and require additional information to inform my decision.

By signing below, you are indicating that you have the authority, or are acting as the duly authorized agent of a person or entity with such authority, to and do hereby grant Corps personnel right of entry to legally access the site if needed to perform the JD. Your signature shall be an affirmation that you possess the requisite property rights to request a JD on the subject property.

*Signature: _____ Date: _____

- Typed or printed name: Dana Whitmer
Company name: Poplar 18, LLC
Address: 14180 Dallas Parkway, Suite 730
Dallas, TX 75254
Daytime phone no.: 949-514-0274
Email address: dana@mcwhitproperties.com

***Authorities:** Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413; Regulatory Program of the U.S. Army Corps of Engineers; Final Rule for 33 CFR Parts 320-332.

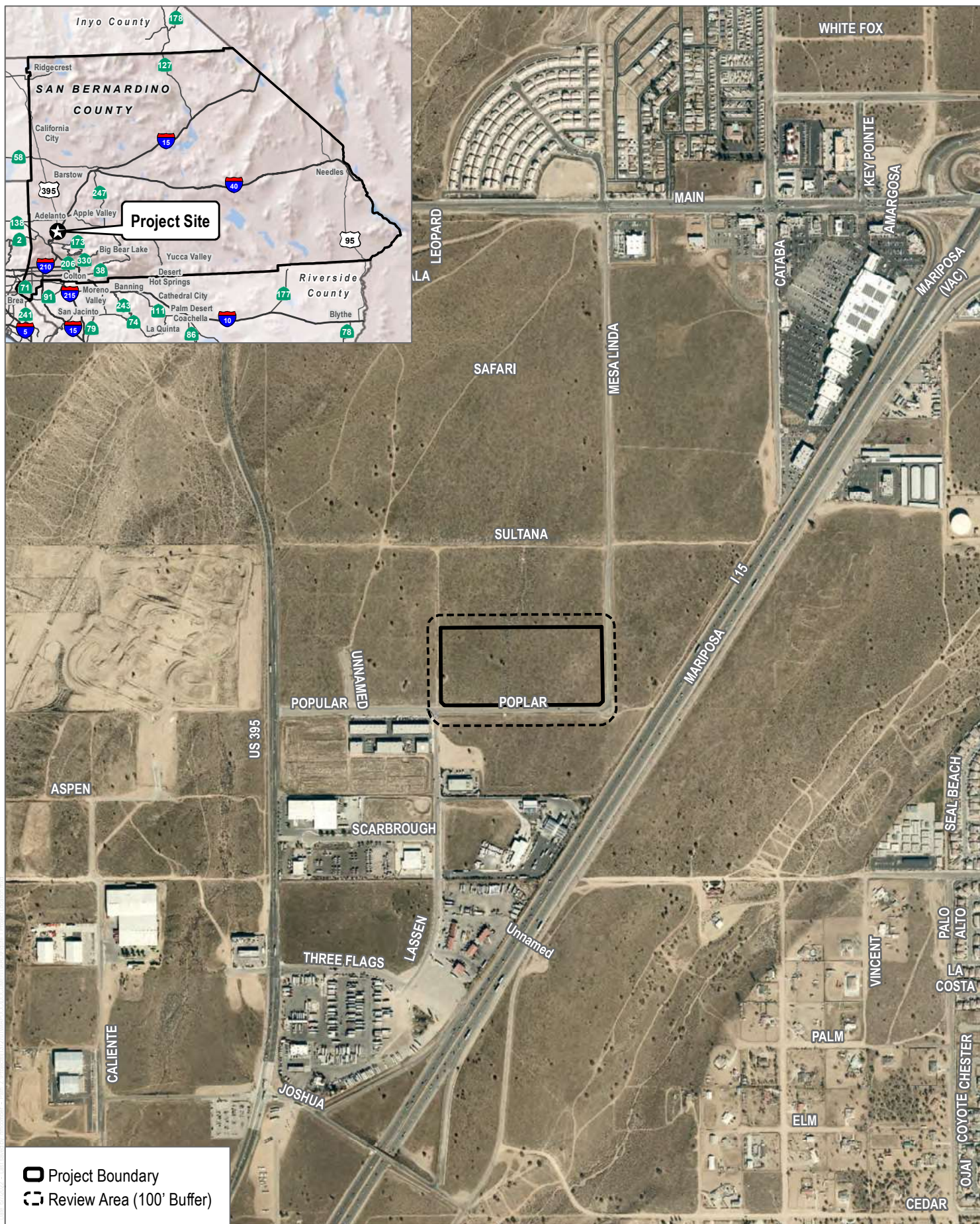
Principal Purpose: The information that you provide will be used in evaluating your request to determine whether there are any aquatic resources within the project area subject to federal jurisdiction under the regulatory authorities referenced above.

Routine Uses: This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public, and may be made available as part of a public notice as required by federal law. Your name and property location where federal jurisdiction is to be determined will be included in the approved jurisdictional determination (AJD), which will be made available to the public on the District's website and on the Headquarters USACE website.

Disclosure: Submission of requested information is voluntary; however, if information is not provided, the request for an AJD cannot be evaluated nor can an AJD be issued.

Attachment B

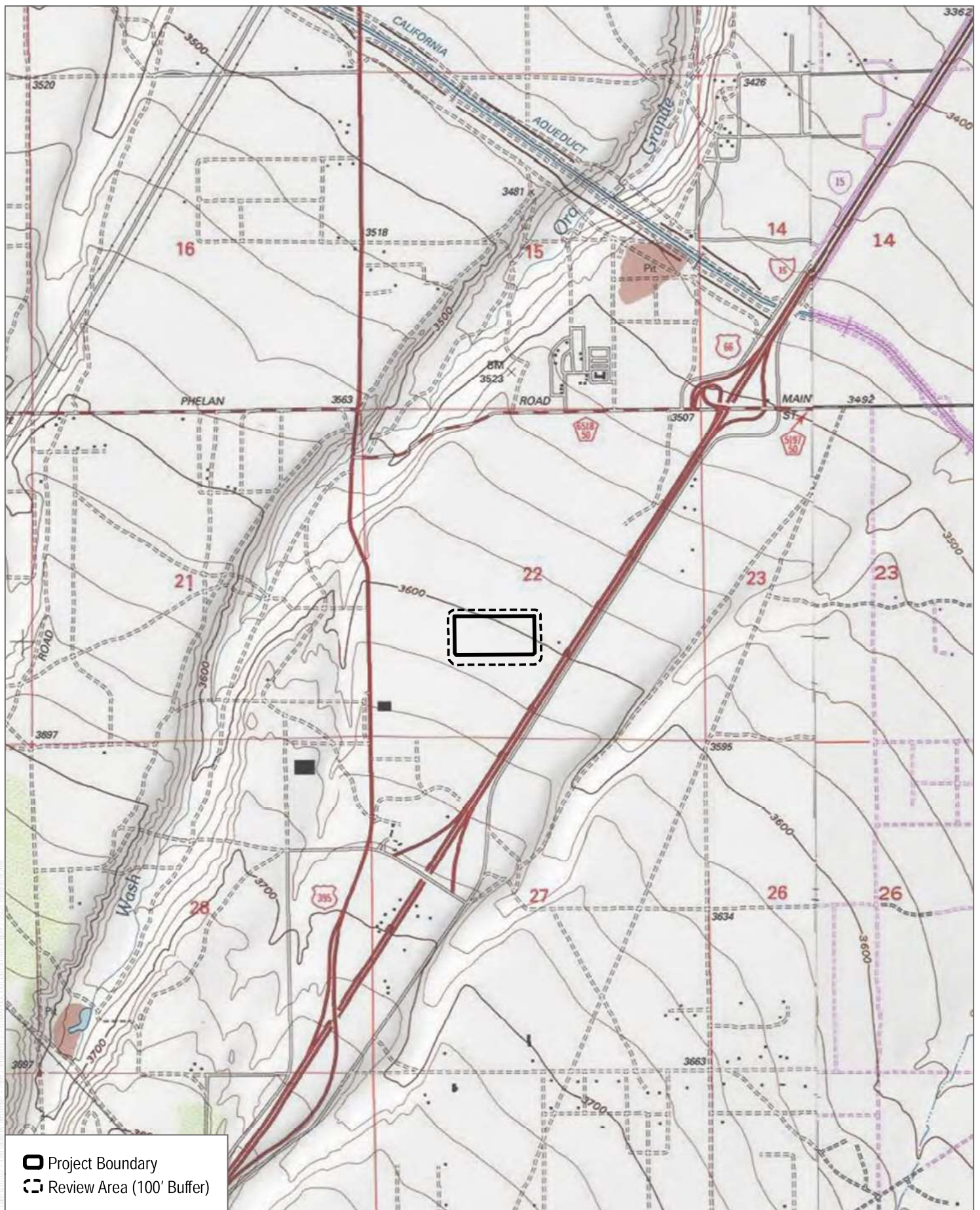
Figures



SOURCE: Bing Maps; County of San Bernardino 2017

FIGURE 1

Project Location

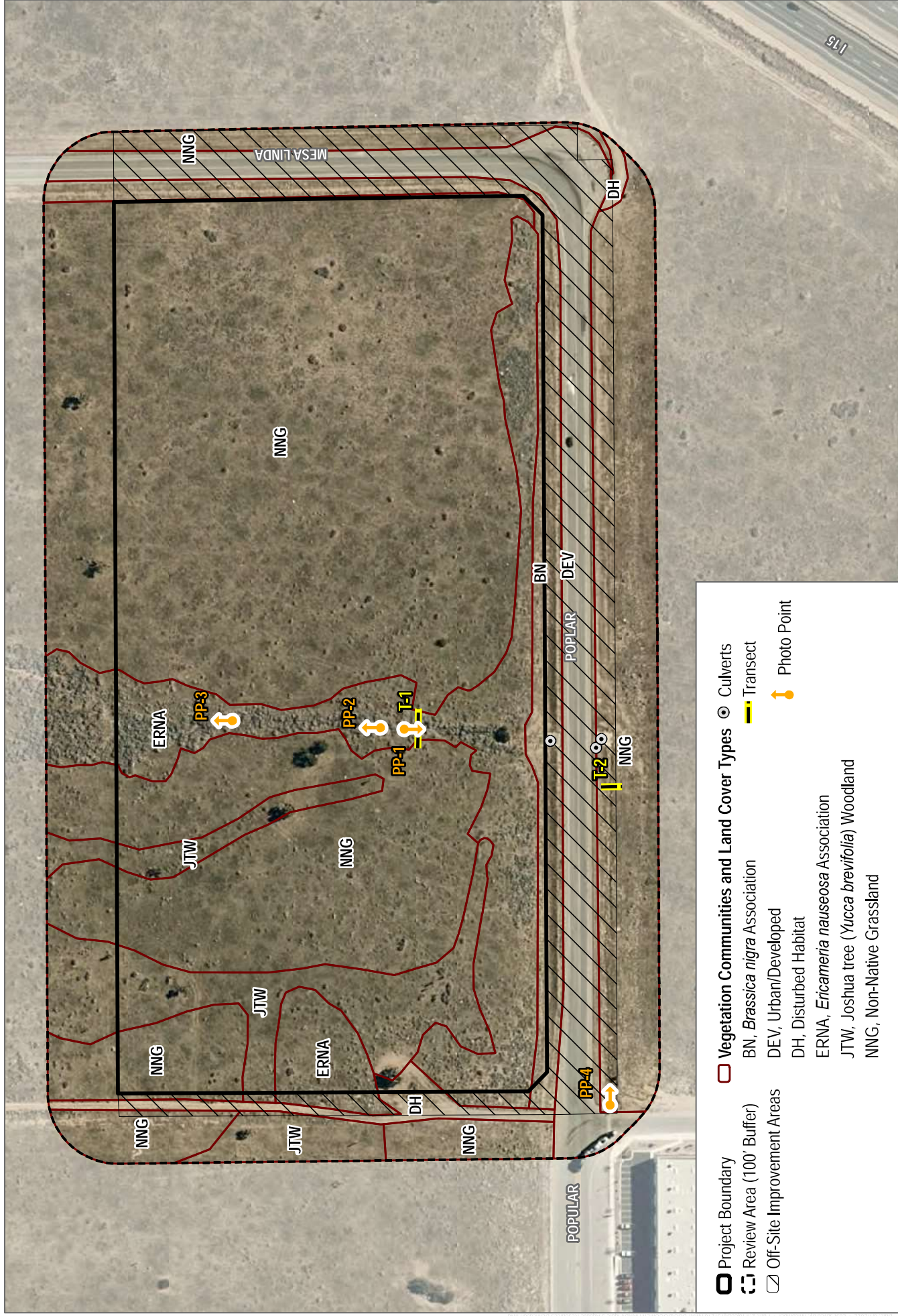


SOURCE: USA Topo Maps 7.5 Minute Quadrangle Baldy Mesa Series
Township 4N; Range 5W; Section 22

FIGURE 2

USGS Topographic Map

Aquatic Resources Delineation Report for the Poplar 18 Project



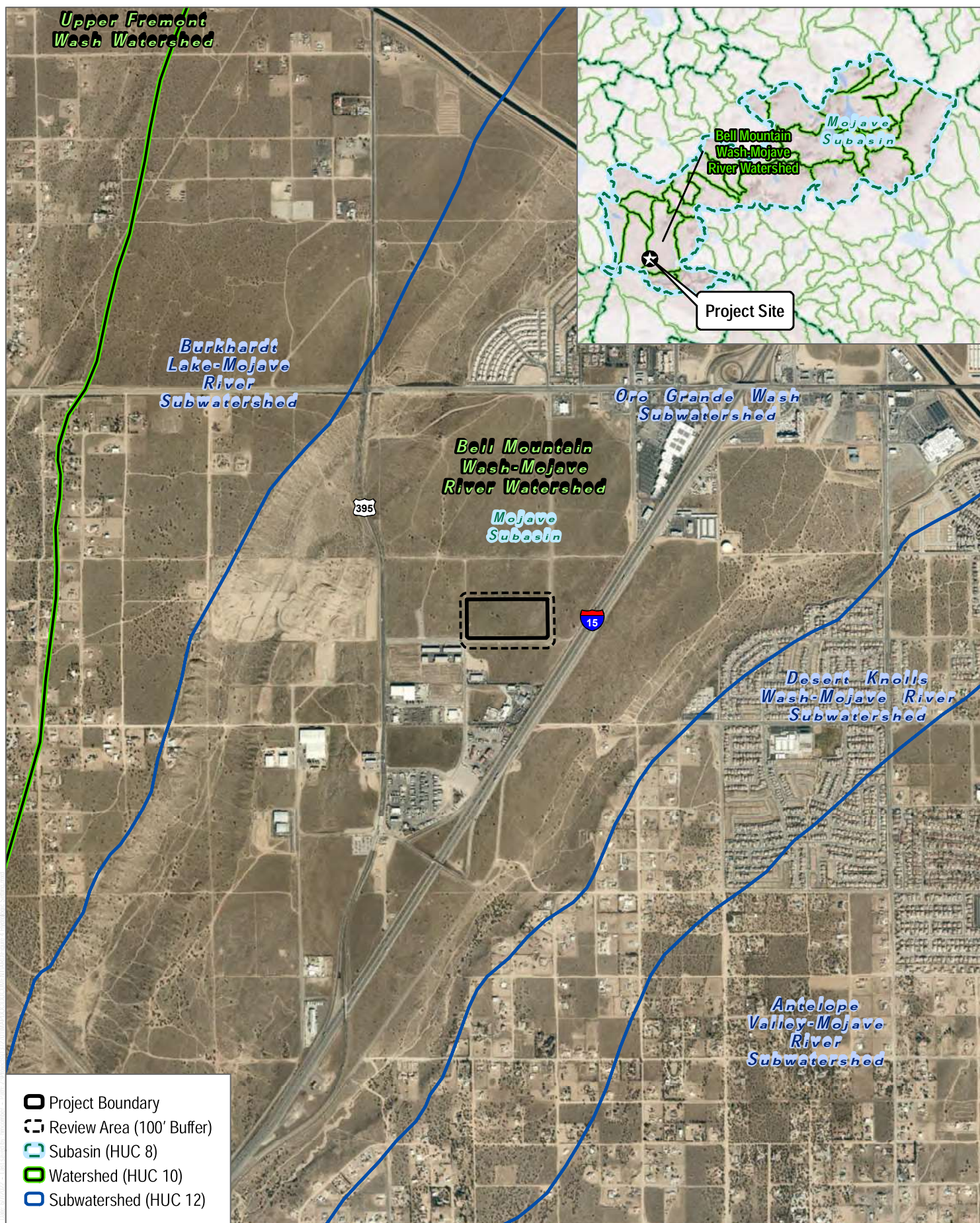
SOURCE: Bing Maps; County of San Bernardino 2017



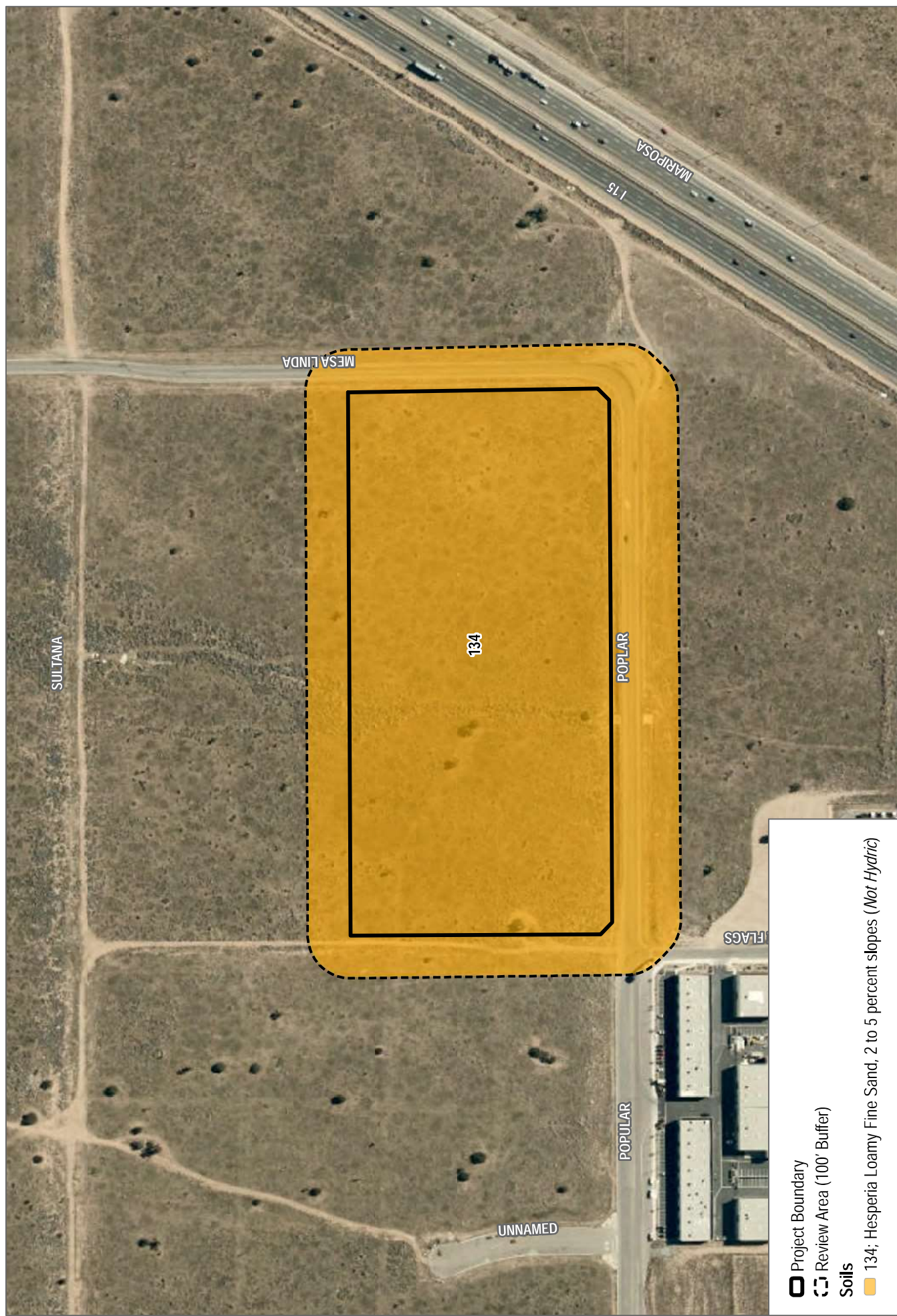
FIGURE 3

Aquatic Resources Delineation

Aquatic Resources Delineation Report for Poplar 18 Project



SOURCE: Bing Maps; County of San Bernardino 2017; USGS 2021

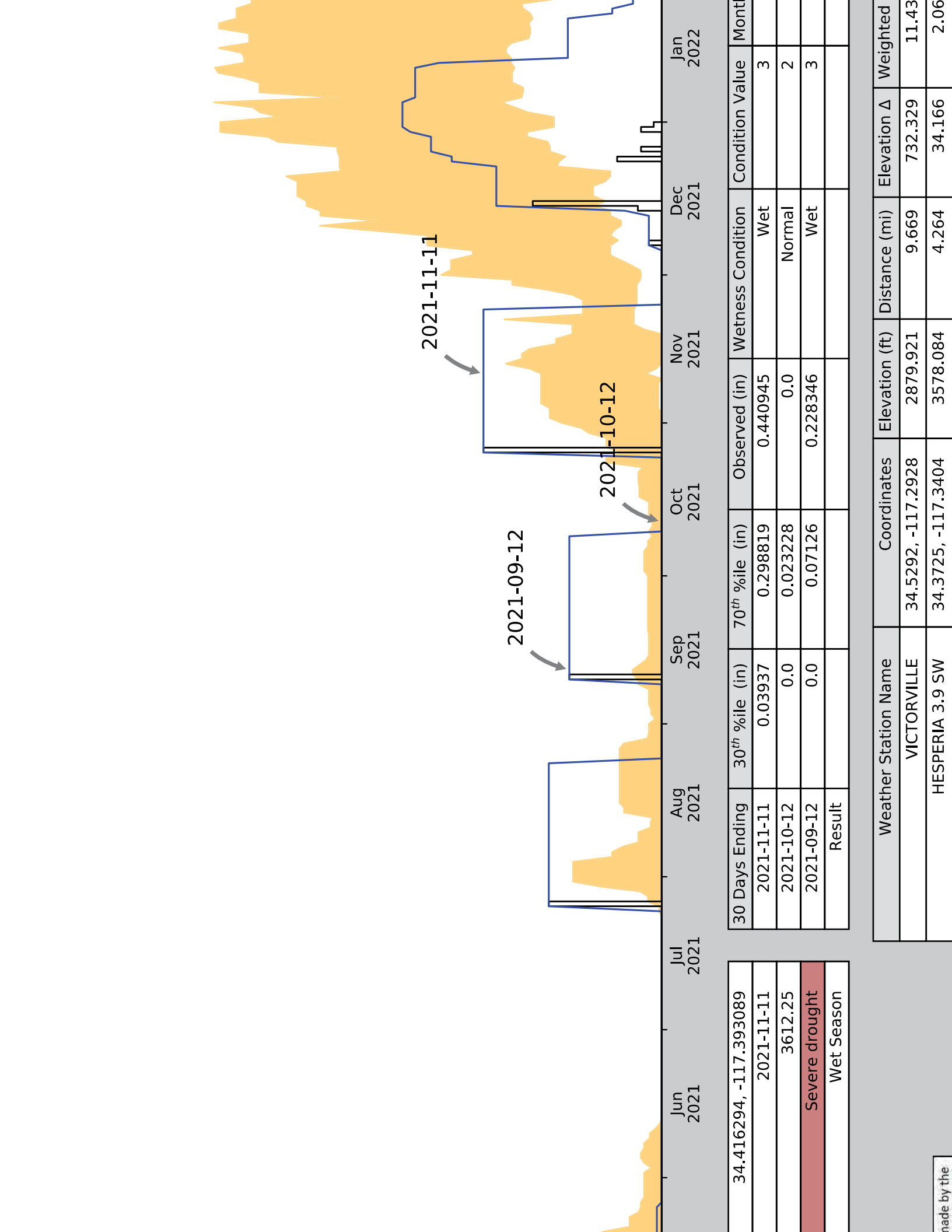


SOURCE: Bing Maps; County of San Bernardino 2017; USDA SSURGO 2020

Soils
Aquatic Resources Delineation Report for Poplar 18 Project

Attachment C

Antecedent Precipitation Tool



Attachment D

California Department of Fish and Wildlife and
Regional Water Quality Control Board
Jurisdictional Resources

Methods

Dudek biologist Tracy Park conducted an aquatic resources delineation for the review area. Table 1 provides the survey date and conditions for the survey. Figure D-1, CDFW and RWQCB Aquatic Resources, depicting waters of the state, is provided at the end of this attachment.

Table 1. Schedule of the Jurisdictional Delineation

Date	Hours	Personnel	Conditions
11/11/2021	9:58 AM–12:15 PM	Tracy Park	71°F –72°F; 0% cloud cover; 1–5 mph wind

Jurisdictional boundaries were mapped in the field using an ESRI Collector mobile application with sub-meter accuracy and aerial imagery. Following the fieldwork, aquatic resources were digitized using ArcGIS.

The jurisdiction-specific methods used to delineate California Department of Fish and Wildlife (CDFW) and Regional Water Quality Control Board (RWQCB) jurisdiction are described below.

CDFW Jurisdiction Methods

The delineation defined areas under the jurisdiction of CDFW pursuant to Sections 1600–1603 of the California Fish and Game Code. CDFW asserts jurisdiction over rivers, streams, lakes, and riparian vegetation associated with these features. A predominance of hydrophytic vegetation, where associated with a stream channel, was used to determine CDFW-regulated riparian areas. Streambeds under the jurisdiction of CDFW were delineated using the Cowardin method of waters classification, which defines waters boundaries by a single parameter (i.e., hydric soils, hydrophytic vegetation, or hydrology). Additionally, waters of the state were delineated based on watercourse characteristics present in the field, which include surface flow, sediment transportation and sorting, physical indicators of channel forms, channel morphology, and riparian habitat associated with a streambed.

RWQCB Jurisdiction Methods

The RWQCB typically asserts jurisdiction over the same areas as the U.S. Army Corps of Engineers (USACE). Guidance from USACE was used to determine the extent of resources regulated by the RWQCB under the Porter-Cologne Act and are described below. Non-wetland waters subject to RWQCB jurisdiction were delineated based on the presence of an ordinary high water mark, as determined by USACE guidance, or any other surface water regulated under the Porter-Cologne Act. Wetland waters subject to RWQCB jurisdiction were assessed based on methods described in the 1987 Corps of Engineers Wetlands Delineation Manual (USACE 1987) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (USACE 2008a). A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States (USACE 2008b) and the Updated Datasheet for the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States (USACE 2010) were reviewed to assist in determining the limits of non-wetland waters under the jurisdiction of the RWQCB. In 2019, the State Water Resources Control Board issued the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (SWRCB 2021). These procedures define wetlands that encompass “the full range of wetland types commonly recognized in California, including some features not protected under federal law, and reflects current scientific

understanding of the formation and functioning of wetlands.” Per the State Water Resources Control Board, “An area is wetland if, under normal circumstances, (1) the area has continuous or recurrent saturation of the upper substrate caused by groundwater, or shallow surface water, or both; (2) the duration of such saturation is sufficient to cause anaerobic conditions in the upper substrate; and (3) the area’s vegetation is dominated by hydrophytes or the area lacks vegetation.”

Results

There is 0.06 acres of RWQCB and/or CDFW jurisdictional resources in the review area (Table 2). Figure D-1 shows all aquatic resources identified within the review area.

Table 2. California Department of Fish and Wildlife and Regional Water Quality Control Board Jurisdictional Resources

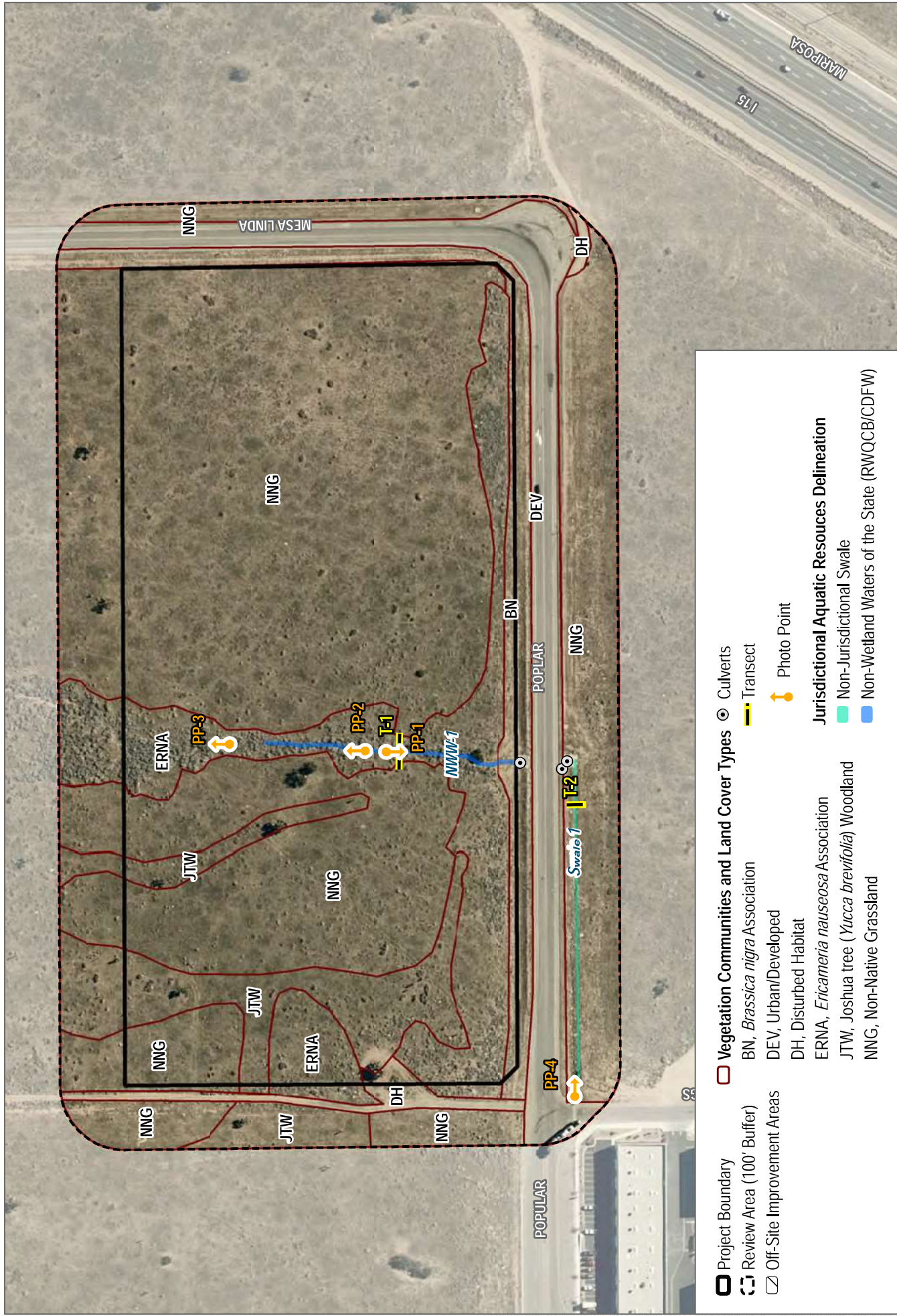
CDFW Type	RWQCB Type	Total (acres)
Waters of the State (RWQCB and CDFW)		
Streambed	Non-wetland waters	0.06
<i>Subtotal CDFW and RWQCB Jurisdictional Resources</i>		<i>0.06</i>
Grand Total		0.06

CDFW = California Department of Fish and Wildlife; RWQCB = Regional Water Quality Control Board.

References

- SWRCB (State Water Resources Control Board). 2021. *State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State*. Adopted April 2, 2019; revised April 6, 2021. https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/procedures_conformed.pdf.
- USACE (U.S. Army Corps of Engineers). 1987. *Corps of Engineers Wetlands Delineation Manual*. Online ed. Environmental Laboratory, Wetlands Research Program Technical Report Y-87-1. Vicksburg, Mississippi: U.S. Army Engineer Waterways Experiment Station. January 1987. <http://www.cpe.rutgers.edu/Wetlands/1987-Army-Corps-Wetlands-Delineation-Manual.pdf>.
- USACE. 2008a. *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0)*. Environmental Laboratory, ERDC/EL TR-08-28. Vicksburg, Mississippi: U.S. Army Engineer Research and Development Center. September 2008. https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1046489.pdf.
- USACE. 2008b. *A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States: A Delineation Manual*. ERDC/CRREL TR-08-12. Prepared by R.W. Lichvar and S.M. McColley. Hanover, New Hampshire: U.S. Army Engineer Research and Development Center, Cold Regions Research and Engineering Laboratory. August 2008. <https://apps.dtic.mil/dtic/tr/fulltext/u2/a486603.pdf>.

USACE. 2010. *Updated Datasheet for the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States*. Wetland Regulatory Assistance Program, ERDC/CRREL TN-10-1. Prepared by K.E. Curtis and R.W. Lichvar. Hanover, New Hampshire: U.S. Army Engineer Research and Development Center Cold Regions Research and Engineering Laboratory. July 2010.



SOURCE: Bing Maps; County of San Bernardino 2017



FIGURE D1
CDFW and RWQCB Aquatic Resources
 Biological Resources Technical Report for Poplar 18 Project

Attachment E

Photographs



PP-1. NWW-1 facing south.



PP-2. NWW-1 facing north.



PP-3. Facing north. No OHWM indicators present; flows assumed to dissipate as sheetflow through area.



PP-4. Swale facing east; no OHWM indicators present.

Attachment F

OHWM Datasheets

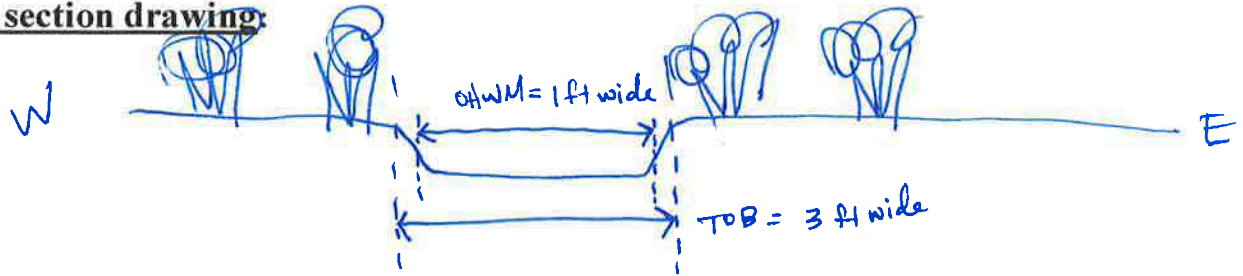
Arid West Ephemeral and Intermittent Streams OHEM Datasheet

Project: <u>Poplar 18 Industrial Project</u> Project Number: <u>13727</u> Stream: <u>NWW-1</u> Investigator(s): <u>TKP</u>		Date: <u>11 Nov 2021</u> Time: <u> </u> Town: <u>Hesperia</u> State: <u>CA</u> Photo begin file#: <u> </u> Photo end file#: <u> </u>	
Y ☒ / N ☐ Do normal circumstances exist on the site? Y ☐ / N ☒ Is the site significantly disturbed?		Location Details: <u>Drainage north of Poplar</u> Projection: Datum: Coordinates: <u>34.41643735°N 117.39307598°W</u>	
Potential anthropogenic influences on the channel system: <u>Drainage is located adjacent to a paved road and likely collects runoff.</u> <u>Littering and trash dumping observed within feature</u>			
Brief site description: <u>NWW-1 is located at the approximate center of the project site, with higher elevations along the southern boundary. Any flow likely travels from Poplar Street to the center of the site. NWW-1 runs S-N.</u>			
Checklist of resources (if available): ☒ Aerial photography Dates: <u>1994-2020; 1938-2018</u> ☒ Topographic maps ☐ Geologic maps ☒ Vegetation maps ☒ Soils maps ☐ Rainfall/precipitation maps ☐ Existing delineation(s) for site ☒ Global positioning system (GPS) ☐ Other studies ☐ Stream gage data Gage number: _____ Period of record: _____ ☐ History of recent effective discharges ☐ Results of flood frequency analysis ☐ Most recent shift-adjusted rating ☐ Gage heights for 2-, 5-, 10-, and 25-year events and the most recent event exceeding a 5-year event			
Hydrogeomorphic Floodplain Units 			
Procedure for identifying and characterizing the floodplain units to assist in identifying the OHWM: 1. Walk the channel and floodplain within the study area to get an impression of the geomorphology and vegetation present at the site. 2. Select a representative cross section across the channel. Draw the cross section and label the floodplain units. 3. Determine a point on the cross section that is characteristic of one of the hydrogeomorphic floodplain units. a) Record the floodplain unit and GPS position. b) Describe the sediment texture (using the Wentworth class size) and the vegetation characteristics of the floodplain unit. c) Identify any indicators present at the location. 4. Repeat for other points in different hydrogeomorphic floodplain units across the cross section. 5. Identify the OHWM and record the indicators. Record the OHWM position via: ☐ Mapping on aerial photograph ☐ Digitized on computer ☒ GPS ☐ Other: _____			

Project ID: 13727 Cross section ID: T-1

Date: 11 Nov 2021 Time: _____

Cross section drawing:



OHWM

GPS point: T-1

Indicators:

- | | |
|--|---|
| ☒ Change in average sediment texture | ☒ Break in bank slope |
| ☒ Change in vegetation species | ☐ Other: _____ |
| ☒ Change in vegetation cover | ☐ Other: _____ |

Comments: Erin au on top of bank. finer sediment within drainage.

Floodplain unit: ☒ Low-Flow Channel ☒ Active Floodplain ☐ Low Terrace

GPS point: T-1

Characteristics of the floodplain unit:

Average sediment texture: fine sand/silt

Total veg cover: 30% Tree: 0% Shrub: 0% Herb: 30%

Community successional stage:

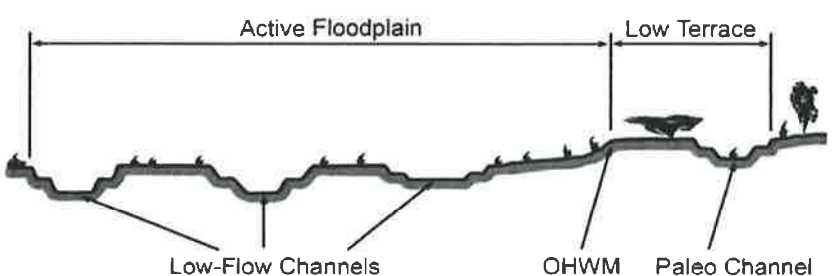
- | | |
|--|--|
| ☐ NA | ☐ Mid (herbaceous, shrubs, saplings) |
| ☒ Early (herbaceous & seedlings) | ☐ Late (herbaceous, shrubs, mature trees) |

Indicators:

- | | |
|--|---|
| ☐ Mudcracks | ☐ Soil development |
| ☐ Ripples | ☐ Surface relief |
| ☐ Drift and/or debris | ☐ Other: _____ |
| ☒ Presence of bed and bank | ☐ Other: _____ |
| ☒ Benches | ☐ Other: _____ |

Comments: Non-native Bromes and Hornmud made up vegetation within drainage.

Arid West Ephemeral and Intermittent Streams OHWM Datasheet

Project: <u>Poplar 18 Industrial Project</u> Project Number: <u>13727</u> Stream: <u>swale 1</u> Investigator(s): <u>TKP</u>		Date: <u>11 Nov 2021</u> Time: <u>—</u> Town: <u>Hesperia</u> State: <u>CA</u> Photo begin file#: <u>—</u> Photo end file#: <u>—</u>	
Y ☒ / N ☐ Do normal circumstances exist on the site? Y ☐ / N ☒ Is the site significantly disturbed?		Location Details: <u>swale south of Poplar</u> Projection: Datum: Coordinates: <u>34.41568070°N 117.39335463°W</u>	
Potential anthropogenic influences on the channel system: <u>swale is located adjacent to road and likely collects runoff. Littering and trash dumping observed.</u>			
Brief site description: <u>swale is located adjacent to a paved road and parking lot for an industrial business. swale runs E-W.</u>			
Checklist of resources (if available): ☒ Aerial photography Dates: <u>1994-2020; 1938-2018</u> ☒ Topographic maps ☐ Geologic maps ☒ Vegetation maps ☒ Soils maps ☐ Rainfall/precipitation maps ☐ Existing delineation(s) for site ☒ Global positioning system (GPS) ☐ Other studies ☐ Stream gage data Gage number: Period of record: ☐ History of recent effective discharges ☐ Results of flood frequency analysis ☐ Most recent shift-adjusted rating ☐ Gage heights for 2-, 5-, 10-, and 25-year events and the most recent event exceeding a 5-year event			
Hydrogeomorphic Floodplain Units 			
Procedure for identifying and characterizing the floodplain units to assist in identifying the OHWM: - Walk the channel and floodplain within the study area to get an impression of the geomorphology and vegetation present at the site. - Select a representative cross section across the channel. Draw the cross section and label the floodplain units. - Determine a point on the cross section that is characteristic of one of the hydrogeomorphic floodplain units. - Record the floodplain unit and GPS position. - Describe the sediment texture (using the Wentworth class size) and the vegetation characteristics of the floodplain unit. - Identify any indicators present at the location. - Repeat for other points in different hydrogeomorphic floodplain units across the cross section. - Identify the OHWM and record the indicators. Record the OHWM position via: ☐ Mapping on aerial photograph ☐ Digitized on computer ☒ GPS ☐ Other:			

Project ID: 13727 Cross section ID: T-2

Date: 11 Nov 2021 Time: —

Cross section drawing:



OHWM

GPS point: T-2

Indicators:

- ☐ Change in average sediment texture
- ☐ Change in vegetation species
- ☐ Change in vegetation cover

- ☒ Break in bank slope
- ☐ Other: _____
- ☐ Other: _____

Comments:

No OHWM indicators observed except slight
depressional channel, likely built to capture runoff from road.

Floodplain unit:

☐ Low-Flow Channel

☐ Active Floodplain

☐ Low Terrace

GPS point: _____

Characteristics of the floodplain unit:

Average sediment texture: _____

Total veg cover: _____ % Tree: _____ % Shrub: _____ % Herb: _____ %

Community successional stage:

- ☐ NA
- ☐ Early (herbaceous & seedlings)
- ☐ Mid (herbaceous, shrubs, saplings)
- ☐ Late (herbaceous, shrubs, mature trees)

Indicators:

- ☐ Mudcracks
- ☐ Ripples
- ☐ Drift and/or debris
- ☐ Presence of bed and bank
- ☐ Benches

- ☐ Soil development
- ☐ Surface relief
- ☐ Other: _____
- ☐ Other: _____
- ☐ Other: _____

Comments:



SOURCE: Bing Maps; County of San Bernardino 2017



DUDEK



PP-1. Facing north. Feature dissipates and no OHWM indicators present.



PP-2. Facing north, Sultana Street in background. No OHWM indicators present. High foot-traffic and trails within the area.



PP-3. Facing southeast. No OHWM indicators present. High foot-traffic and trails within the area.



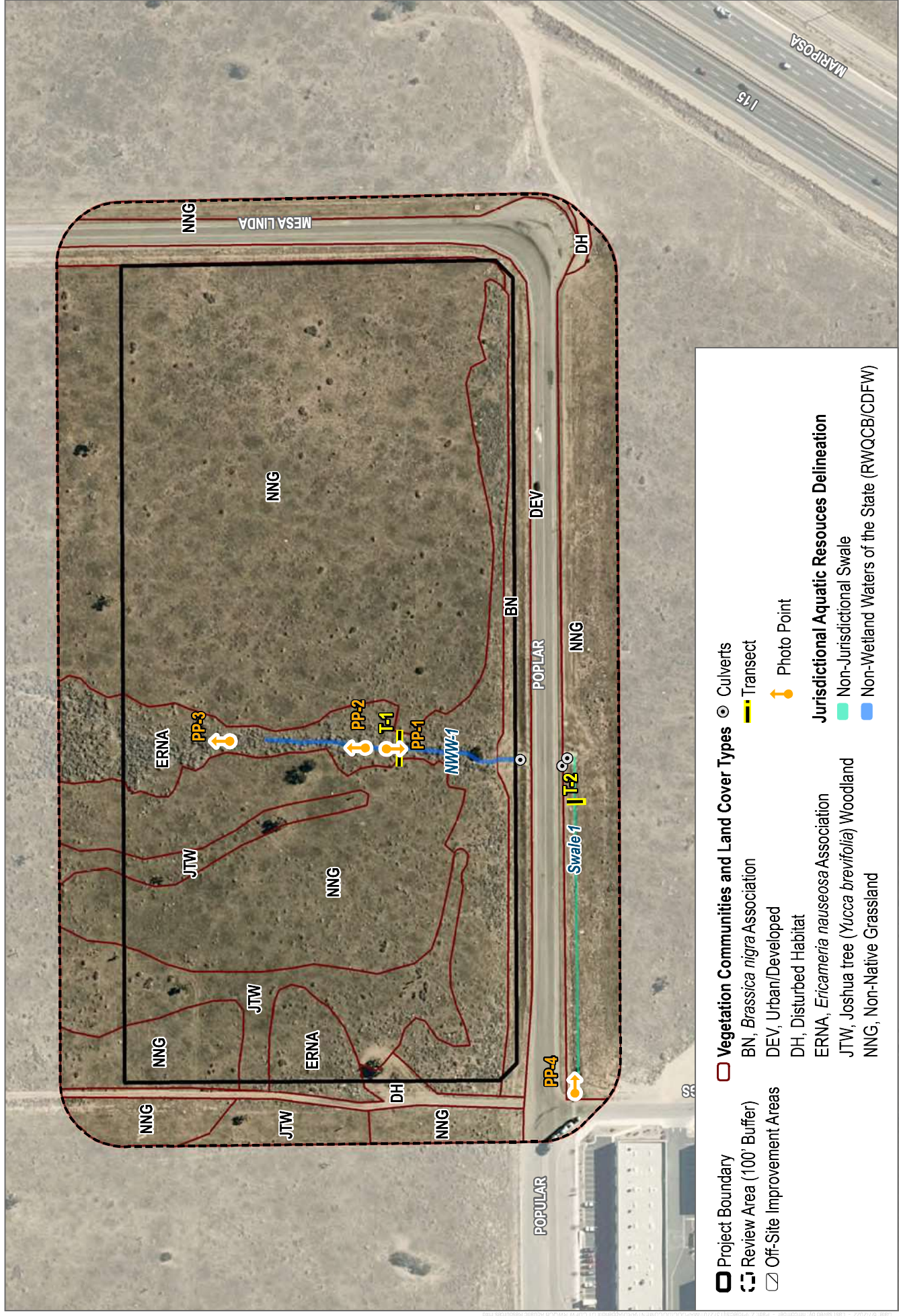
PP-4. Facing north; Sultana Street in background. No OHWM indicators present. High foot-traffic and trails within the area, along with excessive dumping. No culverts or storm drains at Sultana Road.



PP-5. Facing south. No OHWM indicators present. High foot-traffic and trails within the area, along with excessive dumping. No culverts or storm drains at Sultana Road.



PP-6. Facing northwest. No OHWM indicators present.



SOURCE: Bing Maps; County of San Bernardino 2017



FIGURE D1
CDFW and RWQCB Aquatic Resources
Biological Resources Technical Report for Poplar 18 Project

Attachment E

Photographs



PP-1. NWW-1 facing south.



PP-2. NWW-1 facing north.



PP-3. Facing north. No OHWM indicators present; flows assumed to dissipate as sheetflow through area.



PP-4. Swale facing east; no OHWM indicators present.

3. Response to Comments

This chapter of the Final Environmental Impact Report (EIR) for the Poplar 18 Project (Project) includes a copy of all comment letters that were submitted during the public review period for the DEIR, along with responses to comments in accordance with California Environmental Quality Act (CEQA) Guidelines Section 15088. The 45-day review period for the Draft Environmental Impact Report (DEIR) began on June 2, 2023, and ended on July 17, 2023.

The responses amplify or clarify information provided in the DEIR and/or refer the reader to the appropriate place in the document where the requested information can be found. Comments that are not directly related to environmental issues (e.g., opinions on the merits of the Project unrelated to its environmental impacts) are noted for the record. Where text changes in the DEIR are warranted based on comments received, updated Project information, or other information provided by City staff, those changes are noted in the response to comment and the reader is directed to Chapter 2, Changes to the DEIR, of this Final Environmental Impact Report (FEIR).

These changes to the analysis contained in the DEIR represent only minor clarifications/amplifications and do not constitute significant new information. In accordance with CEQA Guidelines Section 15088.5, recirculation of the DEIR is not required.

All written comments on the DEIR are listed in Table 3-1. All comment letters received on the DEIR have been coded with a number to facilitate identification and tracking. The comment letters were reviewed and divided into individual comments, with each comment containing a single theme, issue, or concern. Individual comments and the responses to them were assigned corresponding numbers. To aid readers and commenters, electronically bracketed comment letters have been reproduced in this document and are included as Appendix A, with the corresponding responses provided immediately following each comment letter. The interested parties listed in Table 3-1 submitted letters during the public review period for the DEIR.

Table 3-1. Comments Received on the DEIR

Comment Letter	Commenter	Date
1	Golden State Environmental Justice Alliance	July 12, 2023
2	CDFW	July 17, 2023
3	Center for Biological Diversity	July 17, 2023
4	CARE CA	July 17, 2023

To finalize the EIR for the Project, the following responses were prepared to address comments that were received during the public review period.

Comment Letter 1: Golden State Environmental Justice Alliance, dated July 12, 2023.

BLUM, COLLINS & HO LLP
 ATTORNEYS AT LAW
 AON CENTER
 707 WILSHIRE BOULEVARD
 SUITE 4880
 LOS ANGELES, CALIFORNIA 90017
 (213) 572-0400

July 12, 2023

Ryan Leonard, Senior Planner
 Planning Department, City of Hesperia
 9700 Seventh Avenue
 Hesperia, California 92345

VIA EMAIL TO:
 rleonard@cityofhesperia.us

Subject: COMMENTS ON MESA LINDA STREET DEVELOPMENT EIR
 (SCH NO. 2022090381)

Dear Mr. Leonard,

Thank you for the opportunity to comment on the Environmental Impact Report (EIR) for the proposed Mesa Linda Street Development Project. Please accept and consider these comments on behalf of Golden State Environmental Justice Alliance. Also, Golden State Environmental Justice Alliance formally requests to be added to the public interest list regarding any subsequent environmental documents, public notices, public hearings, and notices of determination for this project. Send all communications to Golden State Environmental Justice Alliance P.O. Box 79222 Corona, CA 92877.

1.1

1.0 Summary

The project proposes the construction and operation of one 408,997 square foot (sf) industrial/warehouse building on an 18 acre site. The building consists of 396,997 sf of warehouse space and 12,000 sf of office space. The building includes 54 truck/trailer loading dock doors and the site provides 57 truck/trailer parking stalls and 213 passenger vehicle parking stalls. The building has a maximum height of 55 feet and a gross floor area ratio of 0.52. The Project site has a General Plan land use designation of Main Street and Freeway Corridor Specific Plan (MSFC-SP). Within the MSFC-SP, the Project site is zoned as Commercial/Industrial Business Park (CIBP).

1.2

1.1 Project Piecemealing

The EIR does not accurately or adequately describe the project, meaning "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a

1.3

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reasonably foreseeable indirect physical change in the environment” (CEQA § 15378). The Mesa Linda Street Development project is a piecemealed portion of a larger overall project which included a SPLA to change the existing land use designations of the project site from Regional Commercial (RC) to Commercial Industrial Business Park (CIBP). SPLA19-00005 was approved by the City Council on January 7, 2020¹. The Analysis portion of the November 14, 2019 Planning Commission Staff Report for SPLA19-00005² states that:

“Over the past few months several developers have approached the City and expressed interest in developing the subject parcels. The development proposals range from light industrial uses, manufacturing uses and warehouse distribution centers. Because these types of uses are restricted in the Regional Commercial (RC) zone, staff has informed the prospective developers that a change of zone would be required for a development application to proceed.”

It is clear that SPLA 19-00005 is a separate project that was facilitated in order to accommodate the Mesa Linda Street Development project as the analysis references contact from a developer, express interest in development of industrial and warehousing uses on the specific area that corresponds to the project, and that staff informed the prospective developers that a change of zone would be required for a development application to proceed. The EIR misleads the public and decision makers by circumventing adequate and accurate environmental analysis for the whole of the action - changing the land use designations on the project site from RC to CIBP to accommodate industrial development and construction/operation of all Newcastle proposed projects. A project EIR must be prepared which accurately represents the whole of the action without piecemealing the project into separate legislative changes and a development project to present unduly low environmental impacts and avoid an adequate, accurate environmental analysis.

1.3 Cont.

3.0 Project Description

The EIR does not include a floor plan, detailed site plan, detailed building elevations, or a conceptual grading plan. The basic components of a Planning Application include a detailed site plan, floor plan, conceptual grading plan, written narrative, and detailed elevations. Additionally, the site plan provided in Figure 3-4 has been edited to remove pertinent information from public view. For example, it does not provide any detailed information such as earthwork quantity notes, parking requirements, or floor area ratio. The building elevations in Figure 3-5 are blurry and the

1.4

¹ January 7, 2020 City Council Staff Report and attachments for SPLA 19-00005
<https://hesperia.legistar.com/LegislationDetail.aspx?ID=4288931&GUID=6854D3F5-466A-4DCF-A7CA-B734FB618386&Option=&Search=>

² November 14, 2019 Planning Commission Staff Report and attachments for SPLA19-00005

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building heights are illegible. The Project Description states that “The Project would involve removal of existing site vegetation, grading and excavation of site soils to a depth of at least 7 feet below existing grade and to a depth of at least 3 feet below proposed pad grade and soils would be balanced on site,” and there is no method for the public or decision makers to verify this statement. The quantity of soil imported/exported from the project site contributes to the quantity of truck trips during the grading phase of construction and will increase project emissions. The EIR has excluded the proposed floor plan and detailed site plan from public review, which does not comply with CEQA’s requirements for adequate informational documents and meaningful disclosure (CEQA § 15121 and 21003(b)). Incorporation by reference (CEQA § 15150 (f)) is not appropriate as the floor plan, grading plan, and detailed site plan contribute directly to analysis of the problem at hand. The EIR must be revised to include all application items for review, analysis, and comment by the public and decision makers in their whole and true form in order to provide an adequate and accurate environmental analysis.

1.4 Cont.

The Project Description states that the gross floor area ratio is 52%. This exceeds the MSFCSP maximum gross floor area ratio of 50%. The EIR must be revised to include this information for discussion and analysis and include a finding of significance due to this inconsistency and the project’s size exceeding of the overall buildout of the MSFCP.

1.5

Further, the EIR does not provide a list of cumulative projects utilized in its analysis. Section 5.0 of the EIR states that the cumulative impacts subsection within each section of environmental analysis “describes the potential cumulative impacts that would occur from the Project’s environmental effects in combination with other cumulative projects (See Table 4-8).” However, Table 4-8 does not exist within the EIR. The EIR has excluded the list of projects utilized for cumulative analysis from public review, which does not comply with CEQA’s requirements for adequate informational documents and meaningful disclosure (CEQA § 15121 and 21003(b)). Incorporation by reference (CEQA § 15150 (f)) is not appropriate as the list of projects utilized for cumulative analysis contribute directly to analysis of the problem at hand. The EIR must be revised and recirculated to include the cumulative projects list for public review in order to provide an adequate informational document.

1.6

5.2 Air Quality, 5.5 Energy, and 5.6 Greenhouse Gas Emissions

Please refer to attachments from SWAPE for a complete technical commentary and analysis.

1.7

The EIR does not include for analysis relevant environmental justice issues in reviewing potential impacts, including cumulative impacts from the proposed project. According to CalEnviroScreen

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4.0³, CalEPA's screening tool that ranks each census tract in the state for pollution and socioeconomic vulnerability, the proposed project's census tract (6071010017) experiences high rates of pollution burden. The surrounding community, including residences to the east and south, bears the impact of multiple sources of pollution and is more polluted than average on several pollution indicators measured by CalEnviroScreen. For example, the project census tract ranks in the 97th percentile for ozone burden, the 63rd percentile for traffic impacts, and the 46th percentile for PM 2.5 burden. All of these environmental factors are typically attributed to heavy truck activity in the area. Traffic impacts represent the vehicles in a specified area, resulting in human exposures to chemicals that are released into the air by vehicle exhaust, as well as other effects related to large concentrations of motor vehicles⁴. Ozone can cause lung irritation, inflammation, and worsening of existing chronic health conditions, even at low levels of exposure⁵.

1.8 Cont.

Further, the census tract is a diverse community including 72% Hispanic, 4% African-American, and 4% Asian-American residents that are especially vulnerable to the impacts of pollution. The community has a high rate of low educational attainment, meaning 59% of the census tract over age 25 has not attained a high school diploma, which is an indication that they may lack health insurance or access to medical care. The community has a high rate of poverty, meaning 44% of the households in the census tract have a total income before taxes that is less than the poverty level. Income can affect health when people cannot afford healthy living and working conditions, nutritious food and necessary medical care⁶. Poor communities are often located in areas with high levels of pollution⁷. Poverty can cause stress that weakens the immune system and causes people to become ill from pollution⁸. Living in poverty is also an indication that residents may lack health insurance or access to medical care. Medical care is vital for this census tract as it ranks in the 80th percentile for incidence of cardiovascular disease and 45th percentile for incidence of asthma.

1.8 Cont.

California's Building Energy Code Compliance Software (CBECC) is the State's only approved energy compliance modeling software for non-residential buildings in compliance with Title 24⁹. CalEEMod is not listed as an approved software. The CalEEMod-based modeling in the EIR and

1.9

³ CalEnviroScreen 4.0 <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>

⁴ OEHHA CalEnviroScreen Report

<https://oehha.ca.gov/media/downloads/calenviroscreen/report/calenviroscreen40reportf2021.pdf>

⁵ OEHHA Ozone <https://oehha.ca.gov/calenviroscreen/indicator/air-quality-ozone>

⁶ OEHHA Poverty <https://oehha.ca.gov/calenviroscreen/indicator/poverty>

⁷ Ibid.

⁸ Ibid.

⁹ California Energy Commission 2022 Energy Code Compliance Software

<https://www.energy.ca.gov/programs-and-topics/programs/building-energy-efficiency-standards/2022-building-energy-efficiency-1>

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appendices does not comply with the 2022 Building Energy Efficiency Standards and under-reports the project's significant Energy impacts and fuel consumption to the public and decision makers. Since the EIR did not accurately or adequately model the energy impacts in compliance with Title 24, a finding of significance must be made. A revised EIR with modeling using the approved software (CBECC) must be circulated for public review in order to adequately analyze the project's significant environmental impacts. This is vital as the EIR utilizes CalEEMod as a source in its methodology and analysis, which is clearly not the approved software.

1.9 Cont.

The EIR also does not provide any background context of the required SPLA19-00005 to change the existing land use designations of the project site from Regional Commercial (RC) to Commercial Industrial Business Park (CIBP). The required General Plan Amendment to change the land use designation indicates that the growth proposed by the project was not accounted for in the AQMP, General Plan, MFCSP, or RTP/SCS. A revised EIR must include this information for discussion and analysis with a finding of significance.

1.10

5.9 Transportation

The VMT analysis concludes the project will result in less than significant impacts. Appendix H: VMT Analysis states that the analysis was prepared using "the San Bernardino County Transportation Analysis Model (SBTAM)" and that "to analyze the project trips, a new Traffic Analysis Zone, referred to as "Zone" hereafter, was added to the SBTAM model." The SBTAM modeling informs the VMT analysis Project Origin-Destination (OD) VMT per employee of 27.7, resulting in less than significant impacts. However, the SBTAM modeling input/outputs, and new Zone are not included for public review. This does not comply with CEQA's requirements for adequate informational documents and meaningful disclosure (CEQA § 15121 and 21003(b)). Incorporation by reference (CEQA § 15150 (f)) is not appropriate as the SBTAM modeling input/outputs, and new Zone contribute directly to analysis of the problem at hand. A revised EIR must be prepared to include the SBTAM modeling input/outputs, and new Zone for review, analysis, and comment by the public and decision makers.

1.11

Further, the MND has underreported the quantity VMT generated by the proposed project operations. The operational nature of industrial/warehouse uses involves high rates of truck/trailer/delivery van VMT due to traveling from large import hubs to regional distribution centers to smaller industrial parks and then to their final delivery destinations. Once employees arrive at work at the proposed project, they will conduct their jobs by driving delivery vans across the region as part of the daily operations as a warehouse, which will drastically increase project-generated VMT. The project's truck/trailer and delivery van activity is unable to utilize public transit or active transportation and it is misleading to the public and decision makers to exclude

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this activity from VMT analysis. The project's actual VMT generated is not consistent with the significance threshold and legislative intent of SB 743 to reduce greenhouse gas emissions by reducing VMT. An EIR must be prepared to reflect a quantified VMT analysis that includes all truck/trailer and delivery van activity.

1.12 Cont.

The EIR has not adequately analyzed the project's potential to substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses; or the project's potential to result in inadequate emergency access. The Traffic Appendix's Figure 2b: Truck Turning on Mesa Linda Driveway and Figure 2c: Truck Turning on Lassen Driveway shows lines that depict each of the trucks (1 truck exiting the site and 1 truck entering the site) overlapping while utilizing each of the driveways to access the proposed building. The overlapping lines mean that if two trucks were to enter and exit the site using the driveway at the same time, they would collide because there is not adequate maneuvering space. A finding of significance must be made as part of an EIR due to this.

1.13

There are no exhibits adequately depicting the onsite turning radius available for trucks maneuvering throughout the site. Notably, the truck/trailer parking stalls are adjacent to the south of the truck/trailer loading docks within the gated truck court. These parking stalls that may be in use at any time and further restrict truck/trailer movement. A revised EIR must be prepared to include a finding of significance due to these significant and unavoidable impacts.

1.14

Additionally, the EIR has not provided any analysis of the available horizontal and vertical sight distance at the intersection of the project driveways and adjacent streets. Sight distance is the continuous length of street ahead visible to the driver. At unsignalized intersections, corner sight distance must provide a substantially clear line of sight between the driver of the vehicle waiting on the minor road (driveway) and the driver of an approaching vehicle. The EIR defers this environmental analysis to after the CEQA public review process to the permitting phase by stating that "sight distance shall be evaluated in accordance with the City of Hesperia sight distance standards at the time of preparation of grading, street improvement, and landscaping plans." This does not comply with CEQA's requirements for adequate informational documents and meaningful disclosure (CEQA § 15121 and 21003(b)). A revised EIR must be prepared with this analysis based on the American Association of State Highway and Transportation Officials (AASHTO) Stopping Sight Distance requirements.

1.15

Table 5.9-1: Consistency with Transportation Plans and Policies finds that the project is consistent with five goals of Connect SoCal, resulting in less than significant impacts. The consistency analysis provided within the table is misleading to the public and decision makers and does not provide an adequate analysis of the proposed project. Due to errors in modeling, modeling

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without supporting evidence (as noted throughout this comment letter and attachments), and the EIR's conclusion that the project will result in significant and unavoidable cumulatively considerable impacts to Transportation, the proposed project is directly inconsistent with Goal 2 to improve mobility, accessibility, reliability, and travel safety for people and goods, Goal 3 to ensure the preservation, security, and resilience of the regional transportation system, and Goal 4 to increase person and goods movement and travel choices within the transportation system. The project also has significant potential for inconsistency with Goal 5 to reduce greenhouse gas emissions and improve air quality, Goal 6 to support healthy and equitable communities, and Goal 7 to adapt to a changing climate due to errors in modeling and modeling without supporting evidence. There is no discussion of the project's significant and unavoidable cumulatively considerable impacts to Transportation. The EIR's consistency analysis is misleading and does not provide any meaningful supporting evidence within SCAG's 2020-2045 Connect SoCal RTP/SCS to support this conclusion, in violation of CEQA's requirements for meaningful disclosure. The EIR must be revised to include revised modeling and an accurate consistency analysis with all goals of SCAG's 2020-2045 Connect SoCal RTP/SCS, including a finding of significance due to the project's direct inconsistency with these goals due to its significant and unavoidable cumulatively considerable impacts to Transportation.

1.16 Cont.

6.2 Growth Inducement and 6.3 Significant Irreversible Effects

The EIR does not discuss or analyze that the project is a piecemealed portion of a larger overall project that required approval SPLA19-00005 to change the existing land use designations of the project site from Regional Commercial (RC) to Commercial Industrial Business Park (CIBP). This increased the developable industrial area of the MSFCSP without providing any information or analysis on the buildout conditions of the MSFCSP area. This is misleading to the public and decision makers. The EIR must be revised to include the required Specific Plan Amendment for discussion and analysis and include a finding of significance as the project will contribute to growth that was not included as part of growth forecasts in Connect SoCal, the General Plan, the AQMP, and/or the MSFCSP. The EIR must also include discussion for the precedence setting action that approval of the Specific Plan Amendment sets for future land use changes in the area.

1.17

The EIR must also include a cumulative analysis discussion here to demonstrate the impact of the proposed project in a cumulative setting. For example, other recent industrial projects such as US Cold Storage (913 employees), Hesperia Commerce Center I (2,928 employees), Hesperia Commerce Center II (3,959 employees), Dara Industrial (628 employees), I-15 Industrial Park (2,309 employees), and Poplar 18 (657 employees) combined with the proposed project will cumulatively generate 11,736 employees. This represents 49.6% of the City's job growth over 29 years accounted for by only seven industrial projects. These totals increase exponentially when

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commercial development activity is added to the brief list of industrial activity above. The EIR must be revised to include this information for analysis, and also provide a cumulative analysis discussion of projects approved since 2016 and projects “in the pipeline” to determine if the proposed project will exceed the employment/population growth forecasts by SCAG, the City’s General Plan, and/or the MSFCSP and their applicable EIRs.

1.18 Cont.

7.0 Effects Found Not Significant: Land Use and Planning

The EIR does not provide any analysis of Land Use and Planning thresholds. All information/analysis that follows is based on Appendix A: Initial Study (IS). The IS provides erroneous and misleading analysis in stating that “The Project proposes an FAR of 0.52. The CIBP designation allows a maximum FAR of 0.5 for buildings 200,000 square feet and under, and buildings over 200,000 square feet are required to obtain a CUP, which allows flexibility in the development standards (including FAR).” The IS does not provide the Hesperia Development Code Section that allegedly enables a CUP application to also approve a floor area ratio (FAR) that exceeds the MSFCP maximum permitted FAR. Hesperia Development Code Article III: Conditional Use Permits (Sections 16.12.105 - 16.12.130)¹⁰ does not include any language permitting a FAR that exceeds the maximum limit. Additionally, Hesperia Development Code Article VI: Variances and Minor Exceptions (Sections 16.12.210 - 16.12.255)¹¹ also does not include any language permitting a FAR that exceeds the maximum limit. Therefore, it is abundantly clear that the project’s 0.52 FAR exceeds the MSFCP maximum 0.50 FAR and is not in compliance with this requirement. The IS has misled the public and decision makers in its claim that a CUP application allows the project to exceed the MSFCP maximum 0.50 FAR. The EIR must be revised to include this information for discussion and analysis and include a finding of significance due to this inconsistency and the project’s size exceeding of the overall buildout of the MSFCP.

1.19

Further, the IS/EIR does not include a consistency analysis with all applicable goals and policies of the Main Street and Freeway Corridor Specific Plan. A revised EIR must be prepared which includes an analysis of the project in conjunction with all applicable goals and policies, including the following:

1.20

1. Goal LU-1a: Respond to market trends and development pressures by creating a forward looking and responsible development plan for the Specific Plan area.

¹⁰ Hesperia Development Code Article III

https://library.municode.com/ca/hesperia/codes/code_of_ordinances?nodeId=TIT16DECO_CH16.12PEPR_ARTIII_COUSPE

¹¹

https://library.municode.com/ca/hesperia/codes/code_of_ordinances?nodeId=TIT16DECO_CH16.12PEPR_ARTVI_VAMIEX

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2. Policy LU-1.3: Mix land uses to create a vibrant and more active environment and make the most efficient use of available land.
3. Policy LU-2.3: Maximize the economic impact of available industrial land by careful use of industrial properties, giving priority to clean enterprises that yield large numbers of highly skilled high-paying jobs relative to site size.
4. Goal LU-3: Create a regional shopping draw of development at the intersection of Interstate-15 and Main Street.
5. Policy LU-3.1: Designate areas around the intersection of Interstate-15 and Main Street for commercial and retail development.
6. Policy LU-3.2: Attract high quality retail, office, hotel and mixed-use projects near the intersection of Interstate-15 and Main Street where freeway visibility and accessibility are highest.

The proposed project is directly inconsistent with several of the MSFCSP and General Plan goals and policies listed above. The consistency analysis (where present) does not include any discussion of the required SPLA19-00005 to change the existing land use designations of the project site from Regional Commercial (RC) to Commercial Industrial Business Park (CIBP). The EIR's analysis for consistency with the MSFC SP CIBP designation is reliant upon the January 7, 2020 approval of the piecemealed SPLA19-00005. As noted above, a Project EIR must be prepared which analyzes the environmental impacts of the whole of the project, including piecemealed SPLA19-00005 to change the land use designations of the project site, and the project's significant and unavoidable environmental impacts.

1.20 Cont.

Further, the EIR does not provide a consistency analysis with all land use plans, policies, or regulations adopted for the purpose of avoiding or mitigating an environmental effect. The project has significant potential to conflict with many of these items, including but not limited to the following from the General Plan:

1. Goal LU-1 Regulate development so that the density of residential development and the intensity of non-residential development are appropriate to the property, surrounding properties, and the general neighborhood.
2. Implementation Policy LU-1.1 Require that new construction, additions, renovations, and infill developments be sensitive to neighborhood context and building form and scale.
3. Implementation Policy LU-1.3 Require that new construction, additions, renovations, and infill developments be sensitive to the intent of the land use designations, incorporating neighborhood context as well as building form and scale.
4. Implementation Policy LU-1.4 Encourage architecture which breaks massive buildings into smaller parts. Focus on maintaining a human scale when creating common spaces or amenities.

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5. Goal LU-3 Promote balanced, efficient commercial development that is functional, safe, attractive and convenient to users, and which will strengthen the local economy.
6. Implementation Policy LU-3.1 Encourage a diverse mix of commercial and service businesses that support the local tax base, are beneficial to residents, and support the economic need of the community.
7. Implementation Policy LU-3.2 Sufficient lands should be designated to provide a full range of commercial services to the community and surrounding areas to serve the residential properties at build-out.
8. Implementation Policy LU-3.5 Require the separation or buffering of residential areas from businesses which produce noise, odors, high traffic volumes, light or glare, and parking through the use of landscaping, setbacks, and other techniques.
9. Goal LU-7 Facilitate a self-contained community with a well designed and maintained community with a full range of densities and uses within the capacity of infrastructure and services.
10. Implementation Policy LU-7.2 Promote sustainable building practices that go beyond the requirements of Title 24 of the California Administrative Code, and encourage energy-efficient design elements, consistent with Policy LU-6.1.
11. Implementation Policy CI-1.10 Ensure that new development provides for adequate road improvements to serve internal circulation needs, as well as to mitigate impacts of increased traffic on the existing road system.
12. Implementation Policy CI-2.1 Strive to achieve and maintain a LOS D or better on all roadways and intersections: LOS E during peak hours shall be considered acceptable through freeway interchanges and major corridors (Bear Valley Road, Main Street/Phelan Road, Highway 395).
13. Implementation Policy CI-2.2 Work with regional agencies which have authority over roadways within the City to ensure a minimum Level of Service D for roadways and a minimum Level of Service E for intersections.
14. CI Policy 2.4 Develop policies and regulations to ensure that future development does not reduce the Level of Service of roadways and intersections below the minimum Levels of Service goals.
15. Goal: CN-7 Develop, promote and implement policies to reduce and limit Greenhouse Gas Emissions
16. Goal: CN- 8 Implement policies and measures to reduce air pollution and emissions of pollutants.

1.20 Cont.

A revised EIR must be prepared to include an analysis of the project's potential inconsistency with these goals and policies. The revised EIR must also include information and analysis regarding the EIR's conclusion that the project will result in significant and unavoidable cumulatively

1.21

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considerable impacts to Transportation and also required a piecemealed SPLA to change the site's land use designations from RC to CIBP.

1.21 Cont.

7.3 Effects Found Not Significant: Population and Housing

The EIR has not provided any calculation of the construction jobs generated by the project. Additionally, the EIR has not presented any evidence that the City's workforce is qualified for or interested in work in the industrial sector. The EIR also utilizes misleading language that the project's "new employment opportunities would be within the forecasted and planned growth of the City," without providing the background context of the required SPLA19-00005 to change the existing land use designations of the project site from Regional Commercial (RC) to Commercial Industrial Business Park (CIBP). The required General Plan Amendment to change the land use designation indicates that the growth proposed by the project was not accounted for in the AQMP, General Plan, MFCSP, or RTP/SCS. A revised EIR must include this information for discussion and analysis with a finding of significance.

1.22

SCAG's Connect SoCal Demographics and Growth Forecast¹² notes that the City will add 23,600 jobs between 2016 - 2045. Utilizing the EIR's calculation of 342 employees, the project represents 1.5% of the City's employment growth from 2016 - 2045. A single project accounting for this amount of projected growth over 29 years represents a significant amount of growth. The EIR must be revised to include this analysis, and also provide a cumulative analysis discussion of projects approved since 2016 and projects "in the pipeline" to determine if the project will exceed SCAG's employment growth forecast for the City. For example, other recent industrial projects such as US Cold Storage (913 employees), Hesperia Commerce Center I (2,928 employees), Hesperia Commerce Center II (3,959 employees), Dara Industrial (628 employees), I-15 Industrial Park (2,309 employees), and Poplar 18 (657 employees) combined with the proposed project will cumulatively generate 11,736 employees. This represents 49.6% of the City's job growth over 29 years accounted for by only seven industrial projects. These totals increase exponentially when commercial development activity is added to the brief list of industrial activity above. The EIR must be revised to include this information for analysis, and also provide a cumulative analysis discussion of projects approved since 2016 and projects "in the pipeline" to determine if the proposed project will exceed the employment/population growth forecasts by SCAG, the City's General Plan, and/or the MSFCSP and their applicable EIRs.

1.23

¹² SCAG Connect SoCal Demographics and Growth Forecast adopted September 3, 2020
https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocial_demographics-and-growth-forecast.pdf?1606001579

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8.0 Alternatives

The EIR is required to evaluate a reasonable range of alternatives to the proposed project which will avoid or substantially lessen any of the significant effects of the project (CEQA § 15126.6.) The alternatives chosen for analysis include the CEQA required "No Project" alternative and only one others - Reduced Intensity Alternative. The EIR does not evaluate a reasonable range of alternatives as only one alternative beyond the required No Project alternative is analyzed. The EIR must be revised to include analysis of a reasonable range of alternatives and foster informed decision making (CEQA § 15126.6). This could include alternatives such as development of the site with a project that reduces the proposed project's significant and unavoidable cumulatively considerable Transportation impacts, and a mixed-use project that provides affordable housing and local-serving commercial uses that may reduce VMT, GHG emissions, and improve Air Quality.

1.24

Conclusion

For the foregoing reasons, GSEJA believes the EIR is flawed and a revised EIR must be prepared for the proposed project and circulated for public review. Golden State Environmental Justice Alliance requests to be added to the public interest list regarding any subsequent environmental documents, public notices, public hearings, and notices of determination for this project. Send all communications to Golden State Environmental Justice Alliance P.O. Box 79222 Corona, CA 92877.

1.25

Sincerely,



Gary Ho
Blum, Collins & Ho LLP

Attachment: SWAPE Analysis



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July 12, 2023

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Subject: Comments on the Mesa Linda Logistics Center Project (SCH No. 2022090381)

Dear Mr. Ho,

We have reviewed the May 2023 Draft Environmental Impact Report ("DEIR") for the Mesa Linda Logistics Center Project ("Project") located in the City of Hesperia ("City"). The Project proposes to construct 396,997-square-feet ("SF") of warehouse space as well as 6,000-SF of office space, 57 trailer stalls, and 220 vehicle parking spaces on the 18.16-acre site.

1b.1

Our review concludes that the DEIR fails to adequately evaluate the air quality, health risk, and greenhouse gas impacts. As a result, emissions and health risk impacts associated with construction and operation of the proposed Project may be underestimated and inadequately addressed. A revised Environmental Impact Report ("EIR") should be prepared to adequately assess and mitigate the potential air quality, health risk, and greenhouse gas impacts that the project may have on the environment.

Air Quality

Unsubstantiated Input Parameters Used to Estimate Project Emissions

The DEIR's air quality analysis relies on emissions calculated with California Emissions Estimator Model ("CalEEMod") Version 2020.4.0 (p. 5.6-11).¹ 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

1b.2

¹ "CalEEMod Version 2020.4.0." California Air Pollution Control Officers Association (CAPCOA), May 2021, available at: <https://www.aqmd.gov/caleemod/download-model>.

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 default values are changed as well as provide justification for the values selected.

When reviewing the Project's CalEEMod output files, provided in the Air Quality, Health Risk, Greenhouse Gas, and Energy Impact Report ("AQ, HRA & GHG Report") as Appendix B to the DEIR, we found that several model inputs were not consistent with information disclosed in the DEIR. As a result, the Project's construction and operational emissions may be underestimated. A revised EIR should be prepared to include an updated air quality analysis that adequately evaluates the impacts that construction of the Project will have on local and regional air quality.

1b.2
Cont.

Underestimated Parking Land Use Size

According to the DEIR the Project would include 220 parking stalls and 57 truck trailer parking stalls (see excerpt below) (p. 3-11, Table 3-2).

Table 3-2: Project Parking

Land Use Parking Requirement	Parking Spaces Required	Parking Provided
3.33 stall for every 1,000 square feet of office space	40	-
20 stalls plus 0.4 stall for every 1,000 square feet of warehouse	179	-
Accessible Parking Stalls		7
Total Parking Stalls	219	220
Truck Trailer Parking Stalls		57

1b.3

As such, the DEIR should have modeled 277 total parking spaces.² However, review of the CalEEMod output files demonstrates that the "Mesa Linda Warehouse Project" model includes only 220 parking spaces (see excerpt below) (Appendix B, pp. 82, 121, 153).

Land Uses	Size	Metric	Lot Acreage	Floor Surface Area
Unrefrigerated Warehouse-No Rail	409.00	1000sqft	11.00	408,997.00
Parking Lot	220.00	Space	4.46	88,000.00
City Park	2.70	Acre	2.70	117,308.00

As demonstrated above, the amount of parking spaces included in the models is underestimated by 57 spaces.³ 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

² Calculated: (220 vehicle stalls) + (57 truck trailer stalls) = 277 total stalls to be modeled.

³ Calculated: (277 total stalls) – (220 modeled stalls) = 57 underestimated stalls.

architectural coatings) and area to include lighting (i.e., energy impacts).⁴ By underestimating the proposed parking land use size, the models may underestimate the Project's construction-related and operational emissions and should not be relied upon to determine Project significance.

1b.3
Cont.

Unsubstantiated Change to Architectural Coating Individual Construction Phase

Review of the CalEEMod output files demonstrates that the "Mesa Linda Warehouse Project" model includes a change to the default architectural coating construction phase length (see excerpt below) (Appendix B, pp. 84, 123, 155).

Table Name	Column Name	Default Value	New Value
tblConstructionPhase	NumDays	20.00	160.00

As a result of this change, the model includes the following construction schedule (see excerpt below) (Appendix B, pp. 90, 127, 159):

Phase Number	Phase Name	Phase Type	Start Date	End Date	Num Days Week	Num Days
1	Site Preparation	Site Preparation	10/2/2023	10/13/2023	5	10
2	Grading	Grading	10/14/2023	11/24/2023	5	30
3	Building Construction	Building Construction	11/25/2023	1/17/2025	5	300
4	Architectural Coating	Architectural Coating	6/3/2024	12/27/2024	5	160
5	Paving	Paving	12/30/2024	1/24/2025	5	20

1b.4

As demonstrated above, the architectural coating phase is increased by 650%, from the default value of 20 to 160 days. The CalEEMod User's Guide requires any changes to model defaults be justified.⁵ According to the "User Entered Comments & Non-Default Data" table, the justification provided for this change is:

"Default schedule with overlap of building construction and architectural coating phases" (Appendix B, pp. 82, 121, 153).

Additionally, the DEIR includes the following Project construction schedule (p. 3-19, Table 3-3):

Table 3-3: Construction Schedule

Construction Activity	Working Days
Site Preparation	10
Grading	30
Building Construction	300
Architectural Coating	150
Paving	20

⁴ "CalEEMod User's Guide." California Air Pollution Control Officers Association (CAPCOA), May 2021, available at: <https://www.aqmd.gov/caleemod/user's-guide>, p. 29.

⁵ "CalEEMod User's Guide." California Air Pollution Control Officers Association (CAPCOA), May 2021, available at: <https://www.aqmd.gov/caleemod/user's-guide>, p. 1, 14.

However, the change to the architectural coating construction phase remains unsubstantiated as the DEIR fails to provide a source for the above table, or any further evidence that the architectural coating phase would overlap with the building construction phase. This is inconsistent with the following guidance from the CalEEMod User's Guide:

"CalEEMod was also designed to allow the user to change the defaults to reflect site- or project-specific information, when available, provided that the information is supported by substantial evidence as required by CEQA."⁶

This unsubstantiated change presents an issue, as the construction emissions are improperly spread out over a longer period of time for the architectural coating phase. According to the CalEEMod User's Guide, each construction phase is associated with different emissions activities (see excerpt below).⁷

Demolition involves removing buildings or structures.

Site Preparation involves clearing vegetation (grubbing and tree/stump removal) and removing stones and other unwanted material or debris prior to grading.

Grading involves the cut and fill of land to ensure that the proper base and slope is created for the foundation.

Building Construction involves the construction of the foundation, structures and buildings.

Architectural Coating involves the application of coatings to both the interior and exterior of buildings or structures, the painting of parking lot or parking garage striping, associated signage and curbs, and the painting of the walls or other components such as stair railings inside parking structures.

Paving involves the laying of concrete or asphalt such as in parking lots, roads, driveways, or sidewalks.

1b.4
Cont.

By disproportionately extending the architectural coating phase length without proper justification, the model assumes a greater number of days to complete the construction activities required by the architectural coating phase. As such, there will be fewer construction activities required per day and, consequently, less pollutants emitted per day. The model may underestimate the peak daily emissions associated with the architectural coating phase of construction and should not be relied upon to determine Project significance.

Updated Analysis Indicates a Potentially Significant Air Quality Impact

In an effort to more accurately estimate the Project's construction-related emissions we prepared an updated CalEEMod model, using the Project-specific information provided by the DEIR. In our updated model we included the proposed truck trailer parking spaces and omitted the unsubstantiated change to the architectural coating construction phase length.⁸

1b.5

⁶ "CalEEMod User's Guide." California Air Pollution Control Officers Association (CAPCOA), May 2021, available at: <https://www.aqmd.gov/caleemod/user's-guide>, p. 13-14.

⁷ "CalEEMod User's Guide." California Air Pollution Control Officers Association (CAPCOA), May 2021, available at: <https://www.aqmd.gov/caleemod/user's-guide>, p. 32.

⁸ See Attachment A for updated CalEEMod model.

Our updated analysis estimates that the Reactive Organic Gases (“ROG”) emissions associated with Project construction exceed the applicable MDAQMD threshold of 75 pounds per day (“lbs/day”), as referenced by the DEIR (p. 5.2-19, Table 5.2-5) (see table below).

SWAPE Criteria Air Pollutant Emissions	
Construction	VOC (lbs/day)
DEIR	63.9
SWAPE	478.0
% Increase	621%
MDAQMD Threshold	137
Exceeds?	Yes

1b.6

As demonstrated above, construction-related ROG emissions, as estimated by SWAPE, increase by approximately 621% and exceed the applicable MDAQMD significance threshold. Our updated modeling demonstrates that the Project would result in a potentially significant air quality impact that was not previously identified or addressed by the DEIR. As a result, a revised EIR should be prepared to adequately assess and mitigate the potential air quality impacts that the Project may have on the environment.

Disproportionate Health Risk Impacts of Warehouses on Surrounding Communities

Upon review of the DEIR, we have determined that the development of the proposed Project would result in disproportionate health risk impacts on community members living, working, and going to school within the immediate area of the Project site. According to the SCAQMD:

“Those living within a half mile of warehouses are more likely to include communities of color, have health impacts such as higher rates of asthma and heart attacks, and a greater environmental burden.”⁹

1b.7

In particular, the SCAQMD found that more than 2.4 million people live within a half mile radius of at least one warehouse, and that those areas not only experience increased rates of asthma and heart attacks, but are also disproportionately Black and Latino communities below the poverty line.¹⁰ Another study similarly indicates that “neighborhoods with lower household income levels and higher percentages of minorities are expected to have higher probabilities of containing warehousing

⁹ “South Coast AQMD Governing Board Adopts Warehouse Indirect Source Rule.” SCAQMD, May 2021, available at: <http://www.aqmd.gov/docs/default-source/news-archive/2021/board-adopts-waisr-may7-2021.pdf?sfvrsn=9>.

¹⁰ “Southern California warehouse boom a huge source of pollution. Regulators are fighting back.” Los Angeles Times, May 2021, available at: <https://www.latimes.com/california/story/2021-05-05/air-quality-officials-target-warehouses-bid-to-curb-health-damaging-truck-pollution>.

facilities.”¹¹ Additionally, a report authored by the Inland Empire-based People’s Collective for Environmental Justice and University of Redlands states:

“As the warehouse and logistics industry continues to grow and net exponential profits at record rates, more warehouse projects are being approved and constructed in low-income communities of color and serving as a massive source of pollution by attracting thousands of polluting truck trips daily. Diesel trucks emit dangerous levels of nitrogen oxide and particulate matter that cause devastating health impacts including asthma, chronic obstructive pulmonary disease (COPD), cancer, and premature death. As a result, physicians consider these pollution-burdened areas ‘diesel death zones.’”¹²

1b.7
Cont.

It is evident that the continued development of industrial warehouses within these communities poses a significant environmental justice challenge. However, the acceleration of warehouse development is only increasing despite the consequences on public health. The Inland Empire alone is adding 10 to 25 million SF of new industrial space each year.¹³

The development of the proposed warehouse would disproportionately contribute to and exacerbate the health conditions of residents in San Bernardino County. In April 2022, the American Lung Association ranked San Bernardino County as the worst for ozone pollution in the nation.¹⁴ The Los Angeles Times also reported that San Bernardino County had 130 bad air days for ozone pollution in 2020, violating federal health standards on nearly every summer day.¹⁵ Downtown Los Angeles, by comparison, had 22 ozone violation days in 2020. This year, the County continues to face the worst ozone pollution, as it has seen the highest recorded Air Quality Index (“AQI”) values for ground-level ozone in California.¹⁶ The U.S. Environmental Protection Agency (“EPA”) indicates that ozone, the main ingredient in “smog,” can cause several health problems, which includes aggravating lung diseases and increasing the frequency of asthma attacks. The U.S. EPA states:

1b.8

¹¹ “Location of warehouses and environmental justice: Evidence from four metros in California.” Metro Freight Center of Excellence, January 2018, available at: https://www.metrotrans.org/assets/research/MF%201.1g_Location%20of%20warehouses%20and%20environmental%20justice_Final%20Report_021618.pdf, p. 21.

¹² “Warehouses, Pollution, and Social Disparities: An analytical view of the logistics industry’s impacts on environmental justice communities across Southern California.” People’s Collective for Environmental Justice, April 2021, available at: https://earthjustice.org/sites/default/files/files/warehouse_research_report_4.15.2021.pdf, p. 4.

¹³ “2020 North America Industrial Big Box Review & Outlook.” CBRE, 2020, available at: <https://www.cbre.com/-/media/project/cbre/shared-site/insights/local-responses/industrial-big-box-report-inland-empire/local-response-2020-ibb-inland-empire-overview.pdf>, p. 2.

¹⁴ “State of the Air 2022.” American Lung Association, April 2022, available at: <https://www.lung.org/research/sota/key-findings/most-polluted-places>.

¹⁵ “Southern California warehouse boom a huge source of pollution. Regulators are fighting back.” Los Angeles Times, May 2021, available at: <https://www.latimes.com/california/story/2021-05-05/air-quality-officials-target-warehouses-bid-to-curb-health-damaging-truck-pollution>.

¹⁶ “High Ozone Days.” American Lung Association, 2022, available at: <https://www.lung.org/research/sota/city-rankings/states/california>.

"Children are at greatest risk from exposure to ozone because their lungs are still developing and they are more likely to be active outdoors when ozone levels are high, which increases their exposure. Children are also more likely than adults to have asthma."¹⁷

Furthermore, regarding the increased sensitivity of early-life exposures to inhaled pollutants, the California Air Resources Board ("CARB") states:

"Children are often at greater risk from inhaled pollutants, due to the following reasons:

- Children have unique activity patterns and behavior. For example, they crawl and play on the ground, amidst dirt and dust that may carry a wide variety of toxicants. They often put their hands, toys, and other items into their mouths, ingesting harmful substances. Compared to adults, children typically spend more time outdoors and are more physically active. Time outdoors coupled with faster breathing during exercise increases children's relative exposure to air pollution.
- Children are physiologically unique. Relative to body size, children eat, breathe, and drink more than adults, and their natural biological defenses are less developed. The protective barrier surrounding the brain is not fully developed, and children's nasal passages aren't as effective at filtering out pollutants. Developing lungs, immune, and metabolic systems are also at risk.
- Children are particularly susceptible during development. Environmental exposures during fetal development, the first few years of life, and puberty have the greatest potential to influence later growth and development."¹⁸

1b.8
Cont.

A Stanford-led study also reveals that children exposed to high levels of air pollution are more susceptible to respiratory and cardiovascular diseases in adulthood.¹⁹ Given children's higher propensity to succumb to the negative health impacts of air pollutants, and as warehouses release more smog-forming pollution than any other sector, it is necessary to evaluate the specific health risk that warehouses pose to children in the nearby community.

According to the above-mentioned study by the People's Collective for Environmental Justice and University of Redlands, a half mile radius is more commonly utilized for identifying sensitive receptors. There are 640 schools in the South Coast Air Basin that are located within half a mile of a large warehouse, most of them in socio-economically disadvantaged areas.²⁰ Regarding the proposed Project

¹⁷ "Health Effects of Ozone Pollution." U.S. EPA, May 2021, available at: <https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution>.

¹⁸ "Children and Air Pollution." California Air Resources Board (CARB), available at: <https://www2.arb.ca.gov/resources/documents/children-and-air-pollution>.

¹⁹ "Air pollution puts children at higher risk of disease in adulthood, according to Stanford researchers and others." Stanford, February 2021, available at: <https://news.stanford.edu/2021/02/22/air-pollution-impacts-childrens-health/>.

²⁰ "Warehouses, Pollution, and Social Disparities: An analytical view of the logistics industry's impacts

itself, review of Google Earth reveals that the nearest school is approximately 0.53 miles away from the Project site.



1b.8
Cont.

As demonstrated above, Canyon Ridge High School is located approximately 0.5 miles away from the Project site. This may pose a significant threat because, as outlined above, children are a vulnerable population that are more susceptible to the damaging side effects of air pollution. As such, the Project may have detrimental short-term and long-term health impacts on local children if approved. A revised EIR should be prepared to evaluate the disproportionate impacts of the proposed warehouse on the community adjacent to the Project, including an analysis of the impact on children and people of color who live and attend school in the surrounding area.

Diesel Particulate Matter Emissions Inadequately Evaluated

The DEIR concludes that the proposed Project would result in a less-than-significant health risk impact based on a quantified construction and operational health risk assessment ("HRA"). Specifically, the DEIR estimates that the maximum incremental cancer risk posed to nearby, existing residential sensitive receptors associated with exposure to diesel particulate matter ("DPM") emissions during Project construction and operation would be 2.04 and 0.46 in one million, respectively, which would not exceed

1b.9

on environmental justice communities across Southern California." People's Collective for Environmental Justice, April 2021, available at: https://earthjustice.org/sites/default/files/files/warehouse_research_report_4.15.2021.pdf, p. 4.

the SCAQMD significance threshold of 10 in one million (see excerpts below) (p. 5.2-21, Table 5.2-7, Table 5.2-8).

Table 5.2-7: Project Construction Health Risks at Nearby Sensitive Receptors

Location	Carcinogenic Inhalation Health Risk in One Million	Chronic Inhalation Hazard Index	Acute Inhalation Hazard Index
Worker Receptor Risk	0.09	0.002	0.000
Sensitive Receptor Risk	2.04	0.002	0.000
MDAQMD Significance Threshold	10.0 in one million	1.0	1.0
Significant?	No	No	No

Source: LSA (May 2023).

MDAQMD = Mojave Desert Air Quality Management District

Table 5.2-8: Project Operational Health Risks at Nearby Sensitive Receptors

Location	Carcinogenic Inhalation Health Risk in One Million	Chronic Inhalation Hazard Index	Acute Inhalation Hazard Index
Worker Receptor Risk	0.13	<0.001	<0.001
Sensitive Receptor Risk	0.46	<0.001	<0.001
MDAQMD Significance Threshold	10.0 in one million	1.0	1.0
Significant?	No	No	No

Source: LSA (May 2023).

MDAQMD = Mojave Desert Air Quality Management District

1b.9
Cont.

However, the DEIR's evaluation of the Project's potential health risk impacts, as well as the subsequent less-than-significant impact conclusion, is incorrect for two reasons.

First, the DEIR's HRAs are unreliable, as they rely upon emissions estimates from a flawed air model, as discussed above in the section titled "Unsubstantiated Input Parameters Used to Estimate Project Emissions." As such, the HRAs are based on potentially underestimated DPM concentrations to calculate the health risk associated with Project construction. As a result, the DEIR's HRAs and resulting cancer risk should not be relied upon to determine Project significance.

Second, the DEIR fails to mention or provide the exposure assumptions for the HRA, such as the age sensitivity factors ("ASF") or fraction of time at home ("FAH") values whatsoever. Until the DEIR substantiates the use of correct exposure assumptions, the HRA may underestimate the cancer risk posed to nearby, existing sensitive receptors because of Project construction. Furthermore, according to the *Risk Assessment Guidelines* provided by the Office of Environmental Health Hazard Assessment ("OEHHHA"), the organization responsible for providing guidance on conducting HRAs in California, the Addendum's models should have used the following equation:²¹

1b.10

²¹ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>, p. 8-7 Equation 8.2.4.

A. Equation 8.2.4 A: $RISK_{inh-res} = DOSE_{air} \times CPF \times ASF \times ED/AT \times FAH$

- 7. $RISK_{inh-res}$ = Residential inhalation cancer risk
- 8. $DOSE_{air}$ = Daily inhalation dose (mg/kg-day)
- 9. CPF = Inhalation cancer potency factor (mg/kg-day⁻¹)
- 10. ASF = Age sensitivity factor for a specified age group (unitless)
- 11. ED = Exposure duration (in years) for a specified age group
- 12. AT = Averaging time for lifetime cancer risk (years)
- 13. FAH = Fraction of time spent at home (unitless)

1b.10
Cont.

However, the DEIR and associated documents fail to include a dose and risk equation to calculate the Project's construction cancer risks. As such, we cannot verify that the DEIR's HRA is accurate, and the Project's cancer risks may be underestimated.

Greenhouse Gas

Failure to Adequately Evaluate Greenhouse Gas Impacts

The DEIR estimates that the Project would generate net annual greenhouse gas ("GHG") emissions of 2,207.5 metric tons of carbon dioxide equivalents per year ("MT CO₂e/year") (see excerpt below) (p. 5.6-12, Table 5.6-1).

Table 5.6-1: Proposed Project Generated Greenhouse Emissions

Source	Greenhouse Gas Emissions, CO ₂ e Metric Tons per Year
Project Operational Emissions	
Area Sources	<0.1
Energy Sources	218.8
Mobile Sources	1,405.1
Stationary Sources	1.1
Waste Sources	193.5
Water Sources	354.3
Total Project Emissions	2,172.7
Amortized Construction Emissions	34.8
Total Annual Emissions	2,207.5
SCAQMD Threshold	3,000
Significant?	No

Source: LSA (May 2023).

CO₂e = carbon dioxide equivalent

SCAQMD = South Coast Air Quality Management District

1b.11

As such, the DEIR concludes:

"As discussed above, a project would have less than significant GHG emissions if it would result in operational-related GHG emissions of less than 3,000 MT/year CO₂e. Based on the analysis results, the proposed Project would result in annual emissions of 2,207.5 MT/year CO₂e.

Therefore, operation of the proposed Project would not generate significant GHG emissions that would have a significant effect on the environment and impacts would be less than significant" (p. 5.6-12).

However, the DEIR's analysis, as well as the subsequent less-than-significant impact conclusion, is incorrect for three reasons.

1b.11
Cont.

- (1) The DEIR's quantitative GHG analysis relies upon a flawed air model;
- (2) The DEIR's quantitative GHG analysis relies upon an outdated threshold; and
- (3) The DEIR's unsubstantiated air model indicates a potentially significant impact.

1) Incorrect and Unsubstantiated Quantitative Analysis of Emissions

As previously stated, the DEIR estimates that the Project would generate net annual GHG emissions of 2,207.50 MT CO₂e/year (p. 5.6-12, Table 5.6-1). However, the DEIR's quantitative analysis is unsubstantiated. As previously discussed, when reviewing the Project's CalEEMod models, provided in the AQ, HR & GHG Report, we found that several of the values inputted into the models are not consistent with information disclosed in the DEIR. As a result, the models may underestimate the Project's emissions, and the DEIR's quantitative analysis should not be relied upon to determine Project significance. A revised EIR should be prepared that adequately assesses the potential GHG impacts that construction and operation of the proposed Project may have on the environment.

1b.12

2) Incorrect Reliance on an Outdated Quantitative GHG Threshold

As previously stated, the DEIR estimates that the Project would generate net annual GHG emissions of 2,207.50 MT CO₂e/year, which would not exceed the SCAQMD threshold of 3,000 MT CO₂e/year (p. 5.6-12). However, the guidance that provided the 3,000 MT CO₂e/year threshold, the SCAQMD's 2008 *Interim CEQA GHG Significance Threshold for Stationary Sources, Rules, and Plans* report, was developed when the Global Warming Solutions Act of 2006, commonly known as "AB 32", was the governing statute for GHG reductions in California. AB 32 requires California to reduce GHG emissions to 1990 levels by 2020.²² Furthermore, AEP guidance states:

"[F]or evaluating projects with a post 2020 horizon, the threshold will need to be revised based on a new gap analysis that would examine 17 development and reduction potentials out to the next GHG reduction milestone."²³

1b.13

As it is currently June 2023, thresholds for 2020 are not applicable to the proposed Project and should be revised to reflect the current GHG reduction target. As such, the SCAQMD bright-line threshold of 3,000 MT CO₂e/year is outdated and inapplicable to the proposed Project, and the DEIR's less-than-significant GHG impact conclusion should not be relied upon. Instead, we recommend that the Project apply the SCAQMD 2035 service population efficiency target of 3.0 metric tons of carbon dioxide

²² "Health & Safety Code 38550." California State Legislature, January 2007, available at:

https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC§ionNum=38550.

²³ "Beyond Newhall and 2020: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California." Association of Environmental Professionals (AEP), October 2016, available at: https://califaep.org/docs/AEP-2016_Final_White_Paper.pdf, p. 39.

equivalents per service population per year ("MT CO₂e/SP/year"), which was calculated by applying a 40% reduction to the 2020 targets.²⁴

1b.13
Cont.

3) Failure to Identify a Potentially Significant GHG Impact

According to the DEIR:

"However, in order to provide a more conservative analysis, the City recommends evaluating the Project's GHG emissions based on the South Coast Air Quality Management District (SCAQMD) GHG thresholds" (p. 5.6-9)

As such, in an effort to quantitatively evaluate the Project's GHG emissions, we compared the Project's GHG emissions, as estimated by the DEIR, to the SCAQMD 2035 service population efficiency target of 3.0 MT CO₂e/SP/year. When applying this threshold, the Project's air model indicates a potentially significant GHG impact. As previously stated, the DEIR estimates that the Project would generate net annual GHG emissions of 2,207.50 MT CO₂e/year (p. 5.6-12, Table 5.6-1). According to CAPCOA's *CEQA & Climate Change* report, a service population ("SP") is defined as "the sum of the number of residents and the number of jobs supported by the project."²⁵ As the Project does not propose any residential land uses, we estimate that the Project would support 0 residents. Furthermore, according to the DEIR, the Project would support approximately 342 employees (p. 7.0-2). As such, we estimate a SP of 342 people.²⁶ When dividing the Project's net annual GHG emissions, as estimated by the DEIR, by an SP of 342 people, we find that the Project would emit approximately 6.45 MT CO₂e/SP/year (see table below).²⁷

1b.14

DEIR Greenhouse Gas Emissions	
Annual Emissions (MT CO ₂ e/year)	2,207.50
Service Population	342
Service Population Efficiency (MT CO ₂ e/SP/year)	6.45
SCAQMD 2035 Threshold	3.0
Exceeds?	Yes

As demonstrated above, the Project's service population efficiency value, as estimated by the DEIR's provided net annual GHG emission estimates and SP, exceeds the SCAQMD 2035 efficiency target of 3.0 MT CO₂e/SP/year, indicating a potentially significant impact not previously identified or addressed by the DEIR. As a result, the DEIR's less-than-significant GHG impact conclusion should not be relied upon.

²⁴ "Minutes for the GHG CEQA Significance Threshold Stakeholder Working Group #15." SCAQMD, September 2010, available at: [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/year-2008-2009/ghg-meeting-15/ghg-meeting-15-minutes.pdf](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/year-2008-2009/ghg-meeting-15/ghg-meeting-15-minutes.pdf), p. 2.

²⁵ CAPCOA (Jan. 2008) *CEQA & Climate Change*, p. 71-72, <http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA-White-Paper.pdf>.

²⁶ Calculated: 0 residents + 342 employees = 342 service population.

²⁷ Calculated: (2,207.50 MT CO₂e/year) / (342 service population) = (6.45 MT CO₂e/SP/year).

An EIR should be prepared to include an updated GHG analysis which incorporates additional mitigation measures to reduce the Project's GHG emissions to less-than-significant levels.

1b.14
Cont.

Mitigation

Feasible Mitigation Measures Available to Reduce Emissions

Our analysis demonstrates that the Project would result in potentially significant air quality and GHG impacts that should be mitigated further. In an effort to reduce emissions, the Project should consider the implementation of the following mitigation measures found in the California Department of Justice Warehouse Project Best Practices document.²⁸

- Requiring off-road construction equipment to be hybrid electric-diesel or zero emission, where available, and all diesel-fueled off-road construction equipment to be equipped with CARB Tier IV-compliant engines or better, and including this requirement in applicable bid documents, purchase orders, and contracts, with successful contractors demonstrating the ability to supply the compliant construction equipment for use prior to any ground-disturbing and construction activities.
- Prohibiting off-road diesel-powered equipment from being in the "on" position for more than 10 hours per day.
- Using electric-powered hand tools, forklifts, and pressure washers, and providing electrical hook ups to the power grid rather than use of diesel-fueled generators to supply their power.
- Designating an area in the construction site where electric-powered construction vehicles and equipment can charge.
- Limiting the amount of daily grading disturbance area.
- Prohibiting grading on days with an Air Quality Index forecast of greater than 100 for particulates or ozone for the project area.
- Forbidding idling of heavy equipment for more than three minutes.
- Keeping onsite and furnishing to the lead agency or other regulators upon request, all equipment maintenance records and data sheets, including design specifications and emission control tier classifications.
- Conducting an on-site inspection to verify compliance with construction mitigation and to identify other opportunities to further reduce construction impacts.
- Using paints, architectural coatings, and industrial maintenance coatings that have volatile organic compound levels of less than 10 g/L.
- Providing information on transit and ridesharing programs and services to construction employees.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations for construction employees.

1b.15

²⁸ "Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act." State of California Department of Justice, September 2022, available at: <https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf>, p. 8 – 10.

- Requiring all heavy-duty vehicles engaged in drayage to or from the project site to be zero-emission beginning in 2030.
- Requiring all on-site motorized operational equipment, such as forklifts and yard trucks, to be zero-emission with the necessary charging or fueling stations provided.
- Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations.
- Forbidding trucks from idling for more than three minutes and requiring operators to turn off engines when not in use.
- Posting both interior- and exterior-facing signs, including signs directed at all dock and delivery areas, identifying idling restrictions and contact information to report violations to CARB, the local air district, and the building manager.
- Installing solar photovoltaic systems on the project site of a specified electrical generation capacity that is equal to or greater than the building's projected energy needs, including all electrical chargers.
- Designing all project building roofs to accommodate the maximum future coverage of solar panels and installing the maximum solar power generation capacity feasible.
- Constructing zero-emission truck charging/fueling stations proportional to the number of dock doors at the project.
- Running conduit to designated locations for future electric truck charging stations.
- Unless the owner of the facility records a covenant on the title of the underlying property ensuring that the property cannot be used to provide refrigerated warehouse space, constructing electric plugs for electric transport refrigeration units at every dock door and requiring truck operators with transport refrigeration units to use the electric plugs when at loading docks.
- Oversizing electrical rooms by 25 percent or providing a secondary electrical room to accommodate future expansion of electric vehicle charging capability.
- Constructing and maintaining electric light-duty vehicle charging stations proportional to the number of employee parking spaces (for example, requiring at least 10% of all employee parking spaces to be equipped with electric vehicle charging stations of at least Level 2 charging performance)
- Running conduit to an additional proportion of employee parking spaces for a future increase in the number of electric light-duty charging stations.
- Installing and maintaining, at the manufacturer's recommended maintenance intervals, air filtration systems at sensitive receptors within a certain radius of facility for the life of the project.
- Installing and maintaining, at the manufacturer's recommended maintenance intervals, an air monitoring station proximate to sensitive receptors and the facility for the life of the project, and making the resulting data publicly available in real time. While air monitoring does not mitigate the air quality or greenhouse gas impacts of a facility, it nonetheless benefits the affected community by providing information that can be used to improve air quality or avoid exposure to unhealthy air.

1b.15
Cont.

• Requiring all stand-by emergency generators to be powered by a non-diesel fuel. • Requiring facility operators to train managers and employees on efficient scheduling and load management to eliminate unnecessary queuing and idling of trucks. • Requiring operators to establish and promote a rideshare program that discourages single-occupancy vehicle trips and provides financial incentives for alternate modes of transportation, including carpooling, public transit, and biking. • Meeting CalGreen Tier 2 green building standards, including all provisions related to designated parking for clean air vehicles, electric vehicle charging, and bicycle parking. • Designing to LEED green building certification standards. • Providing meal options onsite or shuttles between the facility and nearby meal destinations. • Posting signs at every truck exit driveway providing directional information to the truck route. • Improving and maintaining vegetation and tree canopy for residents in and around the project area. • Requiring that every tenant train its staff in charge of keeping vehicle records in diesel technologies and compliance with CARB regulations, by attending CARB-approved courses. Also require facility operators to maintain records on-site demonstrating compliance and make records available for inspection by the local jurisdiction, air district, and state upon request. • Requiring tenants to enroll in the United States Environmental Protection Agency's SmartWay program, and requiring tenants who own, operate, or hire trucking carriers with more than 100 trucks to use carriers that are SmartWay carriers. • Providing tenants with information on incentive programs, such as the Carl Moyer Program and Voucher Incentive Program, to upgrade their fleets. These measures offer a cost-effective, feasible way to incorporate lower-emitting design features into the proposed Project, which subsequently, reduce emissions released during Project construction and operation.	1b.15 Cont.
Furthermore, as it is policy of the State that eligible renewable energy resources and zero-carbon resources supply 100% of retail sales of electricity to California end-use customers by December 31, 2045, we emphasize the applicability of incorporating solar power system into the Project design. Until the feasibility of incorporating on-site renewable energy production is considered, the Project should not be approved.	1b.16
A revised EIR should be prepared to include all feasible mitigation measures, as well as include updated air quality and GHG analyses to ensure that the necessary mitigation measures are implemented to reduce emissions to below thresholds. The revised EIR should also demonstrate a commitment to the implementation of these measures prior to Project approval, to ensure that the Project's significant emissions are reduced to the maximum extent possible.	1b.17
Disclaimer 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 report when additional	1b.18

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.

1b.18
Cont.

Sincerely,



Matt Hagemann, P.G., C.Hg.



Paul E. Rosenfeld, Ph.D.

Attachment A: Updated CalEEMod Output Files

Attachment B: Matt Hagemann CV

Attachment C: Paul Rosenfeld CV

Response to Comment Letter 1: Blum, Collins, and Ho LLP, dated July 12, 2023

Response to Comment 1.1: This comment states that the Golden State Environmental Justice Alliance appreciates the opportunity to comment on the EIR and formally requests to be added to the mailing list for all environmental documents, public notices, public hearings, and notices of determination related to the Project. This comment is introductory in nature and does not raise a specific issue with the adequacy of the Draft EIR or raise any other CEQA issue. Therefore, no further response is required or provided.

Response to Comment 1.2: This comment provides a summary of the Project Description. This comment is introductory in nature and does not raise a specific issue with the adequacy of the Draft EIR or raise any other CEQA issue. Therefore, no further response is required or provided.

Response to Comment 1.3: This comment expresses a concern that the Project is a piecemealed portion of a larger project which included a SPLA to change the existing land use designations of the Project site. The Project site has a General Plan land use designation of Main Street and Freeway Corridor Specific Plan (MSFC-SP). Within the MSFC-SP, the Project site is zoned as Commercial/Industrial Business Park (CIBP). The proposed Project would include development of a one-story, 408,997 SF warehouse building on the 18.16-acre site. The Project does not propose a change in land use or zoning as it is already designated as CIBP, and the Project is an allowed use with the issuance of a Conditional Use Permit. Refer also to Response to Comment 1.17. No further response related to land use is required or provided.

Response to Comment 1.4: This comments states that the Draft EIR does not include a detailed floor plan, site plan, or grading plan. The comment also states that the site plan provided in Figure 3-4 does not provide any pertinent information such as earthwork quantity notes, parking requirements, or floor area ratio calculations. The comment claims that the Draft EIR has excluded these details from public review, “which does not comply with CEQA’s requirements for adequate informational documents and meaningful disclosure,”.

Pursuant to CEQA Guidelines Section 15124, the project description “should not supply extensive detail beyond that needed for the evaluation and review of the environmental impact”. The Draft EIR includes a detailed, 21-page Project Description that accurately and adequately describes the proposed Project in order to provide the necessary information required to evaluate the Project’s potential environmental impacts. The Project description describes parking information including the proposed number of stalls and their location. Additionally, the Project Description details the floor area ratio that would result from the proposed building. As such, the level of detail needed for the evaluation of the Project by the public and decisionmakers and for the review of the Project’s environmental impacts is adequate within the Project Description, and extensively detailed figures are not needed. As demonstrated by *Citizens for a Sustainable Treasure Island v. City & County of San Francisco* (2014) 227 CA4th 1036, 1053, the Draft EIR’s description of the proposed Project should identify the Project’s main features and other information needed for an analysis of the Project’s environmental impacts. As long as the requirements set forth in CEQA Guidelines Section 15124 are met, the Project Description may allow for the flexibility needed to respond to changing conditions that could impact the Project’s final design. As such, detailed plans and elevations for all buildings are not required to be included in the EIR’s Project description and a general description of the Project and conceptual plans are allowed. Therefore, no further response is required or provided.

Response to Comment 1.5: This comment states that the Project Description states the gross floor area ratio is 52% which exceeds the MSFC-SP’s maximum gross floor area ratio of 50%. The comment calls for the Draft EIR to be revised to include this information and a discussion and analysis of the inconsistency between the MSFC-SP development standards and the proposed Project.

As stated in Section 3.0, Project Description of the Errata, the proposed building would result in a floor area ratio of 47% which is consistent with the MSFC-SP’s maximum floor area ratio of 50%. As noted in Section 3.0, the City of Hesperia calculates floor area ratio based upon the gross lot acreage. Hesperia Municipal

Code Section 16.08 defined the gross lot acreage to include the property dimensions up to the centerline of the street. Therefore, based on this definition, the proposed Project is within the allowable floor area ratio of the MSFCSP. This discrepancy was due to a typographical error and has been corrected within this Final EIR. Therefore, no further response is required or provided.

Response to Comment 1.6: This comment states that the Draft EIR references Table 4-8 which provides a list of cumulative projects. However, the EIR left this table out and is therefore violating CEQA Guidelines Sections 15121 and 21003(b) which list requirements for adequate informational documents and meaningful disclosure. The comment states incorporation by reference is not adequate and calls for a revision of the Draft EIR to include cumulative project information.

The Draft EIR erroneously left out Table 4-8 which lists cumulative projects utilized in the analysis. This error has been corrected in FEIR Chapter 2, Changes to Draft Environmental Impact Report. However, all impacts from these cumulative projects were incorporated into the analysis and therefore, the impact conclusions of the Draft EIR remain unchanged. Therefore, recirculation is not required.

Response to Comment 1.7: The comment refers to comments provided by SWAPE, which are included as an attachment to the comment letter. Refer to Responses to Comments 1-b.1 through 1b.18 in which these comments are addressed. This comment is introductory in nature and does not raise a specific issue with the adequacy of the Draft EIR or raise any other CEQA issue. Therefore, no further response is required or provided.

Response to Comment 1.8: This comment states that the Draft EIR does not include for analysis relevant environmental justice issues in reviewing potential impacts, including cumulative impacts from the proposed Project to the surrounding community. The comment states that the Project is within a census tract ranked in the 97th percentile for ozone burden, the 63rd percentile for traffic impacts, and the 46th percentile for PM 2.5 burden, which are all typically attributed to heavy truck activity in the area. The comment also states that the census tract consists of a diverse community that is especially vulnerable to impacts of pollution.

CEQA does not require specific analysis of environmental justice issues; rather, CEQA requires analysis of whether a project may have a significant effect on the physical environment. However, the Draft EIR provides a detailed evaluation of the potential cumulative air quality related impacts of the proposed Project upon the surrounding community (localized impacts). Regarding the existing pollution burden, the existing air quality in the Project area is described in Draft EIR Section 5.2, Air Quality. Table 5.2-2 provides data from the closest air quality monitoring station to the Project site (located at 17288 Olive Street in Hesperia and 14306 Park Avenue in Victorville, California) between 2019 and 2021. Data from the air quality monitoring stations indicates that the PM_{2.5} federal standard had no exceedances in 2019, four exceedances in 2020, and an unknown number of exceedances in 2021. The 1-hour ozone State standard was exceeded nine times in 2019 and in 2020, and an unknown number of times in 2021. The 8-hour ozone State standard was exceeded 52 times in 2019, 48 times in 2020, and an unknown number of times in 2021. The 8-hour ozone federal standard was exceeded 47 times in 2019, 48 times in 2020, and 55 times in 2021.

As detailed on page 5.2-20 of the Draft EIR, a Construction Health Risk Assessment was prepared to evaluate the health risk impacts as a result of exposure to diesel particulate matter (DPM) as a result of heavy-duty diesel trucks and equipment activities from Project construction. The results of the health risk assessment determined the maximum cancer risk for the sensitive receptor maximally effected individual (MEI) would be 2.04 in one million, which would not exceed the Mojave Desert Air Quality Management District (MDAQMD) cancer risk threshold of 10 in one million. The worker receptor risk would be lower at 0.09 in one million, but would also not exceed the threshold. The total chronic hazard index would be 0.002 for both the worker receptor MEI and sensitive receptor MEI, which is below the threshold of 1.0. In addition, the total acute hazard index would be nominal (0.000), which would also not exceed the threshold of 1.0. As such, the Project would not cause a significant human health or cancer risk to adjacent land uses as a result of Project construction activity.

An operational diesel mobile source health risk was prepared to evaluate the operational health risk impacts as a result of exposure to DPM as a result of heavy-duty diesel trucks traveling to and from the Project site, maneuvering onsite, and entering and leaving the site during operation of the proposed industrial uses. Results of the operational health risk assessment identified the maximum cancer risk for the sensitive receptor MEI would be 0.46 in one million, which is below the threshold of 10 in one million. The worker receptor risk would be lower at 0.13 in one million. The total chronic hazard index would be less than 0.001 for both the sensitive and worker receptor MEI, which is below the threshold of 1.0. In addition, the total acute hazard index would be nominal (0.000), which would also not exceed the threshold of 1.0. Therefore, all health risk levels to nearby residents from operation-related emissions of TACs would be well below the MDAQMD's HRA thresholds impacts would be less than significant.

The Draft EIR also included a long-term microscale (CO Hot Spot) analysis which determined Project-related vehicles are not expected to contribute significantly to result in the CO concentrations exceeding the State or federal CO standards. Therefore, no further response is required or provided.

Response to Comment 1.9: The comment claims that the CalEEMod-based modeling used in the Draft EIR does not comply with the 2022 Building Energy Efficiency Standards and under-reports the Project's significant energy impacts and fuel consumption to the public and decision makers. The comment states that since the EIR did not accurately or adequately model the energy impacts in compliance with Title 24, a finding of significance must be made and that a revised EIR with modeling using the California Building Energy Code Compliance Software (CBECC) must be circulated for public review in order to adequately analyze the Project's significant environmental impacts.

The commenter is correct in stating that CalEEMod was used to model the Project's potential energy impacts. However, there is no requirement under CEQA that a project's energy modeling must be completed with CBECC. Thus, the City of Hesperia affirms that the CalEEMod adequately discloses the Project's energy usage. The commenters statement that the modeling provided in the Draft EIR does not comply with the 2022 Building Energy Efficiency Standards and under-reports the Project's significant energy impacts is incorrect. As noted in Section 5.5, *Energy*, page 5.5-7, the Project would be required to comply with California Energy Code (Code of Regulations, Title 24 Part 6), CalGreen Building Standards Code as included in the City's Municipal Code in Chapter 15.04, demonstration of which is required prior to issuance of building permits. Therefore, the Project would comply with energy efficiency (Title 24) standards and would not result in the inefficient, wasteful, or unnecessary consumption of building energy, and preparation of a revised or recirculated EIR is not necessary nor required.

Response to Comment 1.10: The comment states that the Draft EIR does not describe a previous action (SPLA19-00005) which changed the land use of the Project site from RC to CIBP and therefore the Project could not have been accounted for in the AQMP, General Plan, MSFC-SP, or RTP/SCS.

The previous MSFC-SP land use designations of Regional Commercial (RC) was changed to Commercial Industrial Business Park (CIBP) through SPLA19-00005, which was approved by the City Council on January 7, 2020 and evaluated by the Planning Commission in the November 14, 2019 Planning Commission Staff Report for SPLA19-00005. CEQA requires evaluation of the proposed Project upon the existing setting, not the setting of the site 3.5 years previously.

The Project site has an existing General Plan land use designation of Main Street and Freeway Corridor Specific Plan (MSFC-SP). Within the MSFC-SP, the Project site is zoned as Commercial/Industrial Business Park (CIBP). The MSFC-SP states that the CIBP designation allows for development of commercial, light industrial, light manufacturing, and industrial support uses, and allows for development with a FAR of up to 0.50 (such as the Project) with approval of a Conditional Use Permit (CUP). The proposed use would be compatible with the site's land use and zoning designations. The previous designations of the site are not applicable to this evaluation; however, it should be noted that the previous Regional Commercial zoning

would have also resulted in urban development and a substantial number of vehicle trips. In addition, emissions generated by construction and operation of the proposed Project were determined to not exceed thresholds as detailed in Section 5.2, *Air Quality*, of the Draft EIR (Tables 5.2-5 through 5.2-8), which are designed to bring the Basin into attainment for the criteria pollutants for which it is in nonattainment. Therefore, because the Project does not exceed any of the thresholds it would not conflict with MDAQMD's goal of bringing the Basin into attainment for all criteria pollutants and, as such, is consistent with the AQMP. Therefore, no further response is required or provided.

Response to Comment 1.11: This comment states that the VMT analysis did not properly disclose information used to reach the conclusion of less than significant impacts because the SBTAM modeling input/outputs, and new Zone information was not included for public review. As a part of VMT analysis using SBTAM, Project TAZs are required to be modified to reflect the socio-economic data. The input and output for the SBTAM contains over 3,400 files. The SBTAM is publicly available for request from San Bernardino County Transportation Authority. The socio-economic data (SED) file includes 4,118 records and is not easily printed for attachment to an EIR. The VMT calculation includes numerous matrices that are each over 4,000 rows by 4,000 columns. This data also cannot be printed and attached to an EIR. Pursuant to CEQA Guidelines Section 15148, highly technical documents can be cited, but are not required to be included as an appendix to the EIR. As such, Appendix H properly cited SBTAM and is not required to include all of the data files pursuant to the CEQA Guidelines. Further, the VMT analysis is consistent with City of Hesperia Traffic Impact Analysis Guidelines for Vehicle Miles Traveled and has been reviewed and approved by the City's engineering department. As such, the Draft EIR's VMT analysis is adequate as presented, and a revised EIR is not required.

Response to Comment 1.12: This comment states that the EIR underreported the quantity of VMT generated by the proposed project operations. The comment states that the operational nature of industrial/warehouse uses involves high rates of truck/trailer/delivery van VMT due to traveling from large import hubs to regional distribution centers to smaller industrial parks and then to their final delivery destinations and that an EIR must be prepared to reflect a quantified VMT analysis that includes all truck/trailer and delivery van activity. However, based on local and State guidance as well as the CEQA guidelines, VMT analyses are required to include an evaluation of passenger cars, not truck trips. CEQA Guidelines Section 15064.3(a) states "For the purpose of this section, 'vehicle miles traveled' refers to the amount and distance of automobile travel attributable to a project". Here, the term "automobile" refers to on-road passenger vehicles, specifically cars and light trucks, as stated in December 2018 Guidance from the Office of Planning and Research, "Technical Advisory on Evaluating Transportation Impacts in CEQA." Hence, the VMT analysis only includes and represents the impacts of automobile travel as a result of the proposed project using SBTAM and is not required to include truck trips as a part of the VMT analysis. Therefore, no further response is required or provided.

Response to Comment 1.13: The comment states that the EIR has not adequately analyzed the project's potential to substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses; or the project's potential to result in inadequate emergency access. The comment refers to overlapping lanes at Mesa Linda driveway and states that if two trucks were to enter and exit the site using the driveway at the same time, they would collide because there is not adequate maneuvering space.

As described on Draft EIR page 5.9-13, the northernmost driveway along Mesa Linda Street would be 30 feet wide and dedicated to emergency access only. The southernmost driveway along Mesa Linda Street would be 40 feet wide and would provide access for trucks and passenger vehicles. The design of the proposed Project, including the access to each driveway and the internal circulation, is subject to the City's traffic engineering standards and MSFC-SP design guidelines. The Project design would be reviewed to ensure safe truck accessibility and turn around area is provided in accordance with the fire code standards. As a result, impacts related to vehicular circulation design features would be less than significant. Therefore, no further response is required or provided.

Response to Comment 1.14: The comment states that there are no exhibits adequately depicting the onsite turning radius available for trucks maneuvering throughout the site; and that the truck/trailer parking stalls may restrict truck/trailer movement.

The proposed driveways are designed to Truck Access standards, and there are no unique bends or obstacles. As described in Response 1.13, the design of the proposed Project, including the access to each driveway and the internal circulation, is subject to the City's traffic engineering standards and MSFC-SP design guidelines. The Project design would be reviewed to ensure safe truck accessibility and turnaround area is provided in accordance with the fire code standards. Therefore, no further response is required or provided.

Response to Comment 1.15: The comment states that the EIR has not provided any analysis of the available horizontal and vertical sight distance at the intersection of the project driveways and adjacent streets. The comment states that EIR defers this environmental analysis by stating that "sight distance shall be evaluated in accordance with the City of Hesperia sight distance standards at the time of preparation of grading, street improvement, and landscaping plans." The comment states that this does not comply with CEQA's requirements for adequate informational documents and meaningful disclosure. However, the proposed Project is in the conceptual plan stage and sight distance is reviewed with respect to County Standards during construction level plan reviews and development permitting to ensure that there is adequate line of sight for each specific development in order to limit hazards. Compliance with existing regulations would be ensured through the County's construction permitting process. As a result, impacts related to circulation design features would be less than significant. Therefore, no further response is required or provided.

Response to Comment 1.16: The comment states that Draft EIR Table 5.9-1 does not provide an adequate analysis of the Project and does not discuss the project's significant and unavoidable cumulatively considerable impacts to transportation. Table 5.9-1 does not include a policy related to queuing at Caltrans facilities that are not within the jurisdiction of the City. However, as detailed in Section 5.9, *Transportation*, improvements have been identified to reduce the cumulative impact to queuing to a less than significant level. Although the comment disagrees with the conclusions regarding the analysis within Draft EIR Table 5.9-1, it does not provide any substantive evidence to support differing conclusions. Thus, no further response is required.

Response to Comment 1.17: The comment states that the Draft EIR does not describe a previous action (SPLA19-00005) which changed the land use of the Project site from RC to CIBP and therefore the Project could not have been accounted for in the AQMP, General Plan, MSFC-SP, or RTP/SCS. The comment states that the previous action increased the developable industrial area of the MSFC-SP without providing any information or analysis on the buildout conditions of the MSFC-SP area, and that the EIR must be revised to include the required Specific Plan Amendment. As detailed in Response 1.10, CEQA requires evaluation of impacts of the proposed Project upon the existing environmental setting, which is typically the baseline conditions at the time the Draft EIR Notice of Preparation (NOP) is prepared. Previous zoning changes were completed 3.5 years ago and evaluated in a 2019 Planning Commission staff report.

The Project site has a General Plan land use designation of MSFC-SP and has a zoning designation of CIBP that allows for development of commercial, light industrial, light manufacturing, and industrial support uses, and allows for development with a FAR of up to 0.50 (such as the Project) with approval of a CUP. The proposed use would be compatible with the site's land use and zoning designations. The proposed Project does not include or require a Specific Plan Amendment. The Project does not include any "precedence setting action". Therefore, no further response is required or provided.

Response to Comment 1.18: The comment states that the Draft EIR must include a cumulative analysis of the impact of the proposed project in combination with previous projects since 2016 and projects "in the pipeline" to determine if the Project would result in a cumulative exceedance of employment and population growth forecasts. As detailed previously in Response 1.10, the Project site was previously planned for Regional

Commercial uses prior to the 2020 MSFC-SP amendment change of the site to CIBP. Thus, the site has been planned for urban development as included in the 2016 projections that are within the 2020 SCAG RTP/SCS.

As shown on Draft EIR Table 6.2-1, the 2016 jobs-to-housing ratio for the City of Hesperia was 0.84 and is projected to be 0.87 in 2045. This means that the City is housing rich. As described in Draft EIR Section 6.0, *Other CEQA Considerations*, the 2020 SCAG RTP/SCS, the Project would improve the jobs-household ratio by providing employment within the housing-rich City of Hesperia. The City of Hesperia has had unemployment rates ranging between 18.8 percent in 2010 and 4.9 percent in 2022, and most of the new jobs that would be created by the Project would be positions that do not require a specialized workforce, and this type of workforce exists in the City of Hesperia and surrounding communities. Thus, due to existing unemployment and the availability of a workforce, it is anticipated that new jobs generated from Project implementation would be filled by people within the City of Hesperia and surrounding communities and would not result in cumulatively considerable job growth.

As provided by CEQA Guidelines Section 15064(c)(3), an indirect physical change, such as population growth, is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. An indirect physical change which is speculative or unlikely to occur is not reasonably foreseeable. Therefore, an estimate of construction workers relocating to the City or resulting in growth would be speculative and is not required under CEQA. Therefore, no further response is required or provided.

Response to Comment 1.19: The comment states that the City's Development Code Article III does not specify provision of a higher FAR under a CUP.

The City calculates the allowable FAR based on the gross lot acreage. The gross lot acreage is defined in the City municipal code to include the property dimensions up to the centerline of the street. Therefore, based upon the gross lot acreage of 861,785 SF, the FAR for the Project would be 0.47. Revision and clarification regarding the FAR pursuant to the City's FAR determination methodology has been incorporated into Chapter 2, Errata accordingly.

Response to Comment 1.20: This comment states that the Draft EIR does not include a consistency analysis for all the applicable goals and policies of the MSFC-SP; the comment lists Goals LU-1 through LU-3.2.

CEQA only requires evaluation of potential goal and policy inconsistencies that could result in a physical impact on the environment. The policies listed by the comment do not involve physical environmental impacts, and are focused on market trends, efficient use of land, economic benefits of development, and development location. Thus, evaluation of these policies is not required. CEQA is an environmental protection statute that is concerned with physical changes to the environment (CEQA Guidelines Section 15358(b)). The environment includes land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance (CEQA Guidelines Section 15360). The Project's potential economic and social effects are not considered effects on the environment (CEQA Guidelines Sections 15064(e) and 15131(a)). Each section of the DEIR includes applicable City goals and policies as well as an analysis of the Project's consistency, as applicable, throughout the Project's impact analysis. A compiled table of applicable goals and policies, along with the Project's consistency has been incorporated into Chapter 7, Effects Found Not Significant, via Chapter 2, Errata listed as Table 7.3-1 *Main Street and Freeway Corridor Specific Plan Consistency Analysis* and Table 7.3-2 *Consistency with General Plan Policies* under Section 7.0, *Effects Found not Significant*. No further revision is warranted.

Response to Comment 1.21: The comment includes discussion about General Plan Goal Consistency – namely, the significant and unavoidable impact and alleged piecemealing related to the previous land use designation. Refer to Responses to Comments 1.12, 1.16 and 1.17.

Response to Comment 1.22: The comment states that the Draft EIR has not provided any calculation of the construction jobs generated by the project and that the EIR has not presented any evidence that the City's workforce is qualified for or interested in work in the industrial sector. The comment also states that the background context of SPLA19-00005 was required to change the existing land use designations of the project site from Regional Commercial (RC) to Commercial Industrial Business Park (CIBP), which indicates that the growth proposed by the project was not accounted for in the AQMP, General Plan, MFCSP, or RTP/SCS.

The Draft EIR has provided calculations of the construction jobs generated by the project in Appendix B, AQ, GHG, Energy, and HRA Analysis, which identifies that 18 workers would be required for site preparation, 20 workers required for grading, 258 workers required for building construction, 52 workers required for architectural coatings, and 15 workers required for paving activities. As detailed on page 6.0-2 of the Draft EIR, the City of Hesperia has had unemployment rates ranging between 18.8 percent in 2010 and 4.9 percent in 2022 (EDD 2022), and most of the new jobs that would be created by the Project would be positions that do not require a specialized workforce, and this type of workforce exists in the City of Hesperia and surrounding communities. Thus, due to existing unemployment and the availability of a workforce, it is anticipated that new jobs generated from Project implementation, including construction labor, would be filled by people within the City of Hesperia and surrounding communities and would not induce an unanticipated influx of new labor into the region or growth; and therefore, is within the AQMP, General Plan, MFCSP, or RTP/SCS projections. Furthermore, whether the Project site was developed for the proposed uses or the previously zoned regional commercial uses, a similar number of construction jobs would be required. As described previously in Response 1.10, the proposed Project is consistent with the existing General Plan and MSFC-SP zoning, and no change to the land use designation is required for the Project. Therefore, no further response is required or provided.

Response to Comment 1.23: This comment states that utilizing the EIR's calculation of 342 employees, the project represents 1.5% of the City's employment growth from 2016 - 2045. The comment states that a single project accounting for this amount of projected growth over 29 years represents a significant amount of growth and could result in exceedance of growth forecasts and a cumulative impact.

As detailed previously in Response to Comment 1.18, the Project site was previously planned for Regional Commercial uses prior to the 2020 MSFC-SP amendment change of the site to CIBP. Thus, the site has been planned for urban development as included in the 2016 projections that are within the 2020 SCAG RTP/SCS. Also, the City of Hesperia is housing rich and has unemployment rates ranging between 18.8 percent in 2010 and 4.9 percent in 2022, and most of the new jobs that would be created by the Project would be positions that do not require a specialized workforce, and this type of workforce exists in the City of Hesperia and surrounding communities. Thus, due to existing unemployment and the availability of a workforce, it is anticipated that new jobs generated from Project implementation would be filled by people within the City of Hesperia and surrounding communities and would not result in cumulatively considerable job growth. Thus, the job growth that would be generated by the Project would not result in significant project or cumulative impacts. Therefore, no further response is required or provided.

Response to Comment 1.24: This comment states that the EIR does not evaluate a reasonable range of alternatives as only one alternative beyond the required No Project alternative is analyzed. The Draft EIR included a comprehensive analysis of Project Alternatives as required by CEQA Guidelines Section 15126.6. The "range of alternatives" to be evaluated is governed by the "rule of reason" and feasibility, which requires the EIR to set forth only those alternatives that are feasible and necessary to permit an informed and reasoned choice by the lead agency and to foster meaningful public participation (CEQA Guidelines Section 15126.6(f)). Given that the Project site is zoned for Commercial/Industrial Business Park (CIBP), uses that are either permitted by right or conditionally permitted were considered. As detailed in Draft EIR Section 8.0, *Alternatives*, an alternative site for the Project was considered along with a reduced density alternative that would reduce the Project by 75 percent. However, as detailed, even with the reduction, a significant and unavoidable cumulative queuing impact would continue to occur as much of the impact is

resulting from cumulative projects and the intersection is within Caltrans jurisdiction, which the City cannot control improvements to. The Draft EIR's alternatives analysis thus met CEQA's requirement to evaluate a reasonable range of alternatives and is therefore adequate as provided. Therefore, no further response is required or provided.

Response to Comment 1.25: This comment states that the commentor believes the Draft EIR is flawed and a revised EIR must be prepared for the proposed Project and circulated for public review. The commentor requests to be added to the public interest list regarding any subsequent environmental documents, public notices, public hearings, and notices of determination for this Project. Therefore, no further response is required or provided.

The comment is conclusionary in nature and does not raise any specific concerns with the adequacy of the Draft EIR or raise any other specific CEQA issue. As substantiated by the responses above and below, none of the conditions arise which would require recirculation of the Draft EIR pursuant to CEQA Guidelines Section 15088.5. No revisions per this comment are required and no further response is required or provided.

Response to Comment 1b.1: This comment states that SWAPE has reviewed the Draft EIR and states that the EIR fails to adequately evaluate the air quality, health risk, and greenhouse gas impacts. The comment is conclusionary in nature and does not provide any substantial evidence that potential emissions related impacts could exceed those identified in the Draft EIR. As substantiated by the responses to the detailed comments below, none of the conditions arise which would require a revised Draft EIR pursuant to CEQA Guidelines Section 15088.5 exist, and no revisions per this comment are required.

Response to Comment 1b.2: This comment states that the CalEEMod default data was changed for modeling of the proposed Project and that CEQA requires such changes be justified by substantial evidence. The comment also states that several model inputs are not consistent with information disclosed in the Draft Subsequent EIR. As a result, the Project's construction and operational emissions are underestimated and an updated EIR should be prepared.

This comment does not identify what default data was changed and what aspect of the Project is not consistent with the default changes. As detailed on page 44 of Appendix B to the Draft EIR, the analysis assumes that construction would begin in the fourth quarter of 2023, which was included in CalEEMod. The Project would use Tier 2 construction equipment and would comply with MDAQMD Rule 403.2 measures, which was included in the modeling. All other construction details are not yet known; therefore, default assumptions (e.g., construction worker and truck trips and fleet activities) from CalEEMod were used. This analysis does not underestimate emissions, and no revisions to the modeling are required per this comment.

Response to Comment 1b.3: This comment states that the amount of parking spaces included in the models is underestimated by 57 spaces, which underestimates the square footage of parking land uses which is used for certain calculations (i.e., VOC emissions from architectural coatings) and area to include lighting (i.e., energy impacts).

CalEEMod does not calculate parking area by the number of parking spaces. It is calculated by the acreage of the area. The Draft EIR Appendix B, page 82 details that 11 acres of the Project site would be used for the proposed warehouse building, 4.46 acres of the site would be used for parking lot, and 2.7 acres would be used for landscaping. This totals 18.16 acres, which is the size of the Project site. Thus, development of the entire site has been included in the CalEEMod modeling and it does not underestimate the emissions from the construction or use of the parking area. No revisions to the modeling are required per this comment.

Response to Comment 1b.4: This comment states that the CalEEMod default has been changed to increase the architectural coating phase by 650%, from the default value of 20 to 160 days. The Draft EIR Appendix B, page 82 details that the construction phase modeling was based on the default schedule with overlap of building construction and architectural coating phases. This identifies maximum daily emissions of VOCs that

can occur during the overlapping building construction and architectural coating phases. Thus, emissions identified by the Project are a conservative analysis of potential impacts with the maximum amount of construction activities per day; and therefore, the CalEEMod modeling does not underestimate potential impacts of the architectural coatings emissions. No revisions to the modeling are required per this comment.

Response to Comment 1b.5: This comment states that the commenter prepared an updated CalEEMod model, using the Project-specific information provided by the Draft EIR, omitting the unsubstantiated reductions to truck trailer parking and architectural coating values and states that VOC emissions would increase by approximately 621% and exceed the applicable significance threshold resulting in a potentially significant air quality impact that was not previously identified or addressed in the Draft EIR.

As described previously in Response to Comments 1b.3, CalEEMod does not calculate parking area by the number of parking spaces. It is calculated by the acreage of the area. The Draft EIR Appendix B, page 82 details that 11 acres of the Project site would be used for the proposed warehouse building, 4.46 acres of the site would be used for parking lot, and 2.7 acres would be used for landscaping. This totals 18.16 acres, which is the size of the Project site. Thus, development of the entire site has been included in the CalEEMod modeling and it does not underestimate the emissions from the construction or use of the parking area.

In addition, the commenter's assumptions that architectural coatings for a 408,997 SF warehouse building and parking lot area would occur over a 20-day period is inaccurate. As detailed previously and described in the Draft EIR, architectural coatings would occur during overlap of the building construction phase and would occur over a 150 work day period. In addition, implementation of Rule 1113 that limits the emissions of VOCs from architectural coatings, which would be implemented through the City's construction permitting process. The emissions estimate provided by the comment does not accurately depict construction activities, standard MDAQMD emissions reduction measures, or the architectural coatings that would be required to be used. Further, the comment does not identify necessary changes to the CalEEMod modeling that is provided by the technical analysis included in Appendix B of the Draft EIR. Therefore, no further response is required.

Response to Comment 1b.6: This comment states that the development of the proposed Project would result in disproportionate health risk impacts on community members living, working, and going to school within the immediate area of the Project site.

The Draft EIR determined that the proposed light industrial development would not result in health impacts to sensitive receptors. The health risk assessment determined that the maximum incremental risks to nearby sensitive receptors were far below the thresholds; and the Draft EIR Tables 5.2-7 and 5.2-8 identify that emissions would not exceed the health risk thresholds at the nearest sensitive receptors. In addition, the sensitive receptors are located farther from the proposed light industrial uses than the 1,000-foot setback recommended by CARB. The closest sensitive receptors to the Project site are residential uses located approximately 2,200 feet southeast of the project site along Muscatel Street. Thus, the Project would not result in health risk impacts to the community and would not disproportionately contribute to and exacerbate the health conditions of residents. Therefore, no further response is required or provided.

Response to Comment 1b.7: This comment states that the Project would disproportionately contribute to and exacerbate the health conditions of residents in San Bernardino County, and that the American Lung Association ranked San Bernardino County as the worst for ozone pollution in the nation.

As described in Response to Comment 1b.6, the Draft EIR determined that the proposed Project would not exceed thresholds related to DPM emissions or localized emissions, and therefore would not contribute to and exacerbate the health conditions of residents. The proposed light industrial uses would be farther from the existing sensitive uses than the setback recommended by CARB and would not result in impacts to sensitive receptors.

Also, as described on page 5.2-23 of the Draft EIR, pursuant to MDAQMD thresholds, Projects that do not exceed the project-specific significance thresholds for DPM emissions are considered to also be less than cumulatively considerable. Conversely, projects that do exceed the project-specific thresholds are also considered to be cumulatively significant. Since the Project would not exceed the MDAQMD health risk thresholds, as previously detailed in Response to Comment 1b.6, the Project would not result in a cumulative impact pursuant to MDAQMD guidance. Therefore, no further response is required or provided.

Response to Comment 1b.8: This comment states that the HRA proposed for the Project has a flawed air model, based on the comment in 1b.4. As such, the HRAs are based on potentially underestimated DPM concentrations to calculate the health risk associated with Project construction. As detailed in Response to Comment 1b.4, the Draft EIR Appendix B, page 82 details that the construction phase modeling was based on the default schedule with overlap of building construction and architectural coating phases, which identifies the maximum daily emissions that can occur during the overlapping building construction and architectural coating phases. Thus, emissions identified by the Project are a conservative analysis of potential impacts with the maximum amount of construction activities per day; and therefore, the modeling does not underestimate potential impacts. Therefore, no further response is required or provided.

Response to Comment 1b.9: This comment states that Draft EIR fails to mention or provide the exposure assumptions for the HRA, such as the age sensitivity factors (“ASF”) or fraction of time at home (“FAH”) values, and the Draft EIR should substantiate the use of correct exposure assumptions.

As shown in Appendix B of the Draft EIR, page 48 provides the maximum individual cancer risk (MICR) and noncancer acute and chronic Hazard Index (HI) from project emissions. The HRA model output page 2 shows the sensitive receptors locations and distance from the project site; the construction sensitive receptor risk is provided by wind direction and location for cancer risks, chronic hazards, acute hazards. In addition, the modeling detail is provided as an attachment to Appendix B, to substantiate these findings. Therefore, no further response is required or provided.

Response to Comment 1b.10: This comment states that the Draft EIR GHG analysis is incorrect because it relies upon a flawed air model, an outdated threshold, and it indicates a potentially significant impact. As shown in Appendix B of the Draft EIR provides the methodology regarding use of the modeling and thresholds. The emissions modeling prepared for the Project follows the guidance and methodologies recommended in MDAQMD’s *CEQA and Federal Conformity Guidelines*. The MDAQMD has established thresholds of significance for GHG emissions, applicable to both construction and operations regardless of whether they are stationary or mobile sources. The MDAQMD’s GHG emissions thresholds are 548,000 pounds per day (lbs/day) CO₂e or 100,000 MT/year CO₂e. However, to be conservative, the City evaluates the project’s GHG emissions based on the SCAQMD GHG threshold of 3,000 MT CO₂e, which is much lower; and therefore, easier for a Project to result in a potential impact. As the analysis is consistent with the MDAQMD’s analysis methodology and utilizes a stricter threshold that the Project would not exceed, the analysis does not indicate a potential impact. Therefore, no further response is required or provided.

Response to Comment 1b.11: This comment states that the Draft EIR’s quantitative analysis is unsubstantiated because several of the values inputted into the models as referred to by previous comments are not consistent with information disclosed in the Draft EIR, and that emissions may be underestimated.

This comment refers to previous comments and does not provide any substantive evidence that a potential impact could occur. As detailed previously, modeling inputs are either Project detailed specific or CalEEMod defaults, which provide a conservative analysis of potential impacts of the Project. This comment does not provide specific details of which values may not be consistent; thus, no further response is required or provided.

Response to Comment 1b.12: This comment states that the use of a 3,000 MT CO₂e is outdated and that a service population efficiency target of 3.0 MT CO₂e/SP/year should be used which was calculated by applying a 40% reduction to the 2020 targets.

CEQA Guidelines Section 15064.4 provides discretion to the lead agency to determine what methodology and threshold to use to determine if GHG emissions are potentially significant. As described in Response to Comments 1b.10, the MDAQMD has established thresholds of significance for GHG emissions of 548,000 lbs/day CO₂e or 100,000 MT/year CO₂e. However, to be conservative, the City evaluates the project's GHG emissions based on the SCAQMD GHG threshold of 3,000 MT CO₂e, which is much lower; and therefore, easier for a Project to result in a potential impact.

SCAQMD used the Executive Order S-3-05-year 2050 goal as the basis for the 3,000 MT CO₂e. Achieving the Executive Order's objective would contribute to worldwide efforts to cap CO₂ concentrations at 450 ppm, thus stabilizing global climate.

In addition, a non-zero threshold approach based on Approach 2 of the CAPCOA CEQA and Climate Change handbook, which is the 3,000 MTCO₂e per year threshold. Threshold 2.5 (Unit-Based Thresholds Based on Market Capture) of the CAPCOA CEQA and Climate Change handbook establishes a numerical threshold based on capture of approximately 90 percent of emissions from future development. The latest threshold developed by SCAQMD using this method is the 3,000 MTCO₂e per year screening threshold.

In setting the threshold at 3,000 MTCO₂e per year, SCAQMD researched a database of projects kept by the Governor's Office of Planning and Research (OPR). That database contained 798 projects, 87 of which were removed because they were very large projects and/or outliers that would skew emissions values too high, leaving 711 as the sample population to use in determining the 90th percentile capture rate. The SCAQMD analysis of the 711 projects within the sample population combined commercial, residential, and mixed-use projects. It should be noted that the sample of projects included warehouses and other light industrial land uses but did not include industrial processes (i.e., oil refineries, heavy manufacturing, electric generating stations, mining operations, etc.). Emissions from each of these projects were calculated by SCAQMD to provide a consistent method of emissions calculations across the sample population and from projects within the sample population. In calculating the emissions, the SCAQMD analysis determined that the 90th percentile ranged between 2,983 to 3,143 MTCO₂e per year. The SCAQMD set their significance threshold at the low-end value of the range when rounded to the nearest hundred tons of emissions (i.e., 3,000 MTCO₂e per year) to define small projects that are considered less than significant and do not need to provide further analysis.

The City understands that the 3,000 MTCO₂e per year threshold was proposed by SCAQMD over a decade ago and was adopted as an interim policy; however, no permanent, superseding policy or threshold has since been adopted. The 3,000 MTCO₂e per year threshold was developed and recommended by SCAQMD, an expert agency, based on substantial evidence as provided in the Draft Guidance Document – Interim CEQA Greenhouse Gas Significance Threshold (2008) document and subsequent Working Group meetings (latest of which occurred in 2010). SCAQMD has not withdrawn its support of the interim threshold and all documentation supporting the interim threshold remains on the SCAQMD website on a page that provides guidance to CEQA practitioners for air quality analysis (and where all SCAQMD significance thresholds for regional and local criteria pollutants and toxic air contaminants also are listed). Further, as stated by SCAQMD, this threshold “uses the Executive Order S-3-05 goal [80 percent below 1990 levels by 2050] as the basis for deriving the screening level” and, thus, remains valid for use in 2023 (SCAQMD, 2008, pp. 3-4). Lastly, this threshold has been used for hundreds, if not thousands of GHG analyses performed for projects located within the MDAQMD jurisdiction. Overall, the City has the discretion to select an evidence-based threshold, which is not outdated and is consistent with both regional and local evaluations

of GHG emissions impacts and provides a conservative analysis of GHG related environmental effects. Therefore, no further response is required or provided.

Response to Comment 1b.13: This comment states that an analysis provided by the commenter exceeds the commenter recommended service population threshold and states that since there is no population, it included the employees as the population.

The use of a service population threshold as described by the comment is not supported by substantial evidence that adequately explains how a service population threshold derived from Statewide data could constitute an appropriate GHG metric to be used for the proposed warehouse Project. As described in Response to Comment 1b.12, CEQA Guidelines Section 15064.4 provides discretion to the lead agency to determine what methodology and threshold to use to determine if GHG emissions are potentially significant, and the City's use of the 3,000 MTCO₂e per year threshold is supported by substantial evidence. Further, as detailed in Draft EIR Table 5.6-1, the proposed Project would result in annual emissions of 2,207.5 MT/year CO₂e. Therefore, operation of the proposed Project would not generate significant GHG emissions that would have a significant effect on the environment, impacts would be less than significant, and no mitigation measures are required.

Response to Comment 1b.14: This comment states that the commenter's analysis in Comment 13 shows that impacts would be potentially significant and provides a list of mitigation measures found in the California Department of Justice Warehouse Project Best Practices document.

As detailed in Responses to Comments 1b.12 and 1b.13, the City's use of the 3,000 MTCO₂e per year GHG threshold is supported by substantial evidence. As detailed in Draft EIR Table 5.6-1, the proposed Project would result in annual emissions of 2,207.5 MT/year CO₂e. Therefore, operation of the proposed Project would not generate significant GHG emissions that would have a significant effect on the environment, impacts would be less than significant, and no mitigation measures are required.

Response to Comment 1b.15: This comment states that as it is policy of the State that eligible renewable energy resources and zero-carbon resources supply 100% of retail sales of electricity to California end-use customers by December 31, 2045, we emphasize the applicability of incorporating solar power system into the Project design.

As described on Draft EIR page 5.5-6, the proposed Project would be required to meet the CCR Title 24 energy efficiency standards in effect during permitting of the proposed Project. In addition, the Project would provide a solar-ready roof. Future building tenants would be able to install solar panels in order to offset the operational energy demands. Thus, solar power would be incorporated into the Project design. Therefore, no further response is required or provided.

Response to Comment 1b.16: This comment states that a revised EIR should be prepared to include all feasible mitigation measures, as well as include updated air quality and GHG analyses to ensure that the necessary mitigation measures are implemented to reduce emissions to below thresholds.

As detailed in previous responses herein and in Draft EIR Sections 5.2, *Air Quality*, and 5.6, *Greenhouse Gas Emissions*, the proposed Project would not exceed any of the MDAQMD or City thresholds for air quality and GHG emissions with incorporation of existing AQMD regulations for construction and operation of the proposed Project. Therefore, no mitigation measures are required. Also, as detailed in previous responses, the analysis is consistent with MDAQMD and City CEQA methodology and no revised air quality or GHG analysis is required.

Response to Comment 1b.17: This comment states that the commenter has received limited discovery regarding the Project, additional information may become available in the future; and the commentor retains the right to revise or amend this report when additional information becomes available.

The comment is conclusionary in nature and does not raise any specific concerns with the adequacy of the Draft EIR or raise any other CEQA issue. Therefore, no further response is required.

Response to Comment 1b.18 Attachments A through C: This attachment to the comment letter provides multiple CalEEMod model runs used to substantiate the comments provided and responded to above and provides resumes of SWAPE professionals who provided the SWAPE comments.

The comment does not raise any specific concerns with the adequacy of the Draft EIR or raise any other CEQA issue. Therefore, no further response is required.

Comment Letter 2: CDFW, dated July 17, 2023.

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State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
 CHARLTON H. BONHAM, Director



July 17, 2023
 Sent via email

Ryan Leonard
 Senior Planner
 City of Hesperia
 9700 Seventh Avenue
 Hesperia, CA 92345

Mesa Linda Logistics Center (PROJECT)
 DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
 SCH# 2022090381

Dear Mr. Leonard:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from City of Hesperia (Lead Agency) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.

2.1

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

2.2

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Hesperia Planning Department

Objective: The Project proposes to construct a new 408,997 square foot warehouse building on 18.16-acres of undeveloped Western Joshua Tree habitat. This Project includes removal of vegetation, installation of onsite water lines and an onsite sewer system, new storm drain lines that would convey drainage flows to proposed above ground and underground infiltration basins, street improvements including installation of curb, gutter, and sidewalks, and landscaping along the perimeter of the warehouse.
Location: Northwest of Poplar Street and Mesa Linda Street intersection in the City of Hesperia. Specifically located within Section 22, Township 4 North, Range 5 West, San Bernardino Base and Meridian (SBB&M) of the Baldy Mesa United States Geological Survey (USGS) 7.5-minute topographic quadrangle.

2.3

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Ryan Leonard, Senior Planner
 City of Hesperia Planning Department
 July 14, 2023
 Page 2

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Hesperia in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

Desert Native Plants and Rare Plant Survey

The DEIR includes the results of a 2022 Desert Native Plant and Rare Plant Survey conducted on May 15, 2022. The survey report indicates on page 8, "Due to extremely dry conditions in 2022, spring and summer blooming annuals and cryptic perennials were not detectable". MM BIO-5, identifies the plan to relocate desert native plants. However, CDFW is concerned the field survey did not adequately identify a species list of all plant species found on site potentially impacted due to the project. CDFW's Protocol for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018) recommends conducting botanical field surveys in the field at times of year when plants will be both evident and identifiable, which is during flowering and fruiting.

2.4

CDFW recommends that new surveys be conducted by CDFW-approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with plants of the area, including special status plants and locally significant plants, and familiar with the appropriate state and federal statuses of plant collecting. Botanical field surveys should be conducted floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status. It is also recommended that multiple site visits to the Project area be conducted in the early, mid, and late seasons to capture the floristic diversity at a level necessary to determine if special status plants are present. Additionally, the DEIR should identify specific measures for impacts rare plants.

Following the 2018 CDFW Protocol, the DEIR should include an assessment from project related impacts, such as:

- A discussion of the significance of special status plant populations in the project area considering nearby populations and total range and distribution;
- A discussion of the significance of sensitive natural communities in the project area considering nearby occurrences and natural community distribution;
- A discussion of project related direct, indirect, and cumulative impacts to special status plants and sensitive natural communities;
- A discussion of the degree and immediacy of all threats to special status plants and sensitive natural communities, including those from invasive species;
- A discussion of the degree and impact, if any, of the project on unoccupied, potential habitat for special status plants; and
- Recommended measures to avoid, minimize, or mitigate impacts to special status plants and sensitive natural communities.

2.5

CDFW recommends that Mitigation Measure BIO-5 be revised to state the following (edits are in strikethrough and bold for additions):

MM BIO-5

A plant survey shall be completed prior to any ground disturbance on the site. If any of the eight special status plant species known to occur in the Project area are found on site during the surveys, the population size of the species and importance to the overall population should be determined. If a rare plant species occurs on the site and cannot be avoided, it should be transplanted and/or have seeds/topsoil collected. Prior to the issuance of grading permits, the Project Applicant shall submit an application and applicable fee paid to the City of Hesperia for removal or relocation of protected native desert plants under Hesperia Municipal Code Chapter 16.24 as required and schedule a preconstruction site inspection with the Planning Division and the Building Division. The application shall include certification from a qualified Joshua tree and

2.5

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native desert plant expert(s) to determine that proposed removal or relocation of protected native desert plants are appropriate, supportive of a healthy environment, and in compliance with the City of Hesperia Municipal Code. Protected plants subject to Hesperia Municipal Code Chapter 16.24 may be relocated onsite, or within an area designated as an area for species to be adopted later. The application shall include a detailed plan for the removal of all protected plants on the Project site. The plan shall be prepared by a qualified Joshua tree and native desert plant expert(s). The plan shall include, but not be limited to, the following measures:

- Salvaged plants shall be transplanted expeditiously to either their final on-site location, or to an approved off-site area. If the plants cannot be expeditiously taken to their permanent relocation area at the time of excavation, they may be transplanted in a temporary area (stockpiled) prior to being moved to their permanent relocation site(s).
- ~~Western Joshua trees shall be marked on their north facing side prior to excavation. Transplanted western Joshua trees shall be planted in the same orientation as they currently occur on the Project site, with the marking on the north side of the tree facing north at the relocation site(s).~~
- Transplanted plants shall be watered prior to and at the time of transplantation. The schedule of watering shall be determined by the qualified tree expert and desert native plant expert(s) to maintain plant health. Watering of the transplanted plants shall continue under the guidance of qualified tree expert and desert native plant expert(s) until it has been determined that the transplants have become established in the permanent relocation site(s) and no longer require supplemental watering.

2.5
 Cont.

Western Joshua Tree (*Yucca brevifolia*)

Project activities are expected to result in the removal of western Joshua tree (WJT) individuals, a candidate species under CESA, and in the permanent loss of WJT habitat. The Project has the potential for take of WJT individuals and associated seedbank through the removal of individuals and roots; clearing vegetation; general operation of vehicles and heavy equipment; grading; staging equipment and stockpiling. Incidental take of WJT individuals in the form of mortality ("kill") may occur as a result of removing mature and emergent individuals; relocating individuals; eliminating and modifying habitat; removing seedbank and crushing and/or burying living seeds in the soil, rendering living seeds inviable and/or causing them to be killed.

WJT is a candidate threatened species under CESA. Under CESA, species classified as a candidate species are afforded the same protection as CESA listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Take is defined in Fish and Game Code section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill".

Avoidance of WJT is not feasible and translocation is proposed in the DEIR. Please note that CDFW generally does not support the use of salvaging, translocation, or transplantation as a mitigation strategy for unavoidable impacts to WJT. As such, CDFW encourages the City to obtain a CESA Incidental Take Permit (ITP) for WJT to fully mitigate impacts to WJT, as per biological (BIO) mitigation measure (MM)-6 below. If the Project Applicant is unable to avoid impacts to WJT within a 300-ft buffer, the Project Applicant should also obtain take authorization for those WJT. Please visit CDFW's [Incidental Take Permits \(ca.gov\)](https://www.cdfw.ca.gov/IncidentalTakePermits) webpage for more information regarding ITPs. Mitigation. CDFW supports the inclusion of MM BIO-6 in the DEIR, as per below to mitigate impacts to WJT (edits are in strikethrough and additions are in bold):

2.6

MM BIO-6

~~In the case that the California Fish and Game Commission lists western Joshua trees as threatened under the California Endangered Species Act, the following measure will be implemented:~~ The western Joshua tree is a candidate threatened species under the California Endangered Species Act, and the following measures will be implemented:

- Prior to the initiation of Joshua tree removal, obtain California Endangered Species Act (CESA) Incidental Take Permit under Section 2081 of the Fish and Game Code.

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The Project Applicant will adhere to measures and conditions set forth within the Incidental Take Permit.

- Mitigation for direct impacts to western Joshua trees shall be fulfilled through conservation of western Joshua trees ~~at a 4:1 through~~ habitat replacement ~~ratio~~, of equal or better functions and values to those impacted by the Project. Mitigation can be through purchases of credits at a California Department of Fish and Wildlife (CDFW)-approved mitigation bank for western Joshua tree. Additionally, no take of western Joshua tree will occur without authorization from CDFW in the form of an Incidental Take Permit pursuant to Fish and Game Code 2081.
- Name, qualifications, business address, and contact information of a biological monitor (designated botanist) shall be submitted to CDFW at least 30 days prior to Project activities. The designated botanist shall be responsible for monitoring Project activities to help minimize and fully mitigate or avoid incidental take of Joshua trees.
- An education program (Worker Environmental Awareness Program) shall be conducted for all persons employed or working in the project area before performing any work.
- A trash abatement program shall be in place before starting project activities and throughout the duration of the Project to ensure that trash and food are contained in animal proof containers.
- The boundaries of the Project site shall be clearly delineated, in consultation with the designated botanist, prior to project activities with posted signs, posting stakes, flags, and/or rope or cord.
- Project-related personnel shall access the Project area using existing routes, or routes identified in the Project description, and shall not cross western Joshua tree habitat outside or on route to the Project area.
- The designated botanist shall have authority to immediately stop any activity that does not comply with the ITP, and/or to order any reasonable measure to avoid unauthorized take of an individual Joshua tree.
- The Project analyzed impacts to western Joshua trees by applying the 186-foot and 36-foot buffer zone overlap with the project boundaries of two adjacent proposed developments. Any impacts to overlapping Joshua trees will be analyzed by CDFW ~~to ensure no Joshua trees are mitigated twice.~~
- The Western Joshua Tree Conservation Act is currently under consideration by the California Governor's Office. In the event that the Western Joshua Tree Conservation Act is implemented, effectively replacing the function of species protection under CESA, alternative habitat replacement mechanisms, providing equal or better function and value to existing mechanisms under CESA, will be implemented as required under state law.

2.6
cont.

Burrowing Owl (*Athene cunicularia*)

The Project site has the potential to provide suitable foraging and/or nesting habitat for burrowing owl. Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5 and 3513. Take is defined in Fish and Game Code section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill."

CDFW appreciates that the City will follow the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation* (Department of Fish and Game, March 2012); available for download from CDFW's website:

<https://www.wildlife.ca.gov/conservation/survey-protocols>. The Staff Report on Burrowing Owl Mitigation, specifies three steps for project impact evaluations:

- a. A habitat assessment;
- b. Surveys; and
- c. An impact assessment

CDFW appreciates the inclusion of MM BIO-1 which considers pre-construction surveys for burrowing owl, however, CDFW is concerned that according to the 2012 Staff Report on Burrowing Owl Mitigation, Take avoidance (pre-construction) surveys are intended to detect the presence of burrowing owls on a project site at a fixed period in time. The DEIR does not include the necessary survey documentation to assess project

2.7

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impacts to burrowing owl. According to the 2012 Staff Report on Burrowing Owl there are three progressive steps in evaluating whether projects will result in impacts to burrowing owl. The information gained from these steps will inform any subsequent avoidance, minimization and mitigation measures. The steps for project impact evaluations are: 1) habitat assessment, 2) surveys, and 3) impact assessment. Habitat assessments are conducted to evaluate the likelihood that a site supports burrowing owl. Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with FGC sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of a proposed CEQA project activity

If burrowing owls are found to occupy the Project site and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 2 artificial burrow constructed to 1 natural burrow collapsed (2:1) as minimization for the potentially significant impact of evicting burrowing owls. Burrowing owls may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance of the Project site during Project activities, at a rate that is sufficient to detect burrowing owls if they return. CDFW also recommends that when temporary or permanent burrow exclusion and/or burrow closure is implemented, burrowing owls should not be excluded from burrows unless or until a Burrowing Owl Exclusion Plan is developed and approved by CDFW; permanent loss of occupied burrow(s) and habitat is mitigated in accordance with the Staff Report; site monitoring is conducted prior to, during, and after exclusion of burrowing owls from their burrows sufficient to ensure take is avoided; and excluded burrowing owls are documented using artificial or natural burrows on an adjoining mitigation site.

If burrowing owls are found to occupy the Project site and avoidance is not possible, CDFW recommends mitigation for permanent impacts to nesting, occupied and satellite burrows and/or burrowing owl habitat such that the habitat acreage, number of burrows and burrowing owls impacted are replaced. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. CDFW recommends permanent protection of mitigation land through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.

2.7
cont.

CDFW offers the following revisions to MM-BIO-1 (edits are in strikethrough and bold).

MM BIO-1

~~A preconstruction survey for resident burrowing owls shall be conducted by a qualified biologist within 30 days prior to commencement of grading and construction activities to ensure that no owls have colonized the site in the days or weeks preceding project activities. If ground disturbing activities in these areas are delayed or suspended for more than 30 days after the preconstruction survey, the area shall be resurveyed for owls. The preconstruction survey and any relocation activity shall be conducted in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012).~~

~~If active nests are identified on an implementing project site during the preconstruction survey, the nests shall be avoided, or the owls actively or passively relocated. To adequately avoid active nests, no grading or heavy equipment activity shall take place within at least 250 feet of an active nest during the breeding season (February 1 through August 31), and 160 feet during the non-breeding season. Prior to any ground disturbance, a survey for potential burrows followed by four breeding season surveys of areas~~

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found to have potential for burrowing owl occupation must be conducted in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012). The burrow survey can be conducted any time, but the breeding season focused survey cannot begin prior to February 1. Prior to initiating Project activities, a qualified biologist shall conduct at least one survey covering the entire Project area and surrounding 15-meter buffer to identify the presence of suitable burrows and/or burrow surrogates (>11 cm in diameter [height and width] and >150 cm in depth) for burrowing owl and sign of burrowing owl (e.g., pellets, prey remains, whitewash, or decoration, etc.) If burrowing owls or suitable burrows and/or sign of burrowing owl are documented on-site, a breeding season survey for burrowing owl in accordance with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) shall be conducted by a qualified biologist prior to start of Project activities. If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no further action is necessary. If burrowing owl, active burrowing owl burrows, or sign thereof are found the qualified biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures to be approved by CDFW prior to commencing Project activities and propose mitigation for permanent loss of occupied burrow(s) and habitat. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. Permanent protection of mitigation land through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.

2.7
 cont.

If burrowing owls occupy any implementing portion of the Project site and cannot be avoided, active or passive relocation shall be used to exclude owls from their burrows, as agreed to by the City of Hesperia Planning Department and the CDFW. Relocation shall be conducted outside the breeding season or once the young are able to leave the nest and fly. ~~Passive relocation is the exclusion of owls from their burrows (outside the breeding season or once the young are able to leave the nest and fly) by installing one-way doors in burrow entrances. These one-way doors allow the owl to exit the burrow, but not enter it. These doors shall be left in place 48 hours to ensure owls have left the burrow. Artificial burrows shall be provided nearby. The implementing project area shall be monitored daily for one week to confirm owl use of burrows before excavating burrows in the impact area. Burrows shall be excavated using hand tools and refilled to prevent reoccupation. Sections of flexible pipe shall be inserted into the tunnels during excavation to maintain an escape route for any animals inside the burrow. The CDFW shall be consulted prior to any active relocation to determine acceptable receiving sites available where this species has a greater chance of successful long-term relocation. If avoidance is infeasible, then a Determination of Biologically Equivalent or Superior Preservation (DBESP) Report shall be required, including associated relocation of burrowing owls. If conservation is not required, then owl relocation shall still be required following accepted protocols. Take of active nests shall be avoided, so it is strongly recommended that any relocation occur outside of the nesting season.~~

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

2.8

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ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

2.9

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City in identifying and mitigating Project impacts on biological resources and we request that the City address the Department's comments and concerns prior to adoption of the DEIR. If you should have any questions pertaining to the comments provided in this letter, please contact Marlee Poff (760) 338-8942 or at Marlee.Poff@wildlife.ca.gov.

2.10

Sincerely,

Designed by:


For Alisa Ellsworth
Environmental Program Manager

Response to Comment Letter 2: CDFW, dated July 17, 2023

Response to Comment 2.1: This comment acknowledges receipt of the Project NOA by the California Department of Fish and Wildlife (CDFW). The comment is introductory in nature and does not raise a specific issue with the adequacy of the DEIR or raise any other CEQA issue. Therefore, no further response is required or provided.

Response to Comment 2.2: CDFW states that they have a role as Trustee and Responsible Agency for the Project. The commenter states the possibility of the applicant requiring a lake and streambed alternation agreement, as well as a authorization related to a potential “take” of species protected under the California Endangered Species Act (CESA). The comment does not raise a specific issue with the adequacy of the DEIR or raise any other CEQA issue. Therefore, no further response is required or provided.

Response to Comment 2.3: The commenter provides their understanding of the Project. The comment does not raise a specific issue with the adequacy of the DEIR or raise any other CEQA issue. Therefore, no further response is required or provided.

Response to Comment 2.4: The commenter expresses concern that the desert native plants and rare plant survey, conducted on May 15, 2022 did not adequately identify a species list of all plant species found on site that could potentially be impacted as a result of the project. CDFW recommends additional surveys be conducted in the early, mid, and late seasons.

A site survey for the General Biological Assessment was conducted on October 27, 2021, over the entire 18.26-acre Project site. The temperature at 1:45 PM was 67° Fahrenheit, sunny, with winds ranging from 0 to 7 miles per hour from the north. The purpose of the field survey was to document the existing habitat conditions, as well as obtain plant and animal species information. Out of the 30 potential special status plants that could occur on site, Joshua trees were the only species present.

A follow-up focused survey for the Desert Native Plant and Rare Plant Report was conducted for the entire Project site on May 15, 2022, within all habitat types, to determine the presence of sensitive botanical resources within the Project site. The survey was conducted from 8:20 a.m. to 2:30 p.m. under suitable weather conditions (73°F–88°F, 1–3 mph winds, and 10% cloud cover) (see Appendix C, Biological Reports, of the DEIR). The focused Desert Native Plant and Rare Plant survey conformed to the CNPS Botanical Survey Guidelines (CNPS 2001), Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018), and the FWS General Rare Plant Survey Guidelines (Cypher 2002). The only sensitive species identified on site during the survey was Joshua tree (*Yucca brevifolia*) woodland.

Both protocol surveys conducted were reflective of the baseline conditions established by the Project’s NOP. Additionally, the Desert Native Plant and Rare Plant survey was conducted during the appropriate bloom period for the potential special status plants that could be found on site, when the plants would be evident and identifiable with flowering and fruiting. It is of the professional biological opinion that special status species identified as potentially occurring on site are not present and were not present during the appropriate surveying period relative to the established Project baseline, with the exception of Western Joshua trees, as disclosed in the biological studies and DEIR. Therefore, no further surveys or revisions are warranted.

Response to Comment 2.5:

The commenter provides suggested revision to Mitigation Measure BIO-5, which would include the requirement for preconstruction sensitive plant surveys. Additionally, the proposed measure revision removes a stipulation regarding the translocation of Western Joshua tree individuals, which is not pertinent since all trees within the Project site are proposed for removal and CDFW does not constitute relocation as an acceptable form of mitigation or avoidance. The mitigation measure has been revised consistent with CDFW’s

recommendations as shown below and added under Chapter 2, *Errata*. Additionally, language has been included to specify the relevance to and compliance with the City's municipal code

Section 5.3, Biological Resources (p. 5.3-27)

Mitigation Measure BIO-5: Relocation of Desert Native Plants (Hesperia Municipal Code Chapter 16.24). In compliance with City Municipal Code 16.24.040 E., the building official shall require a preconstruction inspection prior to approval of development permits. Plant survey shall be completed prior to ground disturbance on the site. If any of the eight special status native desert plant species known to occur in the Project area are found on site during the surveys, the population size of the species and importance to the overall population should be determined. If a rare plant species occurs on the site and cannot be avoided, it should be transplanted and/or have seeds/topsoil collected in a manner approved by the county agricultural commissioner or other reviewing authority. Prior to the issuance of grading permits, the Project Applicant shall submit an application and applicable fee paid to the City of Hesperia for removal or relocation of protected native desert plants under Hesperia Municipal Code Chapter 16.24 as required and schedule a preconstruction site inspection with the Planning Division and the Building Division. The application shall include certification from a qualified Joshua tree and native desert plant expert(s) to determine that proposed removal or relocation of protected native desert plants are appropriate, supportive of a healthy environment, and in compliance with the City of Hesperia Municipal Code. Protected plants subject to Hesperia Municipal Code Chapter 16.24 may be relocated on-site, or within an area designated as an area for species to be adopted later. The application shall include a detailed plan for the removal of all protected plants on the Project site. The plan shall be prepared by a qualified Joshua tree and native desert plant expert(s). The plan shall include, but not be limited to, the following measures:

- Salvaged plants shall be transplanted expeditiously to either their final on-site location, or to an approved off-site area. If the plants cannot be expeditiously taken to their permanent relocation area at the time of excavation, they may be transplanted in a temporary area (stockpiled) prior to being moved to their permanent relocation site(s).
- ~~Western Joshua trees shall be marked on their north facing side prior to excavation. Transplanted western Joshua trees shall be planted in the same orientation as they currently occur on the Project site, with the marking on the north side of the trees facing north at the relocation site(s).~~
- Transplanted plants shall be watered prior to and at the time of transplantation. The schedule of watering shall be determined by the qualified tree expert and desert native plant expert(s) to maintain plant health. Watering of the transplanted plants shall continue under the guidance of qualified tree expert and desert native plant expert(s) until it has been determined that the transplants have become established in the permanent relocation site(s) and no longer require supplemental watering.

Response to Comment 2.6:

The commenter explains that Western Joshua trees are listed as candidate species under CESA, and therefore, are treated as a listed species for any incidental take that occurs. The commenter reiterates that CDFW does not support translocation as a valid avoidance or mitigation measure for listed species. Any Western Joshua tree that is directly impacted or indirectly impacted within a 300-foot buffer, would require an incidental take permit. The commenter recommends a revision to text of Mitigation Measure BIO-6 to remove speculative language referring to the listing of the Western Joshua tree under CESA (or WJTC as referred to within Mitigation Measure BIO-6). Additionally, the commenter proposes removal of the statement "to ensure no Joshua trees are mitigated twice". The Project DEIR public circulation period began on June 2, 2023. The Western Joshua Tree Conservation Act was passed on June 27, 2023. The Project DEIR adequately reflected the status of the proposed act at the time of circulation. Under the act, all in-lieu fees collected will be deposited into the Western Joshua Tree Conservation Fund for appropriation to CDFW solely for the purposes of acquiring, conserving, and managing western Joshua tree conservation lands and completing other activities to conserve the western Joshua tree. The mitigation measure has been revised

consistent with CDFW's recommendations and the current status of the specie's listing under CESA and the Western Joshua Tree Conservation Act as shown below and added under Chapter 2, *Errata*.

Section 5.3, Biological Resources (p. 5.3-27)

Mitigation Measure BIO-6: Western Joshua Tree Lands (CESA)

~~In the case that the California Fish and Game Commission lists western Joshua trees as threatened under the California Endangered Species Act, the following measure will be implemented~~ **The western Joshua tree is a candidate threatened species under the California Endangered Species Act, and the following measures will be implemented:**

- Prior to the initiation of Joshua tree removal, obtain California Endangered Species Act (CESA) Incidental Take Permit under Section 2081 of the Fish and Game Code. The Project Applicant will adhere to measures and conditions set forth within the Incidental Take Permit.
- Mitigation for direct impacts to western Joshua trees shall be fulfilled through conservation of western Joshua trees at a 1:1 habitat replacement ratio, of equal or better functions and values to those impacted by the Project. Mitigation can be through purchases of credits at a California Department of Fish and Wildlife (CDFW)-approved mitigation bank for western Joshua tree. Additionally, no take of western Joshua tree will occur without authorization from CDFW in the form of an Incidental Take Permit pursuant to Fish and Game Code 2081.
- Name, qualifications, business address, and contact information of a biological monitor (designated botanist) shall be submitted to CDFW at least 30 days prior to Project activities. The designated botanist shall be responsible for monitoring Project activities to help minimize and fully mitigate or avoid incidental take of Joshua trees.
- An education program (Worker Environmental Awareness Program) shall be conducted for all persons employed or working in the project area before performing any work.
- A trash abatement program shall be in place before starting project activities and throughout the duration of the Project to ensure that trash and food are contained in animal proof containers.
- The boundaries of the Project site shall be clearly delineated, in consultation with the designated botanist, prior to project activities with posted signs, posting stakes, flags, and/or rope or cord.
- Project-related personnel shall access the Project area using existing routes, or routes identified in the Project description, and shall not cross Joshua tree habitat outside or on route to the Project area.
- The designated botanist shall have authority to immediately stop any activity that does not comply with the ITP, and/or to order any reasonable measure to avoid unauthorized take of an individual Joshua tree.
- The Project analyzed impacts to western Joshua trees by applying the 186-foot and 36-foot buffer zone overlap with the project boundaries of two adjacent proposed developments. Any impacts to overlapping Joshua trees will be analyzed by CDFW ~~to ensure no Joshua trees are mitigated twice.~~
- The Western Joshua Tree Conservation Act is ~~currently under consideration~~ **has been signed and put into effect** by the California Governor's Office. In the event that the Western Joshua Tree Conservation Act is implemented **for the project**, effectively ~~replacing the function of species protection~~ **providing a streamlined mitigation approach** under CESA **and Western Joshua tree conservation**, alternative habitat replacement mechanisms, providing equal or better function and value to existing mechanisms under CESA, will be implemented as required under state law.

Response to Comment 2.7:

The commenter expresses concern that the Project did not follow proper recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation* (Department of Fish and Game, March 2012). Specifically, the commenter notes that the DEIR does not include necessary survey documentation to assess potential impacts to burrowing owls through the completion of burrowing owl protocol surveys. The commenter provides directions regarding protocols and mitigations for implementation in the event a

burrowing owl or burrow is found on site. CDFW provides a revised mitigation measure requiring four breeding season surveys for burrowing owls and the subsequent actions to take in the event a burrow is found.

Protocol surveys, including four breeding season surveys, were conducted for the Project prior to circulation of the DEIR. The findings of the surveys were provided in Section 5.3, *Biological Resources*, on page 5.3-11. The surveys were conducted according to the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. The DEIR listed the Focused Burrowing Owl Survey Report as Appendix H of Appendix C: Biological Reports, C.1 General Biological Assessment. However, the survey documentation was not included as an attachment in the electronic file. The Appendix has been revised to include the full Focused Burrowing Owl Survey Report as an attachment to the General Biological Assessment. This survey and document satisfies CDFW's request for further impact assessment via burrowing owl surveys. Therefore, CDFW's recommended revision to Mitigation Measure BIO-1 has not been incorporated into the FEIR.

Additionally, CDFW has proposed deletion of text regarding passive relocation and the preparation of a Determination of Biologically Equivalent or Superior Preservation (DBESP) Report. A DBESP would not be applicable to the Project site, as it falls within San Bernardino County, and therefore, has been removed from Mitigation Measure BIO-1 as recommended by CDFW. The language for passive relocation has been removed as well. The mitigation measure has been revised consistent with CDFW's recommendations as shown below and added under Chapter 2, *Errata*.

Section 5.3, Biological Resources (p. 5.3-25)

Mitigation Measure BIO-1: Preconstruction Burrowing Owl Surveys

- A preconstruction survey for resident burrowing owls shall be conducted by a qualified biologist within 30 days prior to commencement of grading and construction activities to ensure that no owls have colonized the site in the days or weeks preceding project activities. If ground disturbing activities in these areas are delayed or suspended for more than 30 days after the preconstruction survey, the area shall be resurveyed for owls. The preconstruction survey and any relocation activity shall be conducted in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012).
- If active nests are identified on an implementing project site during the preconstruction survey, the nests shall be avoided, or the owls actively or passively relocated. To adequately avoid active nests, no grading or heavy equipment activity shall take place within at least 250 feet of an active nest during the breeding season (February 1 through August 31), and 160 feet during the non-breeding season.
- If burrowing owls occupy any implementing portion of the Project site and cannot be avoided, active or passive relocation shall be used to exclude owls from their burrows, as agreed to by the City of Hesperia Planning Department and the CDFW. Relocation shall be conducted outside the breeding season or once the young are able to leave the nest and fly. ~~Passive relocation is the exclusion of owls from their burrows (outside the breeding season or once the young are able to leave the nest and fly) by installing one-way doors in burrow entrances. These one-way doors allow the owl to exit the burrow, but not enter it. These doors shall be left in place 48 hours to ensure owls have left the burrow. Artificial burrows shall be provided nearby. The implementing project area shall be monitored daily for one week to confirm owl use of burrows before excavating burrows in the impact area. Burrows shall be excavated using hand tools and refilled to prevent reoccupation. Sections of flexible pipe shall be inserted into the tunnels during excavation to maintain an escape route for any animals inside the burrow. The CDFW shall be consulted prior to any active relocation to determine acceptable receiving sites available where this species has a greater chance of successful long-term relocation. If avoidance is infeasible, then a Determination of Biologically Equivalent or Superior Preservation (DBESP) Report shall be required, including associated relocation of burrowing owls. If conservation is not required, then owl relocation shall still be required following accepted~~

~~protocols. Take of active nests shall be avoided, so it is strongly recommended that any relocation occur outside of the nesting season.~~

Response to Comment 2.8:

This comment provides information regarding the reporting of special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). This comment is informational in nature and does not raise a specific issue with the adequacy of the DEIR or raise any other CEQA issue. Therefore, no further response is required or provided.

Response to Comment 2.9:

This comment notes that the Project would result in impacts to fish and/or wildlife and would be required to pay environmental document filing fees as currently proposed. The Project applicant will pay all applicable filing fees as required by CDFW. This comment is informational in nature and does not raise a specific issue with the adequacy of the DEIR or raise any other CEQA issue. Therefore, no further response is required or provided.

Response to Comment 2.10:

This comment requests that the City address CDFW's comments and provide contact information for any additional questions pertaining to the comments. This comment is conclusory in nature and does not raise a specific issue with the adequacy of the DEIR or raise any other CEQA issue. Therefore, no further response is required or provided.

A table of mitigation measures has been attached which reiterates the proposed mitigations discussed above. Revisions have been made as appropriate, as discussed in the responses above. No further revision to the DEIR is warranted.

Comment Letter 3: Center of Biological Diversity, dated July 17, 2023.

July 17, 2023

Sent via email

Ryan Leonard
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Re: Comments on the Draft Environmental Impact Report for the Mesa Linda Logistics Center Project

Dear Mr. Leonard:

These comments are submitted on behalf of the Center for Biological Diversity (the "Center") regarding the Mesa Linda Logistics Center Project ("Project"). The Center previously submitted comments on the Project's Notice of Preparation on October 6, 2022.¹ The Center has reviewed the DEIR closely and is concerned about the proposed project's significant impacts to biological resources, greenhouse gas emissions, and air quality, among others. The Center urges the City to correct the deficiencies identified below and recirculate a revised DEIR for public review and comment prior to approving the Project.

3.1

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.7 million members and online activists throughout California and the United States. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in Hesperia.

I. THE DEIR'S ANALYSIS OF AND MITIGATION FOR THE PROJECT'S IMPACTS TO BIOLOGICAL RESOURCES IS INADEQUATE.

A. The DEIR's Analysis of and Mitigation for Impacts to the Western Joshua Tree is Inadequate.

3.2

¹ The DEIR purports to include comments submitted on the Notice of Preparation in its Appendix A. Appendix A does not include the Center's comment or any other comments submitted prior to the publication of the DEIR. The DEIR must be amended to include these comments.

i. The Project Site Is Home to a Natural Community of Concern.

The Project site is located in the northwestern part of the City, within San Bernardino's Victor Valley region. (DEIR at 1-1.) The City is located within the range of the western Joshua tree South population (YUBR South). The geographic area in which YUBR South is situated is comprised of 3.7 million acres, with just over 50% in private ownership, 48% federally owned, and just under 2% state, county and local owned (USFWS 2018). The USFWS (2018) estimates that 3,255,088 acres of this area was suitable for Joshua trees based on soils and other habitat factors. However, Joshua tree actually occupy only a fraction of this area, as they have a patchy and disjunct distribution, and large areas of former habitat have been lost to development or agricultural conversion.

Increasing development, climate change, increasing drought and wildfires, invasive species that adversely affect fire dynamics, and other threats have led to ongoing reductions in western Joshua trees and western Joshua tree habitat range-wide. Protecting western Joshua trees and their habitat from continued destruction and habitat loss is therefore of utmost importance to the persistence of the species in California. However, within the City and surrounding communities in particular, western Joshua tree habitat is shrinking at an alarming rate due to increasing development. While western Joshua trees currently persist in the less-developed areas of the City, they are absent from the more developed areas as well as the agricultural lands in the region, making the Project site all the more valuable.

3.2 Cont.

While the DEIR characterizes the Project site as "disturbed" property (DEIR at 4.2), the Project site is in fact comprised of ecologically significant habitat for Joshua trees. As the DEIR admits, the Project site is primarily "Joshua tree woodland and habitat," of which the Project will destroy 18.16 acres, resulting in a considerable loss of this natural community in the region. (DEIR at 4-2; 5.3-10.) Joshua tree woodland is a community recognized by the California Department of Fish and Wildlife (CDFW) as a Natural Community of Concern. (DEIR at 5.3-5.) Sensitive natural communities are communities that are of limited distribution statewide or within a county or region and are often vulnerable to environmental effects of projects (CDFW 2018). CDFW's List of California Terrestrial Natural Communities is based on the best available information, and indicates which natural communities are considered sensitive at the current stage of the California vegetation classification effort.² The DEIR fails to disclose or adequately evaluate the impacts from destroying nearly twenty acres of this Natural Community of Concern.

i. The DEIR Does not Analyze the Project's Significant Impacts on Western Joshua Trees.

The Project proposes to develop 18.16 acres of valuable Joshua tree habitat into 408,997 square feet of industrial/warehouse space and associated improvements. (DEIR at 5.2-18.) The DEIR acknowledges that western Joshua Trees are protected under CESA as a candidate species (DEIR at 5.3-5) but inexplicably does not list them among the special-status plant species that

3.3

² See the Vegetation Classification and Mapping Program (VegCAMP) website for additional information on natural communities and vegetation classification. Available at: <https://www.wildlife.ca.gov/Data/VegCAMP>.

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may be present on the site. The DEIR's conclusion that there are "no special status plant species determined to have the potential to be present within the Project site" simply lacks support. (DEIR 5.3-6; 5.3-11.) The Project site contains 25 healthy Joshua Trees, and 16 more appear to reside within a 186-foot buffer. (DEIR at 5.3-11, 5.3-15) The EIR also fails to consider Joshua Tree habitat when analyzing whether the Project would have a substantial adverse effect on any sensitive natural communities. (DEIR at 5.3-12-13.)

3.3 Cont.

ii. Western Joshua Trees Are a Special Status Species, the Impacts to Which are Presumed to be Significant.

The CEQA Guidelines indicate that a Project can be expected to have significant impacts to biological resources if the Project has a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service. (CEQA Guidelines, Appendix G, subd. IV(a).) Accordingly, the DEIR itself indicates that the Project's impacts will be significant if it will "have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate . . . species . . . by the California Department of Fish and Game." (DEIR at 5.3-9; see also CEQA Guidelines § 15065(a)(1) [when performing an initial study, agencies shall make a mandatory finding of significance where a proposed project has the potential to substantially reduce the number or restrict the range of a listed species], California Fish and Game Code § 2085 [CESA candidate species treated like threatened or endangered species].)

3.4

The DEIR erroneously concludes that there are "no special status plant species" on the Project site. (DEIR 5.3-6; 5.3-11.) On September 22, 2020, the California Fish and Game Commission ("CFGC") advanced the western Joshua tree to candidacy under the California Endangered Species Act ("CESA"), protecting these imperiled plants from harm during the ongoing review process. (CFGC 2020.) Consequently, the Project's impacts to the western Joshua trees must be considered significant and fully evaluated and disclosed to the public. In June 2022, CFGC deadlocked 2-2 on whether to make that protection permanent and agreed to reconsider the listing decision after seeking more input from California Tribes. Tribal input has strongly supported protecting western Joshua trees. On June 27, 2023, the California Legislature passed the Western Joshua Tree Conservation Act ("Conservation Act") to permanently protect the iconic species. (Singh 2023.) The law was signed by Governor Newsom and is now in effect.³ Among other things, under the Conservation Act, the western Joshua tree remains a candidate species under CESA, meaning that it undisputedly is a special status species under CEQA. These actions impose obligations to protect the species that have not been met here.

B. The DEIR Does not Adequately Analyze or Disclose the Extent of the Project's Impacts to Joshua Trees and Joshua Tree Habitat.

3.5

³ Sen. Bill No. 122 (2023-2024 Reg. Sess.) Available at: https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=2023202405B122.

The Project's proposed warehouse will require the removal of vegetation from the site prior to the start of construction (DEIR at 3-19), which will necessarily include any Joshua trees located in the Project footprint. Yet the DEIR fails to acknowledge any potentially significant direct or indirect impacts associated with the destruction or adverse modification of the western Joshua tree's *habitat* and concludes that the Project will not have a significant impact on any sensitive natural community without once mentioning Joshua Tree habitat. (DEIR at 5.3-12-13.) Development, climate change, and increasing wildfire occurrences exacerbated by drought and invasive species negatively impact western Joshua trees and their habitat. (DeFalco et al. 2010; Harrower and Gilbert 2018.) Climate change, in particular, represents the single greatest threat to the continued existence of western Joshua trees. Even under the most optimistic climate scenarios, western Joshua trees will be eliminated from significant portions of their range by the end of the century; under warming scenarios consistent with current domestic and global emissions trajectories, the species will likely be close to being functionally extinct in the wild in California by century's end. (Dole et al. 2003; Cole et al. 2011; Sweet et al. 2019.) Studies indicate that the species' range is contracting at lower elevations, recruitment is limited, and mortality is increasing, all of which would likely reflect a population already starting to decline due to recent warming. Even greater changes are projected to occur over the coming decades.

3.5 Cont.

The DEIR does not acknowledge significant impacts to Joshua trees associated with the reduction in habitat connectivity. Maintaining successful habitat connectivity nearby is particularly important to western Joshua trees: for successful reproduction and recruitment, Joshua trees require the presence of their obligate pollinator, rodents to disperse and cache seeds and nurse plants to shelter emerging seedlings. Therefore, to the degree that any Joshua trees are left remaining on the Project site, such moths and rodents must have access to and also be maintained on site in order for these remnant western Joshua trees to successfully reproduce. Construction on the project site will reduce habitat connectivity necessary for sustainable Joshua tree recruitment onsite. Moreover, construction on the Project site will result not just in the loss of Joshua trees and their pollinators and dispersers from the site itself, but will further fragment habitat, potentially resulting in significant adverse impacts to remnant Joshua tree woodland in nearby areas if pollinator or disperser populations are reduced. None of these impacts are analyzed in the DEIR.

C. The Project's Significant Impacts to Joshua Trees and Joshua Tree Habitat Must Be Properly Mitigated.

i. The DEIR's Mitigation is Inadequate.

The DEIR offers five mitigation measures for biological resources, two of which address impacts to the Joshua Tree. The DEIR fails to support its claim that these two measures will reduce the Project's impacts to Joshua trees to less than significant. (DEIR at 5.3-12 ["the Project would result in less than significant direct or indirect impacts on species identified as candidate, sensitive, or special status... with the implementation of Mitigation Measures ... BIO-5 and BIO-6".])

3.6

BIO-5 amounts to nothing more than compliance with already-existing requirements in the City of Hesperia Municipal Code. For one, compliance with the law alone cannot serve as

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substantial evidence that a project's impacts will be mitigated to less-than-significant levels. A determination that compliance with the law will be sufficient to prevent significant adverse impacts must be based on a project-specific analysis of potential impacts and the effect of regulatory compliance. (*Californians for Alternatives to Toxics v Department of Food & Agric.* (2005) 136 Cal.App.4th 1.) The measure lacks project-specific analysis of how compliance with the Hesperia Municipal Code will address project-specific impacts, such as the effects to Joshua Tree woodland and connectivity. The measure also lacks crucial details or performance standards to guide its success: it does not specify who will be responsible for ensuring compliance, such as the party responsible for ensuring that transplanted plants are watered until established, nor does the measure establish a target success rate for transplantation.

3.6

BIO-6 commits the Project to obtaining a take permit for Joshua Tree from CDFW, but only in the event that CFGC lists the Joshua Tree as threatened. (DEIR at 1-13.) As a candidate species, the Joshua Tree enjoys the full protections of listed endangered or threatened species. (Fish and Game Code § 2085.) Should the Project proceed before CFGC has made a final determination on the Joshua Tree, the Project still must secure a take permit for the Joshua Tree. Since the Joshua Tree is a candidate species, BIO-6 must be amended to commit to obtaining take authorization. As discussed below, the passage of the Western Joshua Tree Conservation Act offers an alternative path to securing take authorization from CDFW. The mitigation for the Project will need to be updated, and the DEIR will need to be recirculated for public review.

ii. The DEIR Must Be Updated to Account for the Passage of the Western Joshua Tree Conservation Act.

In recognition of the urgency of protecting the Western Joshua Tree, on June 27, 2023 the California Legislature passed the Western Joshua Tree Conservation Act ("Conservation Act"). (Singh 2023.) The Conservation represents a resolute commitment to safeguarding the future of the Western Joshua Tree: it provides for the conservation of western Joshua tree at a landscape scale, while also making available a permitting and mitigation process that allows payment of in-lieu fees. The Act is now in effect. (*Ibid.*)

Under the Conservation Act, harming or removing Joshua Trees is prohibited unless the project applicant obtains a permit and provides fees or other mitigation. CDFW may authorize permits for Joshua tree removal, following a process that includes the permittee providing a census of all Joshua trees on their property, including photos and sizes for each tree. (Fish and G. Code, § 1927.3(a)(1).) The permittee is required to minimize impacts to Joshua Tree as much as possible (Fish and G. Code, § 1927.3(a)(2)) and must take mitigation steps, which could include fees or relocation. (Fish and G. Code, § 1927.3(a)(2).)

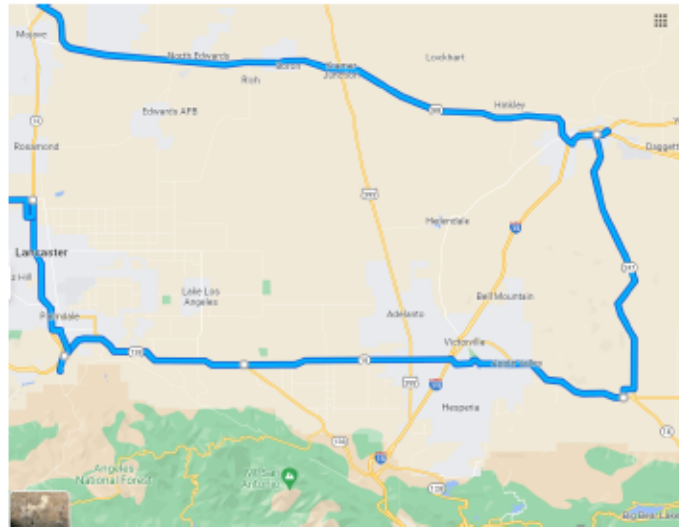
3.7

The Conservation Act authorizes, in lieu of completing the mitigation measures on its own, a permittee to satisfy its mitigation obligation by paying fees. The fee schedule depends upon the location of the Project and the height of each Joshua Tree. (Fish and G. Code, § 1927.3(d)-(e)).

Hesperia is south of Highway 18, and the Project site is outside the jurisdictional bounds entitled to lesser fees (see map below):

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Accordingly, for purposes of compliance with CESA and the Conservation Act, the Project in lieu of mitigation may opt to pay fees, as detailed in Fish and G. Code, § 1927.3(e)(2)(A)-(C), according to the following schedule:

- \$2,500 for each western Joshua tree five meters or greater in height
- \$500 for each western Joshua tree one meter or greater but less than five meters in height
- \$340 for each western Joshua tree less than one meter in height

The DEIR notes that in the event the Conservation Act passed, the Project's Joshua Tree protection measures would be replaced with alternative mechanisms that provide "equal or better function and value." (DEIR at 5.3-28.) The Conservation Act has now passed and is in effect. Consequently, the City must provide new measures that comply with the Conservation Act and recirculate the DEIR to allow the public an opportunity to comment. Importantly, the Conservation Act does not displace existing requirement of Hesperia's current ordinances related to Joshua trees that may provide additional protections to the species beyond those required by the Act. (Fish and G. Code, § 1927.11.) The EIR must be updated to include the information required for permitting under the Conservation Act such as a census of all Joshua Trees, classified by height, as well as an analysis of measures required under Hesperia's existing ordinances that may provide additional conservation benefits to the species.

⁴ The blue line represents the Legislature's demarcation of an area bounded by the intersection of Highway 99 and Highway 58, then east along Highway 58 to the intersection of Interstate 15, then north along Interstate 15 to the intersection of Highway 247, then south along Highway 247 to the intersection of Highway 18, then west along Highway 18 to the intersection of Highway 138, then west and north along Highway 138 to the intersection of Interstate 5, then north along Interstate 5 to the intersection of Highway 99, then north along Highway 99 to Highway 58. This area qualifies for lesser in lieu fees for the take of Joshua Tree. (Fish and G. Code, § 1927.3(e).)

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3.7
Cont.

Finally, while the Project may opt to pay these fees in lieu of seeking a take permit from the California Department of Fish and Wildlife, the Conservation Act does not offer an alternative mechanism to mitigate impacts to Joshua Tree Woodland. Accordingly, the EIR also still must analyze and mitigate the loss of Joshua Tree woodland, upon which a number of species rely.

3.8

II. THE DEIR FAILS TO PROPERLY ANALYZE CLIMATE AND AIR QUALITY IMPACTS.

A. Climate Change Is a Catastrophic and Pressing Threat to California.

A strong, international scientific consensus has established that human-caused climate change is causing widespread harms to human society and natural systems, and that climate change threats are becoming increasingly dangerous. The Intergovernmental Panel on Climate Change (IPCC), the leading international scientific body for the assessment of climate change, concluded in its 2014 Fifth Assessment Report that: “[w]arming of the climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia. The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, and sea level has risen,” and further that “[r]ecent climate changes have had widespread impacts on human and natural systems.” (IPCC 2014.) These findings were echoed in the United States’ own 2014 Third National Climate Assessment and 2017 Climate Science Special Report, prepared by scientific experts and reviewed by the National Academy of Sciences and multiple federal agencies. The Third National Climate Assessment concluded that “[m]ultiple lines of independent evidence confirm that human activities are the primary cause of the global warming of the past 50 years” and “[i]mpacts related to climate change are already evident in many regions and are expected to become increasingly disruptive across the nation throughout this century and beyond.” (Melillo 2014.) The 2017 Climate Science Special Report similarly concluded:

3.9

[B]ased on extensive evidence, it is extremely likely that human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th century. For the warming over the last century, there is no convincing alternative explanation supported by the extent of the observational evidence.

The U.S. National Research Council concluded that “[c]limate change is occurring, is caused largely by human activities, and poses significant risks for—and in many cases is already affecting—a broad range of human and natural systems.” (NRC 2010.) Based on observed and expected harms from climate change, in 2009 the U.S. Environmental Protection Agency found that greenhouse gas pollution endangers the health and welfare of current and future generations. (74 Fed. Reg. 66496 (Dec. 15, 2009) [U.S. EPA, Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule].)

These authoritative climate assessments decisively recognize the dominant role of greenhouse gases in driving climate change. As stated by the Third National Climate Assessment: “observations unequivocally show that climate is changing and that the warming of the past 50 years is primarily due to human-induced emissions of heat-trapping gases.” (Melillo

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2014.) The Assessment makes clear that “reduc[ing] the risks of some of the worst impacts of climate change” will require “aggressive and sustained greenhouse gas emission reductions” over the course of this century. (Melillo 2014 at 13, 14, and 649.)

The impacts of climate change will be felt by humans and wildlife. Climate change is increasing stress on species and ecosystems—causing changes in distribution, phenology, physiology, vital rates, genetics, ecosystem structure and processes—in addition to increasing species extinction risk. (Warren 2008.) Climate-change-related local extinctions are already widespread and have occurred in hundreds of species. (Wiens 2016.) Catastrophic levels of species extinctions are projected during this century if climate change continues unabated. (Thomas 2004; Maclean 2011; Urban 2015.) In California, climate change will transform our climate, resulting in such impacts as increased temperatures and wildfires, and a reduction in snowpack and precipitation levels and water availability.

Therefore, immediate and aggressive greenhouse gas emissions reductions are necessary to keep warming well below 2°C above pre-industrial levels. The IPCC Fifth Assessment Report and other expert assessments have established global carbon budgets, or the total amount of carbon that can be burned while maintaining some probability of staying below a given temperature target. According to the IPCC, total cumulative anthropogenic emissions of CO₂ must remain below about 1,000 GtCO₂ from 2011 onward for a 66 percent probability of limiting warming to 2°C above pre-industrial levels, and to 400 GtCO₂ from 2011 onward for a 66 percent probability of limiting warming to 1.5°C. (IPCC 2013 at 25; IPCC 2014 at 63-64 & Table 2.) These carbon budgets have been reduced to 850 GtCO₂ and 240 GtCO₂, respectively, from 2015 onward. (Rogelj 2016 at Table 2.) As of 2022, climate policies by the world’s countries would lead to an estimated 2.7°C of warming, and possibly up to 3.6°C of warming, well above the level needed to avoid the worst dangers of climate change. (Climate Action Tracker 2021.)

3.9 Cont.

The United States has contributed more to climate change than any other country. The U.S. is the world’s biggest cumulative emitter of greenhouse gas pollution, responsible for 27 percent of cumulative global CO₂ emissions since 1850, and the U.S. is currently the world’s second highest emitter on an annual and per capita basis. (World Resources Institute 2020.) Nonetheless, U.S. climate policy is wholly inadequate to meet the international climate target to hold global average temperature rise to well below 2°C above pre-industrial levels to avoid the worst dangers of climate change. Current U.S. climate policy has been ranked as “insufficient” by an international team of climate policy experts and climate scientists which concluded that “the US’ climate policies and action in 2030 need substantial improvements.” (Climate Action Tracker 2022.)

In its 2018 Special Report on Global Warming of 1.5°C, the IPCC—the leading international scientific body for the assessment of climate change—described the devastating harms that would occur at 2°C warming. The report highlights the necessity of limiting warming to 1.5°C to avoid catastrophic impacts to people and life on Earth. (IPCC 2018.) The report also provides overwhelming evidence that climate hazards are more urgent and more severe than previously thought, and that aggressive reductions in emissions within the next decade are essential to avoid the most devastating climate change harms.

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In response to inadequate action on the national level, California has taken steps through legislation and regulation to fight climate change and reduce statewide GHG emissions. Enforcement and compliance with these steps are essential to help stabilize the climate and avoid catastrophic impacts to our environment. California has a mandate under AB 32 to reach 1990 levels of GHG emissions by the year 2020, equivalent to approximately a 15 percent reduction from a business-as-usual projection. (Health & Saf. Code, § 38550.) Based on the warning of the Intergovernmental panel on Climate Change and leading climate scientists, Governor Brown issued an executive order in April 2015 requiring GHG emission reduction 40 percent below 1990 levels by 2030. (Executive Order B-30-15 (2015).) The Executive Order is in line with a previous Executive Order mandating the state reduce emission levels to 80 percent below 1990 levels by 2050 in order to minimize significant climate change impacts. (Executive Order S-3-05 (2005).) In enacting SB 375, the state has also recognized the critical role that land use planning plays in achieving greenhouse gas emission reductions in California.

The state Legislature has found that failure to achieve greenhouse gas reduction would be “detrimental” to the state’s economy. (Health & Saf. Code § 38501(b).) In his 2015 Inaugural Address, Governor Brown reiterated his commitment to reduce greenhouse gas emissions with three new goals for the next fifteen years:

- Increase electricity derived from renewable sources to 50 percent;
- Reduce today’s petroleum use in cars and trucks by 50 percent;
- Double the efficiency of existing buildings and make heating fuels cleaner.

(Brown 2015 Address.)

3.9 Cont.

Although some sources of GHG emissions may seem insignificant, climate change is a problem with cumulative impacts and effects. (Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin. (9th Cir. 2008) 538 F.3d 1172, 1217 (“the impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis” that agencies must conduct).) One source or one small project may not appear to have a significant effect on climate change, but the combined impacts of many sources can drastically damage California’s climate as a whole. Therefore, project-specific GHG emission disclosure, analysis and mitigation is vital to California meeting its climate goals and maintaining our climate.

The impacts of climate change are already being felt by humans and wildlife. Human-induced climate change, including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature and people. (IPCC 2022.) This rise in weather and climate extremes has led to some irreversible impacts, as natural and human systems are pushed beyond their ability to adapt. (IPCC 2022.)

Thousands of studies conducted by researchers around the world have documented changes in surface, atmospheric, and oceanic temperatures; melting glaciers; diminishing snow cover; shrinking sea ice; rising sea levels; ocean acidification; and increasing atmospheric water vapor. (USGCRP 2017.) In California, climate change will result in impacts including, but not limited to, increased temperatures and wildfires and a reduction in snowpack, precipitation levels, and water availability.

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In the IPCC's most recent report, entitled *Climate Change 2022: Impacts, Adaptation and Vulnerability*, it found that warming is proceeding even faster than anticipated, and the best-case scenario for climate change is slipping out of reach. (IPCC 2022.) The report now estimates that, over the next 20 years, the world will cross the global warming threshold of 1.5°C. And unless there are immediate, rapid and large-scale reductions in greenhouse gas emissions, limiting warming to close to 1.5°C—or even 2°C—will be beyond reach. The United Nations Secretary General described the forecasts in this report as an “atlas of human suffering.” (Borenstein 2022.)

3.9 Cont.

Given the increasingly urgent need for drastic action to reduce GHG emissions, the EIR's failure to fully disclose, analyze, mitigate, or consider alternatives to reduce the Project's significant climate change effects is all the more alarming.

B. Harmful Air Quality Has Serious Health Impacts.

Air quality is a significant environmental and public health concern in California. Unhealthy, polluted air contributes to and exacerbates many diseases and increases mortality rates. The U.S. government has estimated that between 10 to 12 percent of total health costs can be attributed to air pollution. (VCAPCD 2003.) Greenhouse gases, such as the air pollutant carbon dioxide, which is released by fossil fuel combustion, contribute directly to human-induced climate change (EPA 2016), and in a positive feedback loop, poor air quality that contributes to climate change will in turn worsen the impacts of climate change and attendant air pollution. (BAAQMD 2016.)

Air pollution and its impacts are felt most heavily by young children, the elderly, pregnant women and people with existing heart and lung disease. Pregnant women are particularly vulnerable to air pollution, including pollution near busy roads and freeways. People living in poverty are also more susceptible to air pollution as they are less able to relocate to less polluted areas, and their homes and places of work are more likely to be located near sources of pollution, such as freeways or ports, as these areas are more affordable. (ALA 2023.) Warehouse projects are well-documented sources of air quality degradation that can create serious, negative health outcomes for surrounding communities. (Betancourt 2012, pp. 4-5.) Some of the nation's most polluted counties are in Southern California, and San Bernadino County continually tops the list. (ALA 2023.) According to the American Lung Association's 2023 “State of the Air” report, San Bernadino County is the worst county in the country for ozone pollution. (*Ibid.*) The air in San Bernadino County has ozone levels in the unhealthy range almost every day—on average, 407 days per year. (*Ibid.*) The same report found that San Bernadino County received a “Fail” grade in all air quality metrics. (*Ibid.*)

3.10

Although there are many different types of air pollution, Ozone, PM2.5, and Toxic Air Contaminants (TACs) are of greatest concern in San Bernadino County. These three air pollutants have been linked to an increased incidence and risk of cancer, birth defects, low birth weights and premature death, in addition to a variety of cardiac and lung diseases such as asthma, COPD, stroke and heart attack. (Laurent 2016; ALA 2022.) Ozone (commonly referred to as smog) is created by the atmospheric mixing of chemicals released from fossil fuel combustion – such as reactive organic gases (ROG) and nitrogen oxides (NOx) – and sunlight.

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Although it is invisible, ozone poses one of the greatest health risks, prompting the EPA to strengthen its National Ambient Air Quality Standard for Ozone in 2015. (ALA 2022.) PM_{2.5} is a common component of vehicle exhaust emissions and contributes to visible air pollution. These tiny particles are dangerous because they are small enough to escape our body's natural defenses and enter the blood stream. Fugitive dust is a term used for fine particulate matter that results from disturbance by human activity such as construction and road-building operations. (VCAPCD 2003.) TACs are released from vehicle fuels, especially diesel, which accounts for 70% of the cancer risk from TACs. (CARB 2022c.) This is especially relevant for Southern California with its abundance of diesel shipping traffic. (Bailey; Betancourt 2012.)

3.10 Cont.

Warehouse projects in particular are well-documented sources of air quality degradation that can create serious, negative health outcomes for surrounding communities. (Betancourt 2012, pp. 4-5.) Particulate emissions from diesel vehicles that carry freight to and from warehouses contribute to "cardiovascular problems, cancer, asthma, decreased lung function and capacity, reproductive health problems, and premature death." (Id. at 5.) With the rapid increase in global trade, the Ports of LA and Long Beach have become a primary entryway for goods, processing over 40 percent of all imports into the United States, and accounting for 20 percent of diesel particulate pollutants in southern California—more than from any other source. (Minkler, et al. 2012.)

C. The DEIR Relies on Inappropriate Thresholds of Significance and Therefore Erroneously Concludes the Project Would Not Have Significant Impacts Relating to Air Quality.

The City's failure to adequately analyze, support, and disclose air quality risks and related impacts stems, at least in part, from the DEIR's failure to establish appropriate thresholds of significance for this topic. The DEIR estimates the Project *daily* will emit 13.6 pounds of VOC, 11.2 pounds of NO_x, 22.8 pounds of CO, and 82 pounds of PM₁₀. (DEIR at 5.2-20.) This amounts to, annually, to approximately, 2.4 tons of VOC, 2.1 tons of NO_x, 3.9 tons of CO, and .3 tons of PM₁₀. (*Ibid.*)

The DEIR then claims to evaluate these air quality impacts against three thresholds, only one of which is relevant to the amount of criteria pollutants produced by the Project: whether the Project will "[r]esult in a cumulatively considerable net increase of any criteria pollutant for which the Project region is non-attainment under an applicable federal [national] or state ambient air quality standard." (DEIR at 5.2-18 [citing CEQA Guidelines Appendix G].) In applying the threshold, however, the DEIR swaps in massive numeric thresholds—137 pounds per day of VOC, 137 pounds per day of NO_x, 548 pounds per day of CO, and 82 pounds per day of PM₁₀—finding that the proposed Project would not exceed any of these numeric thresholds and thus that the Project's air quality impacts are less than significant, requiring no mitigation. (DEIR at 5.2-18.)

3.11

As discussed above, a lead agency's selection of a threshold of significance must be supported with substantial evidence. Moreover, a determination that an environmental impact complies with a particular threshold of significance does not relieve a lead agency of its obligation to consider evidence that indicates the impact may be significant despite compliance

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with the threshold, evidence shows that an environmental impact might be significant despite the significance standard used in the EIR, the agency must address that evidence. CEQA Guidelines § 15064(b)(2). *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111.

The DEIR's use of these daily emissions as a threshold of significance is not supported by substantial evidence and drastically downplays the Project's significant air quality emissions impacts. The DEIR attempts to justify these exorbitant thresholds by offering that "MDAQMD has established daily emissions thresholds for construction and operation of a proposed project" and that these Guidelines contain "specific criteria for determining whether the potential air quality impacts of a project are significant." (DEIR at 5.2-15.) For one, this statement is factually untrue. The DEIR is referring to a guidance document entitled "MDAQMD California Environmental Quality Act (CEQA) And Federal Conformity Guidelines" that was issued by MDAQMD staff in 2016. (MDAQMD 2016.) The document was issued informally by staff and never approved, let alone "adopted" by the MDAQMD Board, nor was it subject to any notice and comment rulemaking process.⁵ As such, it does not qualify for use as a CEQA threshold of significance of general applicability. (See *Golden Door Props. V. County of San Diego* (2018) 27 Cal.App.5th 892, 901 [rejecting local GHG analysis guidance document as improperly adopted threshold of significance and because it applied state standards without justifying their application to local conditions].)

3.11 Cont.

What's more, the MDAQMD guidance document invokes these numerical "thresholds" only once, in passing, in a table that makes no reference to CEQA, and the document does not make any other reference to these "significance thresholds" for air quality. (MDAQMD 2016 at p. 9-10, Table 6.) In fact, the document contains no discussion at all of how these numbers were derived, why they might be suitable for measuring projects' impacts under CEQA, or how they should be applied by local agencies considering land use proposals. (*Id.*) The document simply supplies no evidence to support the City's use and application of these numbers as a threshold of significance for evaluating individual projects under CEQA. Nor has the MDAQMD separately provided any such evidence: the document was issued without a staff report or any supporting materials.⁶ The City's use of these numerical emissions threshold are therefore not supported by substantial evidence and violate CEQA; the EIR should be revised to include an adequate threshold of significance that does not obscure the Project's air quality impacts.

D. The DEIR Significantly Undercounts Mobile Source Emissions.

Under the EIR's own projections, mobile sources drive the majority of the Project's air quality and greenhouse gas impacts. Mobile sources will generate approximately 98% of the Project's nitrogen oxide emissions, 99% of its carbon monoxide, sulfur oxide, PM10 and PM2.5 emissions, and over 60% of its greenhouse gas emissions. (DEIR at 5.2-20, 5.6-12.) These

3.12

⁵ Personal telephone communication with Tracy Walters, MDAQMD Air Quality Planner, October 28, 2020.

⁶ Personal telephone communication with Tracy Walters, MDAQMD Air Quality Planner, October 28, 2020.

estimates are based on a severe undercount of the number of vehicle trips the Project will generate and how long those trips will be.

3.12
Cont.

i. The DEIR Does Not Correctly Analyze the Vehicle Trips that Will Be Generated by the Project.

The DEIR here grossly underestimates the vehicle trips that the Project will generate—trips that are the main driver of the Project’s air quality and greenhouse gas impacts. (DEIR at 5.6-12.) It estimates that the Project will generate 573 daily trips, which it calculated using the Institute of Transportation Engineers (ITE) Common Trip Generation Rates. (DEIR Appendix H at 3.) That total includes 395 passenger vehicle trips and 177 truck trips. (*Id.*) The ITE estimates trip generation based on the type of facility and square footage of the facility. (ITE 2021.) The DEIR uses the rate for “High-Cube Transload and Short-term Storage Warehouse,” which has a generation rate of .1 trips per thousand square feet of floor area. (DEIR, Appendix H at 13.) Every other type of warehouse project identified by ITE has a significantly higher trip generation rate—up to thirteen times higher. (ITE 2021.)

The DEIR provides no information or evidence justifying its selection of high-cube short-term storage and warehousing when other types of high cube warehouse centers result in truck trip estimates orders of magnitude higher. The DEIR describes the Project generally as having a “a high-cube warehouse/distribution building” (DEIR at 5.2-18) and says that while a tenant hasn’t been identified, the occupant is assumed to be “a warehouse distribution and logistics operator, a light manufacturer or a similar industrial use.” (DEIR at 3-19.) The DEIR lacks additional detail about the type of warehouse facility it anticipates constructing.

3.13

Absent additional information, it appears that any tenant could operate a high-cube fulfillment center warehouse that would generate 1.37 trips per unit, a high-cube parcel hub warehouse that would generate .64 trips per unit, or a manufacturing use that would generate .67 trips per unit, among others. (ITE 2021.) Each of those permitted uses would generate trips orders of magnitude higher than the number of trips that the DEIR disclosed, analyzed, or mitigated.

Using the lowest possible estimate without any evidence that it will be accurate violates CEQA’s requirement that an EIR make a good faith effort to fully analyze and attempt to mitigate all significant impacts of a project. (CEQA Guidelines, § 15126.2; Pub. Resources Code, § 21002.)

D. The DEIR Assumes Each Trip Generated by the Project Will Be Implausibly Short.

The mobile source analysis also uses an average trip length of 16 miles, a significant underestimation unsupported by evidence. The Project rejected alternative sites because it seeks to “benefit[] from the Highway 395 and I-15 corridor’s regional transportation network.” (DEIR at 1-3.) Under the DEIR’s assumption, the Project’s trucks will not stray far from the Project site, let alone travel regionally. The site is 88 miles from Port of Long Beach and 90 miles from the

3.14

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Port of LA. The warehousing industry in southern California is built around the Ports of LA and Long Beach, where 40% of all seaborne imports enter the country. (Karlman, 2021.) The trucks serving this warehouse would have a 16-mile average trip length only if the Project does not serve the major ports, and instead transports goods only to and from Hesperia or Victorville. Nothing in the DEIR supports this implausible assumption.

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E. The DEIR Uses Out-Of-Date Emissions Models.

The DEIR calculates emissions using the 2020 version of CalEEMod even though a new version was issued in April 2022, over a year before this DEIR was published. (DEIR at 5.6-11; ICF Appendix H.) The 2022 version has been “fundamentally revised” and many of the emissions quantification calculations have been improved and updated. (CAPCOA.) There are significant changes to the VMT inputs and calculations, which is especially relevant here given the serious deficiencies in the VMT analysis. (ICF Appendix H.)

3.15

A lead agency must make a good faith effort to evaluate the full extent of a Project’s impacts under CEQA. (Guidelines § 15144 [a lead agency “must use its best efforts to find out and disclose all that it reasonably can” in the EIR]; *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 519-21.) Instead, the City has used a calculation tool that was already a year out-of-date when the DEIR was released. The City’s best efforts at disclosure must include using the most up-to-date version of the modeling software and the City has not fulfilled that duty here.

E. Because the DEIR Improperly Found that the Project’s GHG and Air Quality Impacts Were Less Than Significant, It Failed to Consider, Much Less Adopt, Feasible Mitigation Measures to Reduce or Avoid the Project’s Harms.

As the DEIR readily admits, it does not consider or adopt any mitigation measures to reduce, avoid, or mitigate the Project’s air quality or GHG impacts. (DEIR at 1.6, 1.21.) Because, as described above, the Project’s impacts are significant, the EIR’s failure to consider and adopt all feasible mitigation to reduce or avoid the Project’s significant impacts violates CEQA. (See Pub. Res. Code § 21002 [It is the “policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which will avoid or substantially lessen the significant environmental effects of such projects.”], CEQA Guidelines §§ 15092(b), 15043, 15126.4(a)(1).) “Even when a project’s benefits outweigh its unmitigated effects, agencies are still required to implement all mitigation measures unless those measures are truly infeasible.” (*Sierra Club, supra*, 6 Cal.5th at pp. 524–525.) The EIR must be revised to adequately analyze the Project’s air quality and GHG impacts, acknowledge their significance, and consider and adopt feasible mitigation to reduce those impacts, and it should be recirculated for public review and comment.

3.16

Measures to Mitigate Both GHG Impacts and Air Quality Impacts

Truck Emissions

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Emissions from heavy-duty diesel trucks are one of the most harmful effects of warehouse development. The only way to fully mitigate this harm is by transitioning to zero emissions heavy-duty trucks as quickly as possible. It's crucial that warehouse projects, as the sites of concentrated, severe diesel impacts, accommodate the transition to clean trucks.

The EIR does nothing to mitigate the impacts of trucks. It only notes that on-road diesel trucks will comply with applicable state laws. (DEIR at 3-19.) A warehouse project that requires nothing at all above state law is badly out-of-step with state recommendations and current practice in the warehouse industry. First, the Attorney General recommends that warehouses require heavy-duty haul trucks to be model year 2010 or newer, which the AG has said is a feasible mitigation measure since at least 2021. (AGO 2021.) Second, the Attorney General recommends that all light- and medium- duty trucks be zero emissions, which, again, has been feasible for years. (*Ibid.*) For this project to replace recommended best practice measures that are clear, concrete, and feasible with nothing at all is a violation of CEQA.

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Moreover, this Project does not attempt to mitigate emissions from heavy trucks by accommodating the transition to zero emissions trucks. CARB has developed strategies to achieve 100% zero-emissions from medium and heavy-duty on-road vehicles in the State by 2045 everywhere feasible, and specifically to achieve 100% zero-emissions drayage trucks by 2035. (CARB 2022b.) Zero-emissions trucks are becoming widely available and economically feasible. Medium- and heavy-duty zero-emissions vehicles capable of meeting the daily needs of most trucking operations are available today. (*Ibid.*) Per the Advanced Clean Trucks rule, manufacturers in California will be selling higher percentages of zero emissions trucks every year. (CARB 2021.) CARB also expects to pass the Advanced Clean Fleet rule in spring of this year. Under that rule, all new trucks that companies add to drayage fleets after Jan 1, 2024 must be zero emissions. (CARB 2022b.) Trucks that are already being used as drayage trucks can continue to operate until the end of their legally defined useful life or until 2035, whichever comes first. (*Ibid.*) Transportation Refrigeration Units also emit significant GHGs, and CARB has responded with a rule requiring all TRUs operating in CA to be zero emission by 2030. (CARB 2022a.)

3.18

The EIR must require concrete, enforceable measures that prepare the Project's warehouses to operate with all-electric fleets, as they will be quickly required to do. The EIR must offer more electric truck charging infrastructure to meet the demands of the fleet mix of 2040. Otherwise, the Project will lag sorely behind the much-needed transition and will cement diesel emissions for decades.

In order to mitigate the Project's significant GHG impacts, the Project must first require that tenants use only trucks that are model year 2010 or newer and that all of the light- and medium-duty trucks be zero emissions. Next, the Project must prepare to transition to clean trucks via installing electric truck charging stations sufficient to allow every truck that serves the Project to be charged; requiring electric plugs for electric transport refrigeration units at every dock door, if the warehouse use could include refrigeration; and adding the projected energy use of an all-electric fleet to the Project's projected electricity use, and meeting that need with on-site solar panels.

3.19

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Requiring Electrical Equipment on Site

Warehouses require cargo handling equipment, like forklifts and pallet jacks, that produce considerable air pollution if they run on diesel. (CARB 2020.) Those emissions contribute to the Project's emissions from mobile sources, which are by far the largest source of air pollutants. (DEIR at 5.2-20.) Therefore, the California Attorney General recommends that all electrical equipment that warehouses use on-site should be zero-emission, and many recent warehouse projects have required this. (AGO 2021; Speedway Commerce Center DEIR at 1-16; Beaumont Summit Station DEIR at 4.2-22).⁷

3.20

Instead, this EIR only says that outdoor cargo handling equipment "would be non-diesel powered, in accordance with contemporary industry standards." (DEIR at 3-19.) This wording does not make it clear if the EIR is requiring non-diesel equipment, or just predicting that it will be used because it is typical in the industry. Vague, unenforceable assurances do not allow the public to understand the impact of the Project and do not mitigate its impacts. The Mitigation Monitoring and Reporting Program must require zero-emissions cargo equipment.

Measures to Mitigate GHG Impacts*100% On-Site Solar*

In the face of the climate crisis, California has set a bold and necessary goal to achieve net zero carbon emissions by 2045. In order to meet that decarbonization target, California needs to double its clean energy generation in the next decade, which will require a "record-breaking" expansion of clean energy infrastructure. (Cart, California Energy Commission). The Joint Agency SB 100 Report calls for building 2.8 GW/year of solar every year for 25 years, which is higher than the previous maximum annual build. (Joint Agencies at 11.) The biggest obstacle to increasing solar energy capacity as fast as it's needed is the large amount of flat, sunny land that solar farms require. (Groom) Building solar infrastructure across undeveloped land is an imperfect solution that hurts important ecosystems, eliminates opportunities for natural carbon sinks, and is often opposed by local residents. (Groom, Cart, Courage.)

3.21

Installing solar on the roofs of large warehouses in California is a crucial opportunity to use miles of flat, sunny space that would otherwise be wasted. A recent study found that warehouses could produce 176% of their annual electricity by fully developing their rooftop solar potential. (Huxley-Reicher and Neumann 2023.) If warehouses across America did this, it would reduce CO₂ by 112 million metric tons every year—the equivalent of taking 24 million gas vehicles off the road. (*Id.*) The Inland Empire has an estimated 1 billion square feet of warehouse, or 37 square miles, making it the most concentrated warehousing area in the US and a prime place to take advantage of the solar potential of warehouses. (Calma.)

Each warehouse built with the capacity to provide 100% of its own clean energy via rooftop solar brings California closer to the clean energy targets we must meet in order to avoid the most devastating effects of the climate crisis. Conversely, building 408,997 SF of warehouse and planning to power it via electricity from off-site sets back progress to achieving carbon neutrality

⁷ The Center does not here comment on the adequacy of any of these EIRs beyond noting that they required zero-emissions cargo handling equipment.

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by 2045, and thus, conflicts with a statewide goal. The technology exists now to require all future building sites to install enough rooftop solar photovoltaic panels to meet 100% of projected energy needs or be built with the capacity for these panels to be added later. The California Attorney General recommends that new warehouses are built with this capacity, and companies and municipalities are now following suit. (AGO 2021.) The City of Fontana, for example, already requires that every warehouse over 400,000 square feet get all its power from rooftop solar. (City of Fontana at 9-73.4) This is a feasible and necessary mitigation measure that the Project must adopt.

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Cont.

Measures to Mitigate Air Quality Impacts

Sensitive Receptors

The Project is within a mile of residential neighborhoods that will bear the brunt of the Project's air pollution impacts. (DEIR at 4-2.) Despite this, the Project did not adopt any of the mitigation measures that the California Attorney General recommends to protect sensitive receptors from trucking impacts. These should be considered:

- Per CARB guidance, siting warehouse facilities so that their property lines are at least 1,000 feet from the property lines of the nearest sensitive receptors.
- Creating physical, structural, and/or vegetative buffers that adequately prevent or substantially reduce pollutant dispersal between warehouses and any areas where sensitive receptors are likely to be present, such as homes, schools, daycare centers, hospitals, community centers, and parks.
- Providing adequate areas for on-site parking, on-site queuing, and truck check-in that prevent trucks and other vehicles from parking or idling on public streets.
- Placing facility entry and exit points from the public street away from sensitive receptors, e.g., placing these points on the north side of the facility if sensitive receptors are adjacent to the south side of the facility.
- Locating warehouse dock doors and other onsite areas with significant truck traffic and noise away from sensitive receptors, e.g., placing these dock doors on the north side of the facility if sensitive receptors are adjacent to the south side of the facility. Screening dock doors and onsite areas with significant truck traffic with physical, structural, and/or vegetative barriers that adequately prevent or substantially reduce pollutant dispersal from the facility towards sensitive receptors. (AGO 2021.)

3.22

III. THE DEIR LACKS THE REQUIRED ANALYSIS OF THE PROJECT'S CUMULATIVE IMPACTS.

The CEQA Guidelines define cumulative impacts as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." 14 Cal Code Regs §15355. Sections 15130 and 15065 elaborate that a project has a significant cumulative impact when a project's incremental addition to environmental impacts from past, current, and reasonably probable future projects is cumulatively considerable. Significant cumulative impacts can result from the incremental effects of many projects that do not individually have a significant environmental impact.

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The CEQA Guidelines set forth two methods for analyzing cumulative impacts: the list-of-projects approach and the summary-of-projections approach. Under either method, the EIR must summarize the expected environmental effects of the project and related projects, provide a reasonable analysis of cumulative impacts, and examine reasonable options for mitigating or avoiding the project's contribution to any significant cumulative impacts. 14 Cal Code Regs §§15130(b)(1)(A)–(B), 15130(b)(4)–(5).

The DEIR did not disclose the existence of the numerous past, current, and future warehouses and other polluting sources in the Project's immediate vicinity. The DEIR repeatedly found a less-than-significant cumulative impact, but without consideration of other sources that could lead to a cumulative impact, the DEIR had no basis by which to conclude impacts would be less than significant. While the City possesses the most current information on future developments planned for the community, the Center is aware of numerous other warehouse projects in the vicinity that the City either recently approved or is currently considering:

- United States Cold Storage Hesperia Project (SCH No. 2020069036)
- Poplar 18 Project (SCH No. 2022080248)
- I-15 Industrial Park Project (SCH No. 2021060397)
- Hesperia Commerce Center II Project (SCH No. 2019110418)
- Kiss Logistics Center Project (SCH No. 2022110097)
- Dara Industrial Project (SCH No. 2022040060)

3.24

These similarly situated warehouse projects have either been recently approved (within the past two years) by the City, or are undergoing the approval and environmental review process. Unsurprisingly, these nearby projects will also have impacts to Joshua tree and Joshua tree habitat, greenhouse gas emissions, and air quality.

	Distance from Project	Square Footage	Operational GHG Emissions, per EIR?	Affects/removes Joshua trees and JT habitat?
U.S. Cold Storage Hesperia	1.9	531,434sf	22,223 MT CO ₂ e/yr	Yes 78.70 acres
Hesperia Commerce Center II	1.5	3,742,590 sf	63,906 MT CO ₂ e/yr	Yes 194.8 acres
I-15 Industrial	.1 & .3	1,850,000 sf	32,921 MT CO ₂ e/yr	Yes 96.1 acres
Poplar 18	.1	414,700 sf	6,335 MT CO ₂ e/yr	Yes 17.87 acres
Kiss Logistics	1.2	655,468 sf	Not yet available	Yes 29.61-acres
Dara Industrial	.8	750,000 sf	8,383.61 MT CO ₂ e/yr	Yes 50-acres

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These projects are listed, along with descriptions and access to the environmental review documents, on the City's own website: <http://www.cityofhesperia.us/1466/Environmental-Documents>.⁸

The Center has worked closely with the City during its consideration and approval of many of these projects, and has submitted comments on the associated environmental review documents, and has specifically expressed concerns about these projects' impacts to Joshua trees and Joshua tree habitat, greenhouse gas emissions, and air quality. The EIR's refusal to disclose or acknowledge these current or reasonably foreseeable future projects, let alone consider this Project's impacts in the context of these related projects, is inexplicable. The application materials and environmental review documents are in the City's possession. EIRs must evaluate whether a project "when taken in isolation appear[s] insignificant," becomes "startling" "when viewed together" with other projects. (*Kings County*, 221 Cal.App.3d at 721.) The EIR's rote conclusion that cumulative impacts will not be significant because the Project's impacts are not significant does not meet CEQA's requirements.

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The EIR's paltry discussion of biological resource (including Joshua tree) impacts is just one example of how readily the EIR glosses over cumulative impacts. The EIR concludes without analysis that there are "no special status plant species" with the potential to be present within the Project site and thus no cumulative impacts can result. (DEIR at 5.3-24.) This directly contradicts the EIR's disclosure that 41 "healthy" Joshua Trees exist on or near the Project site. (DEIR at 5.3-15.)

3.25

IV. THE REIR MUST BE RECIRCULATED.

Under California law, this DEIR cannot properly form the basis of a final EIR. CEQA and the CEQA Guidelines describe the circumstances that require recirculation of a draft EIR. Such circumstances include: (1) the addition of significant new information to the EIR after public notice is given of the availability of the DEIR but before certification, or (2) the DEIR is so "fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." (CEQA Guidelines, § 15088.5.)

3.26

Here, both circumstances apply. Decisionmakers and the public cannot possibly assess the Project's impacts through the present DEIR, which is riddled with error. Among other fundamental deficiencies, the DEIR repeatedly fails to disclose and underestimates the Project's significant impacts. In order to resolve these issues, the City must prepare a revised EIR that would necessarily include substantial new information.

V. CONCLUSION

Thank you for the opportunity to submit comments on the Draft EIR for the Mesa Linda Street Development Project. Due to the shortcomings described above, the City should make corrections to the EIR and Project—including properly analyzing and mitigating for the Projects

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⁸ Environmental review documents, including the Notice of Preparation and/or Initial Study for these projects are included with this letter as references.

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significant impacts to biological resources, air quality, and GHG emissions—and recirculate a revised and legally adequate EIR for public review and comment.

Given the possibility that the Center will be required to pursue legal remedies in order to ensure that the City complies with its legal obligations including those arising under CEQA, we note the City's statutory duty to maintain and preserve all documents and communications that may constitute part of the "administrative record" of this proceeding. (§ 21167.6(e); *Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733.) The administrative record encompasses any and all documents and communications that relate to any and all actions taken by the City with respect to the Project, and includes "pretty much everything that ever came near a proposed [project] or [] the agency's compliance with CEQA" (*County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 8.) The administrative record further includes all correspondence, emails, and text messages sent to or received by the City's representatives or employees that relate to the Project, including any correspondence, emails, and text messages sent between the City's representatives or employees and the Project applicant's representatives or employees. Maintenance and preservation of the administrative record requires that, *inter alia*, the City (1) suspend all data destruction policies; and (2) preserve all relevant hardware unless an exact replica of each file is made.

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Please add the Center to your notice list for all future updates to the Project and do not hesitate to contact the Center with any questions at the number or email listed below.

Sincerely,



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Response to Comment Letter 3: Center for Biological Diversity, dated July 12, 2023

Response to Comment 3.1: This comment states that the comment is written on behalf of the Center for Biological Diversity and notes that a letter was also submitted with comments on the Notice of Preparation on October 6, 2022. The commenter summarizes their concerns with the DEIR, including biological resources, greenhouse gas emissions, and air quality. The comment is introductory in nature and does not raise a specific issue with the adequacy of the DEIR or raise any other CEQA issue. Therefore, no further response is required or provided.

Response to Comment 3.2: This comment provides background on the loss of Joshua tree habitat within the region. Additionally, the comment notes the DEIR's description of the site as "disturbed" desert native scrub and consisting of Joshua tree woodland and habitat. The comment includes information on the designation of Joshua tree woodland as a community designated by the California Department of Fish and Wildlife (CDFW) as a Natural Community of Concern. The comment concludes that the DEIR fails to disclose or adequately evaluate the impacts on the Natural Community of Concern. The comment is speculative and does not provide substantial evidence to support the claim. The comment is introductory to the following paragraphs. Therefore, no further surveys or revisions are warranted.

Response to Comment 3.3: This comment provides the commenter's understanding of the proposed Project. The commenter indicates that the Project does not list Joshua Trees under the special-status plant species discussion on page 5.3-11; however, notes that it is a special status species under the California Endangered Species Act on page 5.3-5. The commenter asserts that the DEIR conclusion regarding "no special status plant species determined to have the potential to be present within the Project site" is incorrect. This is due to misplaced text within the EIR. The statement on page 5.3-11 regarding the absence of special status species is in error and has been revised to indicate the presence of Joshua trees within the Project site. The description under "Wildlife Species" regarding Joshua trees has been moved and corrections have been made to the text as provided below and in Chapter 2, Errata. While the text describing impacts to Western Joshua tree individuals was misplaced within the impact section, the information that was provided was factual and the textual revision would not result in substantial new information or a change in impact severity. Therefore, the Project DEIR would not be required to be recirculated pursuant to Cal. Code Regs. tit. 14 § 15088.5.

The comment also states that the DEIR fails to consider Joshua Tree habitat when analyzing the Project's impacts on sensitive natural communities. The DEIR adequately analyzes the Project impact on Joshua Tree woodland habitat throughout Section 5.3.6, Environmental Impacts of Section 5.3, Biological Resources, through identification of direct impacts on Western Joshua tree alliance habitat, and the potential indirect impacts on special status wildlife species that have the potential to occur in the habitat as a result. However, the impact analysis was not carried forward under Impact BIO-2, beginning on page 5.3-12 of the DEIR.

Therefore, additional text has been included to discuss Joshua Tree woodland habitat, as provided below and within Chapter 2, Errata. Deletions are shown in strikethrough and addition are red shown in bold underlined.

Section 5.3, Biological Resources (p. 5.3-6)**Special-Status Plant Species**

Two plant species are listed as state and/or federally Threatened, Endangered, Candidate, Rare, or as 1B.1 in the CNPS Rare Plant Inventory. One other sensitive species has the potential to exist in the Project site. **Additionally, a fourth species is listed as 2B.3 on the CNPS Rare Plant Inventory.**

Mojave tarplant

Mojave tarplant (*Deinandra mohavensis*) is a state listed Endangered Species and is ranked 1B.3 in the CNPS Rare Plant Inventory. This species is typically found in low sand bars in riverbeds and most commonly in

riparian or ephemeral grassy areas. Its habitat includes chaparral, coastal scrub, and riparian scrub. No habitat for this species is present on the Project site. This species was determined to **not be present** within the Project site.

Jokerst's monardella

Jokerst's monardella (*Monardella australis* ssp. *jokerstii*) is ranked 1B.1 in the CNPS Rare Plant Inventory. This species is typically found along steep slopes between breccia or along alluvial benches near drainages and washes. It inhabits coniferous forest and chaparral habitats. No habitat for this species is present on the Project site. This species was determined to **not be present** within the Project site.

Western Joshua tree

Western Joshua tree (*Yucca brevifolia*) is listed as a Candidate Species under the California Endangered Species Act (CESA), which requires authorization under CESA for any take of the species (including removal of western Joshua tree or similar actions). This species is generally found at moderate elevations in the Mojave Desert between creosote bush scrub and pinyonjuniper woodlands. Suitable habitat is present on the project site. This species is present.

Booth's evening-primrose

Booth's evening-primrose (*Eremothera boothii* ssp. *boothii*) is ranked 2B.3 in the CNPS Rare Plant Inventory. Based on locational records (Jepson Flora Project 2021) and Consortium of California Herbaria (CCH 2021), this species is restricted to wash habitat, which is absent from the survey area. This species was determined to **not be present** within the Project site.

Section 5.3, Biological Resources (p. 5.3-11)

Plant Species

As described above, **the Project site contains Western Joshua trees, which are a listed Candidate Species under CESA. Further,** there are **no other** special status plant species determined to have the potential to be present within the Project site. ~~The Project would result in no impact on special status plant species.~~

A total of 25 protected Joshua trees (*Yucca brevifolia*) are located within the Project site, as shown in Figure BIO-1. Impacts to Joshua trees are analyzed based on guidance from CDFW and a literature review completed by CDFW (Vander Wall et al. 2006). Guidance from CDFW states that western Joshua tree locations, where Joshua trees are larger than 6.6 feet tall, should be buffered by 186 feet to account for the impacts of seed bank for western Joshua tree and their associated habitat. Joshua trees smaller than 6.6 feet tall should be buffered by 36 feet. Therefore, these are the appropriate buffers (or radii) applied to each western Joshua tree location. The combined Project site and buffer areas encompass approximately 12.6 acres (see Figure 5.3-1). The Project site includes 25 Joshua trees within the Project boundaries and five Joshua trees outside of the Project site within the buffer area. The Project site and buffer area lie within the buffer areas of two other development projects. While a total of 25 trees have the potential to be directly impacted as part of the proposed Project, several of those trees within the Project's buffer area may overlap with and may be considered directly impacted as part of the construction of the two adjacent properties. As such, the Project would directly impact 25 Joshua trees. As described in Mitigation Measure BIO-6, boundaries of the Project site shall be clearly delineated prior to Project construction, in consultation with the designated botanist, prior to project activities with posted signs, posting stakes, flags, and/or rope or cord and the designated botanist shall be responsible for monitoring Project activities to help minimize and fully mitigate or avoid incidental take of Joshua trees.

Joshua trees are a listed species under CESA and the Project applicant would be required to obtain an Incidental Take Permit under Section 2081 of the Fish and Game Code prior to removal of any Joshua trees. As outlined in Mitigation Measure BIO-6, mitigation for direct impacts to western Joshua trees shall be fulfilled through conservation of western Joshua trees at a 1:1 habitat replacement ratio, of

equal or better functions and values to those trees impacted by the Project. Mitigation can be through purchases of credits at a CDFW or State of California-approved mitigation bank for western Joshua tree or through permit and payment of fees under the Western Joshua Tree Conservation Act. Additionally, no take of western Joshua tree will occur without authorization from CDFW in the form of an Incidental Take Permit pursuant to Fish and Game Code 2081 while it is being considered as a candidate or if it is listed under the CESA. Through conservation of western Joshua trees at a 1:1 habitat replacement ratio, of equal or better functions and values to those trees impacted by the Project, impacts would be less than significant.

Additionally, Project applicants are required to submit an application and pay applicable fees to the City of Hesperia for removal or relocation of protected native desert plants under Hesperia Municipal Code Chapter 16.24. Requirements also include a preconstruction Project site inspection with the Planning Division and the Building Division. The Project impacts to Western Joshua Trees regarding Hesperia Municipal Code Chapter 16.24 would be fulfilled through the fulfillment of mitigation under CESA and/or WJTCA, per City policy. Therefore the Project would result in a less than significant impact on special-status plant species with the implementation of Mitigation Measure BIO-6.

Wildlife Species

As described above, four wildlife species listed as State and/or Federal Threatened, Endangered, or Candidate have the potential to be present within the Project site.

Burrowing owl (*Athene cunicularia*) is a CDFW Species of Special Concern. The Project site contains potential suitable habitat for this species in the Sonoran Desert scrub habitat. The focused surveys completed for the Project found no sign of burrowing owl on site or within the 500-foot buffer. However, ground squirrels and ground squirrel burrows were observed, which may also serve as burrowing owl burrows; approximately 21 suitable burrows were identified and recorded in the Project site and surrounding buffer, including five burrows within the Project site and 16 burrows within the 500-foot buffer. However, burrowing owl signs such as molted feathers, cast pellets, or excrement on rock outcroppings were not found. As such, all burrows were considered inactive and not in use by burrowing owl.

Mitigation Measure BIO-1 requires preconstruction Burrowing owl surveys to be conducted within 30 days prior to commencement of Project grading and construction activities to verify the burrows remain inactive. If Burrowing owls are detected within the Project site prior to or during construction, active Burrowing owl areas would be avoided until relocation is conducted. In the event the construction of the Project site becomes inactive for 30 days, additional surveys are required to be conducted to ensure the continued absence of Burrowing owls. Implementation of preconstruction surveys would avoid impacts to Burrowing owls within the Project site and therefore, the Project would result in less than significant impacts with implementation of Mitigation Measure BIO-1.

Coastal whiptail (*Aspidoscelis tigris stejnegeri*) is a CDFW Species of Special Concern and the Project site contains potential suitable habitat for this species in the dry desert habitat. Coast horned lizard (*Phrynosoma blainvillii*) is also a CDFW Species of Special Concern and the Project site contains potential suitable habitat for this species in the juniper woodland habitat. As implementation of the proposed Project has the potential to impact these species, Mitigation Measure BIO-2 is included which requires a pre-construction survey to be conducted for these species to ensure no direct or indirect take would occur during site clearing or ground disturbing activities. The Project would result in less than significant impacts with implementation of Mitigation Measure BIO-2.

Loggerhead shrike (*Lanius ludovicianus*) is a CDFW Species of Special Concern. The Project site contains potential suitable habitat for this species in the Joshua tree woodland alliance habitat. Additionally, Le Conte's thrasher (*Toxostoma lecontei*) is a CDFW Species of Special Concern. The Project site contains potential suitable habitat for this species in the desert scrub habitat. Loggerhead shrike (*Lanius ludovicianus*) and Le Conte's thrasher (*Toxostoma lecontei*) are avian species that may nest within existing suitable

vegetation of the Project site and construction of the proposed Project has the potential to impact these species. In the event that site ground disturbing and vegetation clearing activities occur during the bird nesting season of February 1 through September 15, nesting bird surveys would be conducted by a qualified biologist within three days prior to any vegetation removal and/or construction activities to identify any active nests within the Project site (Mitigation Measure BIO-3). If active nests are found, a minimum of a 250-foot buffer around the nest would be implemented until the young have fledged and the nest is unoccupied. Implementation of nesting bird surveys and avoidance measures would ensure avoidance of impacts to nesting birds within the Project site. The Project would result in less than significant impacts with implementation of Mitigation Measure BIO-3.

~~A total of 25 protected Joshua trees (*Yucca brevifolia*) are located within the Project site, as shown in Figure BIO-1. Impacts to Joshua trees are analyzed based on guidance from CDFW and a literature review completed by CDFW (Vander Wall et al. 2006). Guidance from CDFW states that western Joshua tree locations, where Joshua trees are larger than 6.6 feet tall, should be buffered by 186 feet to account for the impacts of seed bank for western Joshua tree and their associated habitat. Joshua trees smaller than 6.6 feet tall should be buffered by 36 feet. Therefore, these are the appropriate buffers (or radii) applied to each western Joshua tree location. The combined Project site and buffer areas encompass approximately 12.6 acres (see Figure 5.3-1). The Project site includes 25 Joshua trees within the Project boundaries and five Joshua trees outside of the Project site within the buffer area. The Project site and buffer area lie within the buffer areas of two other development projects. While a total of 25 trees have the potential to be directly impacted as part of the proposed Project, several of those trees within the Project's buffer area may overlap with and may be considered directly impacted as part of the construction of the two adjacent properties. As such, while the Project would directly impact 25 Joshua trees, impacts to overlapping Joshua trees will be analyzed by CDFW to ensure no Joshua trees are mitigated twice. As described in Mitigation Measure BIO-6, boundaries of the Project site shall be clearly delineated, in consultation with the designated botanist, prior to project activities with posted signs, posting stakes, flags, and/or rope or cord and the designated botanist shall be responsible for monitoring Project activities to help minimize and fully mitigate or avoid incidental take of Joshua trees.~~

~~Joshua trees are a listed species under CESA and the Project applicant would be required to obtain an Incidental Take Permit under Section 2081 of the Fish and Game Code prior to removal of any Joshua trees. As outlined in Mitigation Measure BIO-6, mitigation for direct impacts to western Joshua trees shall be fulfilled through conservation of western Joshua trees at a 1:1 habitat replacement ratio, of equal or better functions and values to those trees impacted by the Project. Mitigation can be through purchases of credits at a CDFW or State of California approved mitigation bank for western Joshua tree. Additionally, no take of western Joshua tree will occur without authorization from CDFW in the form of an Incidental Take Permit pursuant to Fish and Game Code 2081 while it is being considered as a candidate or if it is listed under the CESA. Through conservation of western Joshua trees at a 1:1 habitat replacement ratio, of equal or better functions and values to those trees impacted by the Project, impacts would be less than significant.~~

~~Additionally, Project applicants are required to submit an application and pay applicable fees to the City of Hesperia for removal or relocation of protected native desert plants under Hesperia Municipal Code Chapter 16.24. Requirements also include a preconstruction Project site inspection with the Planning Division and the Building Division. The application shall include certification from a qualified Joshua tree and native desert plant expert(s) to determine that proposed removal or relocation of protected native desert plants are appropriate, supportive of a healthy environment, and in compliance with the City of Hesperia Municipal Code. Protected plants subject to Hesperia Municipal Code Chapter 16.24 may be relocated on-site, or within an area designated as an area for species to be adopted later. The application shall include a detailed plan for the removal of all protected plants on the Project site. The plan shall be prepared by a qualified Joshua tree and native desert plant expert(s) (Mitigation Measure BIO-5). Per City policy, obtainment of an Incidental Take Permit and corresponding mitigations under the jurisdiction of CDFW would satisfy the City's requirements under Chapter 16.24 of the City Municipal Code. Therefore, in the event that~~

~~western Joshua Tree is not listed as Threatened per determination by the California Fish and Game Commission, the Project would be required to comply with the City's Relocation of Desert Native Plants policy. The Project site is not located within any designated federal critical habitat. The closest federal critical habitat is arroyo toad critical habitat located 6.77 miles south of the Project site, across Interstate 15 (I-15) Freeway and Highway 138.~~

Therefore, the Project would result in less than significant direct or indirect impacts on species identified as candidate, sensitive, or special status in local or regional plans, policies, or regulations, or by CDFW or USFWS with the implementation of Mitigation Measures BIO-1 through BIO-3, and BIO-5 and BIO-6.

Section 5.3, Biological Resources (p. 5.3-13)

Less Than Significant Impact With Mitigation. As discussed above, the Project would result in the disturbance of 18.16 acres. Biological research and site surveys conducted for the Project identified two habitat types within the Project site and 500-foot buffer: 20.07 acres of disturbed ~~Joshua Tree woodland alliance area~~ and 2.95 acres of rabbitbrush (*Ericameria nauseosa*) dominant riparian habitat. The Project would result in the disturbance of 18.62 total acres, which includes 15.71 acres of disturbed Joshua tree woodland alliance habitat. State rankings of 1, 2, or 3 are considered high priority for inventory or special-status and impacts to these communities typically require mitigation Joshua Tree woodland is ranked as S3, or "vulnerable to extirpation or extinction", by the California Natural Community List. All other communities listed are ranked as S4 or S5, or unranked, which are not considered sensitive vegetation communities. Mitigation for direct impacts to 25 western Joshua tree individuals will also mitigate for impacts to Joshua tree woodland. As outlined in Mitigation Measure BIO-6, mitigation for direct impacts to western Joshua trees shall be fulfilled through conservation of western Joshua trees at a 1:1 habitat replacement ratio, of equal or better functions and values to those trees impacted by the Project. Mitigation can be through purchases of credits at a CDFW or State of California-approved mitigation bank for western Joshua trees or through permit and payment of fees under the Western Joshua Tree Conservation Act. Conservation efforts for western Joshua tree will focus on the conservation of large, interconnected Joshua tree woodlands on lands where edge effects are limited, versus lands in urban settings that are subject to habitat fragmentation and edge effects, such as the Project site. Thus, mitigation for impacts to western Joshua tree will also mitigate for impacts to the 15.71 acres of disturbed Joshua tree woodland alliance habitat.

The approximately 2.95 acres (1,377.62 linear feet) of ephemeral stream, and associated riparian habitat dominated by rabbitbrush, would be regulated under Section 1602 of the Fish and Game Code. The proposed Project is expected to impact 2.95 acres of ephemeral stream and associated riparian habitat that is regulated under Section 1602 of the Fish and Game Code (Figure 5.3-2). Impacts to this drainage will require a 1602 Streambed Alteration Agreement from the CDFW. Impacts to Waters of the State will be mitigated through land credits at a CDFW or State of California-approved mitigation bank for ephemeral stream at a 2:1 ratio (Mitigation Measure BIO-4).

Therefore, ~~the Project would result in a less than significant impact~~ **on riparian habitat and other sensitive natural communities** with Mitigation Measure BIO-4 **and Mitigation Measure BIO-6.**

Response to Comment 3.4: The commenter provides background on the listing status of Western Joshua trees pursuant to CESA and passage of the Western Joshua Tree Conservation Act, which was not yet in effect at the time of DEIR publication. The comment reiterates that the Project DEIR fails to disclose impacts related to special status plant species on page 5.3-11. As discussed above in Response to Comment 3.3, the Project adequately discloses impacts to Western Joshua trees as a special status species. Revisions to the section have been made to move misplaced text under the correct subheading. No further revisions are warranted.

Response to Comment 3.5: The comment includes background information on the threats to Joshua tree woodland habitat. The commenter reiterates that the Project DEIR did not adequately disclose significant impacts to Western Joshua tree habitat as a sensitive natural community. As discussed under Response to Comment 3.3, the Project adequately discloses impacts to Western Joshua trees; however, the text was mistakenly misplaced in the document and not carried forward under Impact BIO-2 regarding sensitive plant communities. Further, through implementation of Mitigation Measure BIO-6, the Project would result in a less than significant impact with mitigation, as disclosed throughout the DEIR. Revisions have been made to the text, as provided in Chapter 2, Errata.

Additionally, the comment states that the DEIR does not adequately address significant impacts to Joshua trees associated with reduction in habitat connectivity. Potential impacts to species that have the potential to occur within Western Joshua tree habitat as a result of the removal of Joshua trees on the Project site are disclosed within Impact BIO-1 beginning on page 5.3-11. Further, the Project analyzes potential impacts to habitat connectivity and wildlife corridors on page 5.3-23 under Impact BIO-4 of the DEIR. The analysis explicitly states “The Project site is flat and surrounded by paved and dirt roads and vacant land. No wildlife corridors are located on the Project site. However, the Project site contains trees and shrubs that can support nesting song birds or raptors protected under the Federal Migratory Bird Treaty Act and Sections 3503, 3503.5, and 3513 of the California Fish and Game Code during the nesting season.” Ultimately, based on professional biological opinion, as provided in Appendix C, Biological Studies, the Project does not have the potential impact habitat connectivity or wildlife corridors. Additionally, the Project would include mitigation to Joshua tree habitat at a 1:1 functional ratio, and the Project would result in less than significant impacts with mitigation on Joshua tree individuals and habitat.

Response to Comment 3.6: This comment states that the DEIR fails to support its claims that Mitigation Measures BIO-5 and BIO-6 will reduce the Project’s impacts to Joshua trees to a less than significant impact. The commenter asserts that compliance with Mitigation Measure BIO-5 lacks project-specific analysis of how compliance with the City’s Municipal Code Section Chapter 16.24 will address project-specific impacts, such as the effects to Joshua Tree woodland and connectivity.

Under BIO Impact 1, the DEIR specifies that the Project is only required to prepare a detailed plan for the removal and relocation of Western Joshua trees on the Project site in the event that Western Joshua trees are delisted as a protected species under CESA. In the event that Western Joshua trees are delisted as a protected species under CESA, the state has determined through substantial evidence that Western Joshua trees are not a threatened species, and therefore, would not be treated or mitigated as such. In such event, the City’s requirements for a detailed plan for the removal and relocation of Western Joshua trees pursuant to Municipal Code Section Chapter 16.24 would be required. The City’s Municipal Code Section Chapter 16.24 not only protects Western Joshua trees as a native desert species under the Native Desert Species Act, but sets performance standards as well to mitigate the Project’s impacts. Mitigation measures shall be fully enforceable through legally binding instruments. (CEQA Guidelines § 15126.4(a)(2). Additionally, mitigation measures must be consistent with all applicable constitutional requirements such as having a nexus to a legitimate governmental interest and being roughly proportional to the impact (CEQA Guidelines § 15126.4(a)(4). CEQA case law provides:

“‘[W]hen a public agency has evaluated the potentially significant impacts of a project and has identified measures that will mitigate those impacts,’ and has committed to mitigating those impacts, the agency may defer precisely how mitigation will be achieved under the identified measures pending further study.” (Oakland Heritage Alliance v. City of Oakland (2011) 195 Cal.App.4th 884, citing California Native Plant Society v. City of Rancho Cordova (2010) 172 Cal.App.4th 603.)

Mitigation Measure BIO-5 is fully enforceable through City approval authority of the required native desert plan species removal plan, which would be required prior to approval of the Project grading permit. Further, the Project sets clear performance standards and of how Western Joshua tree relocation will be met through a future study, which is consistent with findings from *Oakland Heritage Alliance v. City of Oakland (2011)*,

which states “the agency may defer precisely how mitigation will be achieved under the identified measures pending further study”. Therefore, Mitigation Measure BIO-5 is adequate and no revisions are required.

Further, the commenter states that BIO-6 commits the Project to obtaining a take permit for Joshua Tree from CDFW, but only in the event that the California Fish and Game Commission (CFGF) lists the Joshua Tree as threatened. The commenter notes that should the Project proceed before CFGF has made a final determination on the Joshua Tree, the Project still must secure a take permit for the Joshua Tree; therefore, BIO-6 must be amended to commit to obtaining take authorization. This comment has been noted and an Incidental Take Permit would be sought as necessary. Additionally, as discussed under Response to Comment 2.6, Mitigation Measure BIO-6 has been updated to reflect the current status of CESA and the Western Joshua Tree Conservation Act.

Finally, under AB 1008, the Western Joshua Tree Conservation Act specifies that the provisions of the Native Plant Protection Act shall not apply to the western Joshua tree. Further, requirements of Mitigation Measure BIO-5 would no longer be applicable at the State level. No further revisions are required and no further response is warranted.

Response to Comment 3.7: This comment states that the DEIR must be updated to reflect passage of the Western Joshua Tree Conservation Act. The Project DEIR public circulation period began on June 2, 2023. The Western Joshua Tree Conservation Act was passed on June 27, 2023. The Project DEIR adequately reflected the status of the proposed act at the time of circulation. Under the act, all in-lieu fees collected will be deposited into the Western Joshua Tree Conservation Fund for appropriation to CDFW solely for the purposes of acquiring, conserving, and managing western Joshua tree conservation lands and completing other activities to conserve the western Joshua tree. The Western Joshua Tree Conservation Act has a direct nexus to the conservation of Western Joshua trees and the costs have been established by the CFGF and CDFW to capture adequate costs for acquiring, conserving, and managing western Joshua tree conservation lands and completing other activities to conserve the western Joshua tree. The DEIR’s inclusion of the Western Joshua Tree Conservation Act under Mitigation Measure BIO-6 specifies that the Project would mitigate to the degree that the Western Joshua tree is determined threatened/protected at the time of Project implementation and would be mitigated accordingly through the specific mitigation mechanisms provided by expert opinion of CFGF and CDFW.

Additionally, the commenter states that the Project must further analyze and disclose impacts to Joshua trees pursuant to the fee metrics provided by the Western Joshua Tree Conservation Act. The Joshua tree analysis is adequate for the purposes of CEQA and it is not necessary to provide specific fee information within the FEIR.

Finally, the commenter reiterates the need for an analysis of measures required under Hesperia’s existing ordinances regarding Western Joshua trees. As discussed in Response to Comment 3.6, the Project DEIR adequately discusses the implications of the City’s municipal code on the mitigation of Western Joshua trees potentially removed by the proposed Project. No further revisions are required and no further response is warranted.

Response to Comment 3.8: The commenter states that the Western Joshua Tree Conservation Act does not provide an alternative mechanism to mitigate impacts to Joshua Tree woodland. As specified under AB 1008, the bill would require the moneys in the fund, upon appropriation by the Legislature, to be used solely for the purposes of acquiring, conserving, and managing western Joshua tree conservation lands and completing other activities to conserve the western Joshua tree. Through acquisition and conservation of Western Joshua tree lands, mitigation of Joshua tree habitat would be directly achieved as well. No further revisions are required and no further response is warranted.

Response to Comment 3.9: The comment states that climate change is a catastrophic and pressing threat to California and provides information related to human activities increasing climate change and the general

effects anticipated related to climate change. The comment also states that the DEIR failed to fully disclose, analyze, mitigate, or consider alternatives to reduce the Project's significant effect on climate change. As discussed in Response 3.16, the Project would result in a less than significant impact related to GHG emissions; therefore, no mitigation would be required. Thus, impacts of the Project were fully analyzed by the DEIR. Regarding emissions disclosures, Tables 5.6-1 through 5.6-4 in DEIR Section 5.6, identify the emissions that would occur from the Project. Also, alternatives are evaluated in Section 8, *Alternatives* and effects related to GHG were evaluated under each of the alternatives. No further response is warranted.

Response to Comment 3.10: The comment states that air quality is a significant environmental and public health concern in California and provides information about adverse health effects from air pollution. The comment states that ozone, PM_{2.5}, and Toxic Air Contaminants are of greatest concern in San Bernardino County and are linked to various health issues. Additionally, the comment describes warehouses as being a source of air quality degradation. This comment is informational in nature and does not raise a specific issue with the adequacy of the DEIR or raise any other CEQA issue. Therefore, no further response is required or provided.

Response to Comment 3.11: This comment states that the DEIR relies on inappropriate thresholds of significance and therefore erroneously concludes the Project would not have significant impacts relating to Air Quality.

As identified on page 2 of the *MDAQMD CEQA and Federal Air Conformity Guidelines*, under CEQA, the MDAQMD is an expert commenting agency on air quality and related matters within its jurisdiction or impacting on its jurisdiction. Under the Federal Clean Air Act, the MDAQMD has adopted federal attainment plans for ozone and PM₁₀. The MDAQMD has dedicated assets to reviewing projects to ensure that they will not: (1) cause or contribute to any new violation of any air quality standard; (2) increase the frequency or severity of any existing violation of any air quality standard; or (3) delay timely attainment of any air quality standard or any required interim emission reductions or other milestones of any federal attainment plan. The CEQA and Federal Air Conformity Guidelines are intended to assist persons preparing environmental analysis or review documents for any project within the jurisdiction of the MDAQMD by providing background information and guidance on the preferred analysis approach. Further, the analysis and thresholds used in the DEIR are consistent with the MDAQMD CEQA and Federal Air Conformity Guidelines. Thus, for CEQA purposes, the City has discretion to select an appropriate significance criterion, based on substantial evidence. The thresholds recommended in the MDAQMD CEQA and Federal Air Conformity Guidelines were used in this analysis. The City has selected this value as a significance criterion which has been supported by substantial evidence. No revisions to the DEIR or further responses are warranted.

Response to Comment 3.12: The comment states that mobile sources drive the majority of the Project's air quality and greenhouse gas impacts and provides percentage estimates of generated emissions. The comment also states that estimates are based on a severe undercount of the number of vehicle trips the Project will generate and how long those trips will be. This comment is speculative and does not provide substantial evidence supporting the commenter's claim that vehicle trips are undercounted. The trip generation accurately reflects the proposed Project in anticipated trips. No further response is warranted.

Response to Comment 3.13: This comment states that the DEIR does not correctly analyze vehicle trips that will be generated by the Project. The comment states that the DEIR provides no information or evidence justifying its selection of high-cube short-term storage and warehousing when other types of high cube warehouse centers result in higher truck trip estimates. The comment also states that the DEIR lacks additional detail about the type of warehouse facility it anticipates constructing and without additional information, any tenant could operate a high-cube fulfillment center warehouse that would generate a higher than the number of trips that the DEIR disclosed, analyzed, or mitigated. The comment concludes that using the lowest possible estimate without any evidence that it will be accurate violates CEQA's requirement that an EIR make a good faith effort to fully analyze and attempt to mitigate all significant impacts of a project.

This comment is speculative and does not provide substantial evidence supporting the commenter's claim that vehicle trips are not analyzed correctly based on the ITE rates used. The project applicant has stated that a fulfillment center, parcel hub, or cold storage warehouse is not planned for the site and the site is not designed to accommodate either a fulfillment center or parcel hub. The project applicant has also agreed to the following condition of approval to ensure that the trip generation of the site does not exceed the trip generation evaluated in the EIR.:

Prior to the issuance of a business compliance certificate, any new tenant or operator of the facility shall: 1) submit an operational plan and trip generation analysis prepared by a licensed traffic engineer for review and approval demonstrating the proposed operations and projected traffic associated with the new tenant or operator is the same or less than the projected traffic assumed in the approved entitlements for the facility; and 2) sign a statement acknowledging acceptance of all operational conditions of approval associated with the approved entitlements for the facility. If the proposed operations and trip generation represent a significant change in operational characteristics or more than ten percent increase in trip generation beyond what was entitled, a modification to the conditional development permit shall be required prior to the start of operations.

Further, transload and short-term storage facilities have a different operational profile as outlined in the ITE High-Cube Warehouse Vehicle Trip Generation Analysis (October 2016). As noted in that study, a transload facility has a focus on consolidation and distribution of larger loads whereas fulfillment centers typically serve e-commerce retailers and distribute smaller packages to end users. As noted previously, the Project applicant does not propose a fulfillment center or a parcel hub and would be required to modify the conditional development permit if either use proposed in the future. The DEIR adequately analyzes the Project as proposed and discloses potential impacts accordingly. Therefore, no revisions to the DEIR or further response is warranted.

Response to Comment 3.14: The comment states that trips generated by the Project will be implausibly short and that the average trip length of 16 miles that the mobile source analysis is underestimated and unsupported by evidence. The comment also states that the warehousing industry in southern California is built around the Ports of LA and Long Beach, where 40% of all seaborne imports enter the country. Further, the comment states that the trucks serving this warehouse would have a 16-mile average trip length only if the Project does not serve the major ports, and instead transports goods only to and from Hesperia or Victorville. The comment does not provide substantial evidence of any environmental impact. Under CEQA Guidelines Section 15384, argument, speculation, unsubstantiated opinion or narrative, evidence that is not credible, and evidence of seaborne imports entering the country does not constitute substantial evidence. The proposed Project would be used for warehouse uses and the trip generation is consistent with previously used methodology and was reviewed and approved by the City of Hesperia Public Works Department. Further it is speculative to assume that truck trips to and/or from the Project area would come from either the Ports of Los Angeles or Long Beach and substantial evidence regarding such has not been provided. Transload and short-term storage facilities have a different operational profile than other warehouse uses as outlined in the ITE High-Cube Warehouse Vehicle Trip Generation Analysis (October 2016). As noted in that study, a transload facility has a focus on consolidation and distribution of larger loads whereas fulfillment centers typically serve e-commerce retailers and distribute smaller packages to end users, which would result in shorter trips to other retailers and end users, versus long distance trips associated with fulfillment center and other warehouse type uses. Therefore, no revision to the DEIR or further response is warranted.

Response to Comment 3.15: This comment states the DEIR uses out-of-date emissions models, and that the DEIR uses the 2020 version of CalEEMod even though a new version was issued in April 2022. The comment also states that the City's best efforts at disclosure must include the most up-to-date version of the modeling software and the City did not fulfill this duty. This comment does not provide any substantial evidence that the Project would result in a significant environmental impact. At the time the analysis was initiated, the emissions model was run, and the NOP was issued, the 2022 version of CalEEMod was still in its beta phase.

As shown in Tables 5.2-1 through 5.2-6, the Project would not have significant emissions that would exceed MDAQMD Thresholds. As demonstrated in Table 5.2-6, the 13.6 pounds per day of VOC is the criteria pollutant that is closest to an exceedance of the MDAQMD thresholds of 137 pounds per day. The commenter provides no evidence that Project emissions that could potentially be created from off-road equipment would be anywhere near the air quality emission thresholds that would be result in a change in the level of significance set forth in the DEIR. Further, the comment does not provide substantial evidence that the Project would exceed MDAQMD and is speculative in nature. No further response is warranted.

Response to Comment 3.16: This comment states that the DEIR does not consider or adopt any mitigation measures to reduce, avoid, or mitigate the Project's air quality or GHG impacts. This comment states that based on the previous comments, Project's impacts air quality and GHG impacts are significant and therefore the EIR's failure to consider and adopt all feasible mitigation to reduce or avoid the Project's significant impacts violates CEQA. The comment concludes that the EIR must be revised to adequately analyze the Project's air quality and GHG impacts, acknowledge their significance, and consider and adopt feasible mitigation to reduce those impacts, and it should be recirculated for public review and comment. As detailed in previous responses herein and in DEIR Section 5.2, Air Quality and Section 5.6, Greenhouse Gas, the Project would result in a less than significant impact related to air quality and GHG emissions, including emissions from stationary and mobile sources. Thus, impacts of the Project were fully analyzed by the DEIR and no mitigation would be required.

Response to Comment 3.17: According to the comment, the only way to fully mitigate emissions from heavy-duty diesel trucks is by transitioning to zero emissions heavy-duty trucks as quickly as possible. The comment states that the DEIR fails to mitigate the Project's GHG emissions from trucks since the DEIR only notes that on-road diesel trucks would comply with applicable state laws. The comment states that the DEIR is therefore out-of-step with recommended best practice measures that are currently feasible. The comment states that the DEIR does not meet the recommendations and current practice in the warehouse industry and is therefore in violation of CEQA. This comment is speculative and does not provide substantial evidence supporting the commenter's claim that the DEIR fails to mitigate GHG emissions from trucks. As detailed in previous responses herein and in DEIR Section 5.6, *Greenhouse Gas Emission*, the Project would result in a less than significant impact related to GHG emissions, including emissions from trucks, and provides an adequate analysis of the Project's GHG emissions. Therefore, impacts of the Project were fully analyzed by the DEIR and mitigation measures would not be required to mitigate the already less than significant impacts. Regarding emissions disclosures, Tables 5.6-1 through 5.6-4 in the DEIR Section 5.6, identify the emissions that would occur from the Project. Also, alternatives are evaluated in Section 8, *Alternatives* and effects related to GHG were evaluated under each of the alternatives. Therefore, in compliance with CEQA, no mitigation measures are required and compliance with applicable state laws is an adequate measure for the proposed Project based on the determination of less than significant impact. No further response is warranted.

Response to Comment 3.18: The comment states that the Project does not mitigate emissions by accommodating the transition to zero emission trucks. The comment states that CARB has developed strategies to achieve 100% zero-emissions from medium and heavy-duty on-road vehicles in the State by 2045 everywhere feasible, and specifically to achieve 100% zero-emissions drayage trucks by 2035. The comment continues to state that the DEIR must require concrete, enforceable measures or else the Project will lag sorely behind the much-needed transition and will cement diesel emissions for decades. As detailed in previous responses herein and in the DEIR section 5.6, *Greenhouse Gas Emissions*, the Project would result in a less than significant impact related to GHG emissions, including emissions from heavy trucks, therefore, no mitigation would be required. Appendix B of the DEIR provides the methodology regarding use of the modeling and thresholds. The emissions modeling prepared for the Project follows the guidance and methodologies recommended in MDAQMD's *CEQA and Federal Conformity Guidelines*. Also, as detailed in previous responses, the analysis is consistent with MDAQMD and City CEQA methodology and no revised GHG analysis is required. Thus, impacts of the Project were fully analyzed by the DEIR and the Project is not required to include mitigation measures, such as transitioning to zero emission trucks. Additionally, as shown in Table 5.6-2 *Project consistency with the CARB 2022 Scoping Plan*, the Project would not interfere with

implementation of the GHG reduction measures listed in CARB's Updated Scoping Plan (2022), including those meant to achieve 100% zero-emissions drayage trucks by 2035. The practices provided are recommendations, not requirements, to reduce potential significant impacts of warehouse projects; however, the measures are only recommended and to be considered on a project-by-project basis; further, once again, the Project would result in less than significant impacts and does not require mitigation. Finally, the comment asserts that Transportation Refrigeration Units also emit significant GHGs, and CARB has responded with a rule requiring all TRUs operating in CA to be zero emission by 2030. However, the Project does not propose and would not include the operation of TRUs; therefore, applicable requirements would not be pertinent to the Project. No changes to the DEIR or further response is warranted.

Response to Comment 3.19: The comment states that in order to mitigate the Project's significant GHG impacts the Project must require that tenants use only trucks that are model year 2010 or newer and that all of the light- and medium-duty trucks be zero emissions. The comment states that the Project must also prepare to transition to clean trucks via installing electric truck charging stations; requiring electric plugs for electric transport refrigeration units at every dock door, and meeting that need for electric with on-site solar panels. As discussed in Response 3.19 and 3.20, the Project would result in a less than significant impact related to GHG emissions, including emissions from light- and medium-duty trucks, therefore no mitigation would be required. Thus, impacts of the Project were fully analyzed by the DEIR. Regarding emissions disclosures, Tables 5.6-1 through 5.6-4 in DEIR Section 5.6, identify the emissions that would occur from the Project. Also, alternatives are evaluated in Section 8, *Alternatives* and effects related to GHG were evaluated under each of the alternatives. Finally, the comment's noted requirement for electric plugs for electric transport refrigeration units at every dock door would not be applicable, as the Project does not propose cold storage or the use of TRUs, as specified in Section 3, *Project Description*, of the DEIR. Therefore, the Project is not required to include mitigation measures, such as a transition to clean trucks via installing electric truck charging stations; requiring electric plugs for electric transport refrigeration units at every dock door, and meeting that need for electric with on-site solar panels. No changes to the DEIR or further response is warranted.

Response to Comment 3.20: The comment states that all electrical equipment that warehouses use on-site should be zero-emission, and many recent warehouse projects have required this and it is recommended by the California Attorney General. The comment states that the DEIR is vague on whether the Project would be requiring non-diesel equipment. Thus, the comment states that mitigation must require zero-emissions cargo equipment in the MMRP. The DEIR accurately states that outdoor cargo handling equipment "would be non-diesel powered, in accordance with contemporary industry standards". Compliance with industry standards would require the Project to implement non-diesel-powered outdoor cargo handling equipment, which would be verified by the City as the lead agency. Further, page 5.6-4 of Section 5.6, *Greenhouse Gas Emissions*, specifies the Project's requirement to comply with 2022 CALGreen standards, which includes "requirements for the installation of raceway conduit and panel power requirements for medium- and heavy-duty electric vehicle supply equipment for warehouses". The Project would be constructed to allow for electric vehicle usage by future tenants, and plans would be reviewed for compliance by the City during plan check prior to approval of the Project's building permit. No further response is warranted.

Response to Comment 3.21: The comment gives an overview of climate change, solar energy, and California goals to achieve net zero carbon emissions by 2045. The comment states that each warehouse built with the capacity to provide 100% of its own clean energy via rooftop solar brings California closer to the clean energy targets we must meet in order to avoid the most devastating effects of the climate crisis. The comment continues to state that the California Attorney General recommends that new warehouses are built with 100 percent solar energy capacity, and that companies and municipalities are now following suit. Finally, the comment states that requiring new warehouses to get all its power from rooftop solar is a feasible and necessary mitigation measure that the Project must adopt. As discussed in Chapter 3.0, *Project Description*, of the DEIR, the proposed project would comply with CALGreen Code policies related to sustainable design and energy conservation by incorporating the following features: installation of enhanced insulation; design structure to be solar ready; design electrical system to accommodate future renewable energy technologies, solar photovoltaic (PV) systems, and battery storage systems; installation of energy

efficient lighting, heating and ventilation systems, and appliances; installation of drought-tolerant landscaping and water-efficient irrigation systems; and implementation of a City construction waste diversion program. The implementation of solar roofs to meet 100% capacity of the building is not required. As discussed under Section 5.5, *Energy*, the Project would result in a less than significant impact on energy, and therefore, mitigation would not be required. No further response is warranted.

Response to Comment 3.22: The comment states that the Project is within a mile of residential neighborhoods that will be exposed to the Project's air pollution impacts and that the Project did not adopt any of the mitigation measures that the California Attorney General recommends to protect sensitive receptors from trucking impacts. The comment then lists recommendations from the California Attorney General that the Project should consider implementing as mitigation measures. As detailed in previous responses herein and in DEIR Section 5.2, *Air Quality*, it was determined that the proposed Project would not exceed thresholds related to DPM emissions or localized emissions, and therefore, would not contribute to and exacerbate the health conditions of residents. The proposed warehouse would be setback 2,200 feet from the closest sensitive receptors, residential uses southeast of the project site along Muscatel Street. This distance is greater than the 1,000-foot setback recommended by CARB and would not result in impacts to sensitive receptors. Additionally, the HRA model output page 2 (see Appendix C) shows the sensitive receptors locations and distance from the project site, the construction sensitive receptor risk is provided by wind direction and location for cancer risks, chronic hazards, acute hazards. The modeling detail is provided as an attachment to Appendix B, to substantiate these findings. Adequate on-site parking would be provided by the Project. The proposed Project is required to comply with CARB's idling limit of five minutes, and further, MDAQMD recommends that the onsite idling emissions should be estimated for 15 minutes of truck idling, which takes into account onsite idling that occurs while the trucks are waiting to pull up to the truck bays, idling at the bays, idling at check-in and check-out, etc. As such, the Project analysis estimated truck idling at 15 minutes, consistent with MDAQMD's recommendation. Trucks would be maintained onsite and would not be idling within public streets. Therefore, the Project would result in a less than significant impact related to GHG emissions, including trucking impacts on sensitive receptors, and no mitigation would be required. No further response is warranted.

Response to Comment 3.23: The comment provides an overview of the CEQA Guidelines for defining and analyzing cumulative impacts. The comment states that a project has a significant cumulative impact when a project's incremental addition to environmental impacts from past, current, and reasonably probable future projects is cumulatively considerable. The comment is introductory in nature and does not raise a specific issue with the adequacy of the DEIR or raise any other CEQA issue. Therefore, no further response is required or provided.

Response to Comment 3.24: The comment states that DEIR did not disclose the existence of the numerous past, current, and future warehouses and other polluting sources in the Project's immediate vicinity, which is required under CEQA Guidelines. The comment states that the DEIR did not disclose the existence of the numerous past, current, and future warehouses and other polluting sources in the Project's immediate vicinity, yet still found a less-than-significant cumulative impact, but without consideration of other sources that could lead to a cumulative impact. The comment provides a list of cumulative projects and warehouses in the vicinity of the proposed Project that should have. The DEIR erroneously left out Table 5-1 which lists cumulative projects utilized in the cumulative analysis of the Project. The Project utilized a hybrid methodology of project list and summary of projections. The list of cumulative projects was provided in the Transportation Impact Assessment attached to the DEIR as Appendix I. This error has been corrected in FEIR Chapter 2, Errata. Cumulative impacts have been analyzed by environmental topic area within each respective environmental topic section (e.g. cumulative air quality impacts under Section 5.4, *Air Quality* etc.). Therefore, cumulative impacts were disclosed within the DEIR, and determinations were made regarding the Project's cumulatively considerable impacts.

Further, the commenter asserts that the EIR's conclusion that cumulative impacts will not be significant because the Project's impacts are not significant does not meet CEQA's requirements. Cumulative impacts of the Project

were taken into consideration through various methodologies as appropriate relative to the environmental topic. For instance, cumulative analysis of air quality and GHG is supported by analysis demonstrating the Project's cumulatively considerable quantitative impact relative to considerably cumulative thresholds, but cumulative land use impacts were considered via comparison of General Plan projections. Therefore, the Project adequately analyzed potential cumulative impacts that could result from the Project. No further response is warranted.

Response to Comment 3.25: The comment states that the DEIR's discussion of Joshua tree impacts is inadequate as it glosses over cumulative impacts. The comment claims that the DEIR is contradictory as it concludes that there are "no special status plant species" with the potential to be present within the Project site and thus no cumulative impacts can result, but also discloses that healthy Joshua trees exist on or near the site. As described in Response 3.5, Joshua trees have been adequately analyzed within the DEIR and appropriate changes have been incorporated into the FEIR Chapter 2, Errata. No further revisions are warranted.

Response to Comment 3.26: The comment explains the circumstances under which a DEIR would require circulation and claims that the Project DEIR cannot properly form the basis of a FEIR. The comment states that the present DEIR has errors, fundamental deficiencies, and fails to disclose and underestimates the project's significant impacts. The comment states that to resolve these issues, the DEIR must be revised and recirculated. The commenters' concerns were addressed above in Responses 3.1 through 3.25, and appropriate revisions were made, as incorporated into Chapter 2, Errata. In reviewing the above listed comments and making the appropriate revisions, where necessary, no significant new information was incorporated, and further, the impacts disclosed in the DEIR accurately reflect the proposed Project and subsequent potential environmental impacts. Therefore, per CEQA Guidelines and CA Code of Regulations 15088.5, DEIR recirculation would not be warranted.

Response to Comment 3.27: The comment concludes that due to the shortcomings described in the above comments, the City should make corrections to the EIR and Project including properly analyzing and mitigating for the Projects significant impacts to biological resources, air quality, and GHG emissions and recirculate a revised and legally adequate EIR for public review and comment. Additionally, the comment states legal obligations that the City must abide, specifically, to maintain and preserve all documents and communications that may constitute part of the "administrative record" of this proceeding. This comment also requests that the County add the Center to the notification list for all future updates to the Project. The comment is conclusory in nature and does not raise a specific issue with the adequacy of the DEIR evaluation, but rather summarizes the comments above. Responses related to the adequacy of the EIR, and impacts are discussed above in Responses 3.1 through 3.26. Additionally, the City will continue to comply with its statutory duty to maintain all correspondence and documents related to the proposed Project that are part of the administrative record and will add the Center for Biological Diversity to the notification list for future updates regarding the park. Therefore, no further response is required or provided.

Comment Letter 4: CARE CA, dated July 17, 2023.

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July 17, 2023

Via Email and Overnight Mail

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Re: Comments on the Draft Environmental Impact Report for the
Mesa Linda Street Development Project (SCH: 2022090381)

Dear Mr. Leonard:

We are writing on behalf of Californians Allied for a Responsible Economy ("CARE CA") to provide comments on the Draft Environmental Impact Report ("DEIR") (SCH No. 2022090381) for the Mesa Linda Street Development Project¹ ("Project") proposed by Newcastle Partners ("Applicant") and prepared by the City of Hesperia ("City") pursuant to the California Environmental Quality Act ("CEQA").²

4.1

The 18.16-acre Project site is located within the northwestern portion of the City, northwest of the Poplar Street and Mesa Linda Street intersection on Assessor's Parcel Numbers 306-458-102 and 306-458-103.³ The Applicant proposes to construct a single-story, approximately 55-foot-tall warehouse building to include 396,997 square feet of warehouse space, 6,000 square feet of office space, and 6,000 square feet mezzanine for additional office use for a total floor area of 408,997 square feet.⁴ The Project would also include 54 dock doors along the south side of the building, an outdoor, a concrete truck court comprised of 57 trailer stalls for

¹ City of Hesperia, Draft Environmental Impact Report, Mesa Linda Street Development (hereinafter "DEIR") (SCH: 2022090381) (May 2023) available at <https://ceqanet.opr.ca.gov/2022090381/2>

² Pub. Resources Code (hereinafter "PRC") §§ 21000 et seq.; 14 Cal. Code Regs (hereinafter "CEQA Guidelines") §§ 15000 et seq.

³ DEIR, p. 1-1.

⁴ DEIR, p. 1-1.

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loading and unloading, 213 vehicle parking spaces in surface lots on the east and west sides of the building, landscaping, and sewer and water infrastructure to serve the Project.⁵

Based upon our review of the DEIR and supporting documentation, we conclude that the DEIR fails to comply with the requirements of CEQA. The DEIR fails to adequately analyze many of the Project's significant environmental impacts and fails to propose enforceable mitigation measures that can reduce those impacts to a less than significant level, as required by CEQA. The City therefore lacks substantial evidence to support the DEIR's conclusions that Project impacts would be mitigated to the greatest extent feasible.

As explained in these comments, there is substantial evidence that the Project will result in significant unmitigated impacts relating to air quality, health risk, greenhouse gas ("GHG") emissions, and transportation. The Project also conflicts with applicable land use plans and policies, resulting in land use inconsistencies as well as significant impacts under CEQA. The City may not approve the Project until the City revises and recirculates the Project's DEIR to adequately analyze the Project's significant direct, indirect and cumulative impacts, and incorporates all feasible mitigation measures to avoid or minimize these impacts to the greatest extent feasible.

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We reviewed the DEIR and its technical appendices with the assistance of traffic and transportation expert Norman Marshall of Smart Mobility⁶ and health risk, air quality, GHG emissions and hazardous materials expert James Clark Ph.D.⁷ We reserve the right to supplement these comments at a later date, and at any later proceedings related to this Project.⁸

I. STATEMENT OF INTEREST

CARE CA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental impacts of the Project. The coalition includes the District Council of Ironworkers, Southern California Pipe

4.2

⁵ DEIR, pp. 1-1 – 1-2.

⁶ Mr. Marshall's technical comments (hereinafter "Marshall") and curricula vitae are attached hereto as Exhibit A.

⁷ Dr. Clark's technical comments (hereinafter "Clark") and curricula vitae are attached hereto as Exhibit B.

⁸ Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield ("Bakersfield")* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

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Trades DC 16, along with their members, their families, and other individuals who live and work in the City of Hesperia and in San Bernardino County.

CARE CA advocates for protecting the environment and the health of their communities' workforces. CARE CA seeks to ensure a sustainable construction industry over the long-term by supporting projects that offer genuine economic and employment benefits, and which minimize adverse environmental and other impacts on local communities.

CARE CA includes individuals who live, work, recreate, and raise their families in the City of Hesperia and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

4.2
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In addition, CARE CA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

II. LEGAL BACKGROUND

CEQA requires public agencies to analyze the potential environmental impacts of their proposed actions in an EIR.⁹ "The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."¹⁰

4.3

CEQA has two primary purposes. First, CEQA is designed to inform decisionmakers and the public about the potential significant environmental effects of a project.¹¹ "Its purpose is to inform the public and its responsible officials of the

⁹ PRC § 21100.

¹⁰ *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal* ("Laurel Heights I") (1988) 47 Cal.3d 376, 390 (internal quotations omitted).

¹¹ Pub. Resources Code § 21061; CEQA Guidelines §§ 15002(a)(1); 15003(b)-(e); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 517 ("[T]he basic purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to

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environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’”¹² The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”¹³ The CEQA Guidelines explain, “[t]he EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected.”¹⁴

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring consideration of environmentally superior alternatives and adoption of all feasible mitigation measures.¹⁵ The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.”¹⁶ If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment” to the greatest extent feasible and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”¹⁷

While courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.’”¹⁸ As the courts have explained, a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.”¹⁹ “The ultimate inquiry, as case

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have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.”).

¹² *Citizens of Goleta Valley*, 52 Cal.3d at p. 564 (quoting *Laurel Heights I*, 47 Cal.3d at 392).

¹³ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810; see also *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (“*Berkeley Jets*”) (purpose of EIR is to inform the public and officials of environmental consequences of their decisions before they are made).

¹⁴ CEQA Guidelines § 15003(b).

¹⁵ CEQA Guidelines § 15002(a)(2), (3); see also *Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at p. 564.

¹⁶ CEQA Guidelines § 15002(a)(2).

¹⁷ PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090(a), 15091(a), 15092(b)(2)(A), (B); *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

¹⁸ *Berkeley Jets*, 91 Cal.App.4th at p. 1355 (emphasis added) (quoting *Laurel Heights I*, 47 Cal.3d at 391, 409, fn. 12).

¹⁹ *Berkeley Jets*, 91 Cal.App.4th at p. 1355; see also *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722 (error is prejudicial if the failure to include relevant information precludes informed decision-making and informed public participation, thereby

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law and the CEQA guidelines make clear, is whether the EIR includes enough detail to enable who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.”²⁰

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The DEIR fails to comply with the requirements of CEQA and may not be used as the basis for approving the Project. It fails to perform its requisite function as an informational document that is meant “to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment” and “to list ways in which the significant effects of such a project might be minimized.”²¹ The use of inaccurate and flawed information on which the DEIR bases its conclusions results in underestimated Project impacts. This, in turn, leads to a failure to comply with CEQA’s requirement that an agency “eliminated or substantially lessened all significant effects on the environment” to the greatest extent feasible and that any significant and unavoidable impacts on the environment are “acceptable due to overriding concerns.”²² Mitigation of impacts to the fullest extent feasible requires an agency to accurately quantify the severity of Project impacts, and because the DEIR’s inadequate analyses underestimate the severity of the Project’s impacts, the City has failed to comply with CEQA and cannot approve the Project based upon the DEIR’s analyses and conclusions.

4.4

III. THE DEIR FAILS TO DESCRIBE THE PROJECT

The DEIR does not meet CEQA’s requirements because it fails to include an accurate, complete and stable description of key Project components, rendering the DEIR’s impact analysis inadequate. California courts have repeatedly held that “an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.”²³ CEQA requires that a project be described with enough particularity that its impacts can be assessed.²⁴ Without a complete project

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thwarting the statutory goals of the EIR process); *Galante Vineyards*, 60 Cal.App.4th at p. 1117 (decision to approve a project is a nullity if based upon an EIR that does not provide decision-makers and the public with information about the project as required by CEQA); *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946 (prejudicial abuse of discretion results where agency fails to comply with information disclosure provisions of CEQA).

²⁰ *Sierra Club*, 6 Cal.5th at p. 516 (quoting *Laurel Heights I*, 47 Cal.3d at 405).

²¹ *Laurel Heights I*, *supra*, 47 Cal.3d at p. 391.

²² PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090(a), 15091(a), 15092(b)(2)(A), (B); *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

²³ *Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 17; *Communities for a Better Environment v. City of Richmond* (“*CBE v. City of Richmond*”) (2010) 184 Cal.App.4th 70, 85–89; *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 193.

²⁴ CEQA Guidelines § 15124; see, *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376, 192–193.

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description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review.²⁵

The DEIR fails to include information regarding the use of transportation refrigeration units ("TRUs") during Project operation and fails to account for potential cold storage warehouse use of the Project. The DEIR states "[t]he buildings are not designed to accommodate any warehouse cold storage or refrigerated uses" and fails to include any information regarding TRUs accessing the Project site.²⁶ However, the air quality analysis for the Project assumes that TRUs will account for 10 percent of truck traffic at the Project during operation.²⁷ TRUs are used to transport refrigerated good to and from cold storage warehouses which the DEIR states elsewhere is not a foreseeable use of the Project site. The inconsistency between the information presented in the DEIR and Appendix B renders the DEIR's impact analysis inadequate. Failure to analyze potential cold storage use at the Project results in the failure to analyze the air quality, energy and GHG emissions that would result from the use of the equipment necessary for cold storage.

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Furthermore, the Project is located in the Commercial Industrial Business Park ("CIBP") zone within the City's Main Street and Freeway Corridor Specific Plan ("Specific Plan").²⁸ Cold storage warehouse and refrigerated uses are not restricted in the CIBP zone and are therefore allowed under the same discretionary review required for warehouse use.²⁹ Therefore, despite the DEIR's statement that the building is not designed for cold storage use, there is no condition restricting the use of cold storage at the Project site, and the DEIR's air quality analysis assumes the use of cold storage transportation. It is therefore reasonably foreseeable that future tenants of the building may implement cold storage or refrigeration in their operations. The City must analyze the potential environmental impacts that would result from the reasonably foreseeable use of the Project as a cold storage warehouse in a revised and recirculated DEIR.

4.6

²⁵ *Id.*

²⁶ DEIR, p. 3-19.

²⁷ DEIR, Appendix B, p. 239.

²⁸ City of Hesperia, Main Street and Freeway Corridor Specific Plan (hereinafter "Specific Plan") (amended July 15, 2021) pp. 197-198 available at <https://www.cityofhesperia.us/DocumentCenter/View/15940>

²⁹ Specific Plan, p. 197.

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IV. THE DEIR FAILS TO ADEQUATELY ESTABLISH THE EXISTING BASELINE

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

The existing environmental setting is the starting point from which the lead agency must measure whether a proposed project may cause a significant environmental impact.³⁰ CEQA defines the environmental setting as the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, from both a local and regional perspective.³¹ Describing the environmental setting accurately and completely for each environmental condition in the vicinity of the Project is critical to an accurate, meaningful evaluation of environmental impacts. The courts have clearly stated that, "[b]efore the impacts of a project can be assessed and mitigation measures considered, an [environmental review document] must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined."³²

4.7

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

The DEIR fails to include any information describing the known presence/issue of *Coccidioides Immitis* (Valley Fever Cocci)³³ in the vicinity of the Project site, thereby failing to provide context on the environmental setting of the Project. This results in the failure to analyze the potential impacts of Valley Fever exposure to Project construction workers and sensitive receptors and a failure to mitigate its potentially significant impacts on health.

4.8

³⁰ See, e.g., *Communities for a Better Env't v. S. Coast Air Quality Mgmt. Dist.* (March 15, 2010) 48 Cal.4th 310, 316.

³¹ CEQA Guidelines §15125(a) (emphasis added); *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1453 ("Riverwatch").

³² *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.

³³ San Bernardino County, Public Health, Environmental Health Services, *Coccidioidomycosis* (February 2017) available at <http://www.sbcounty.gov/uploads/dph/dehs/Depts/EnvironmentalHealth/EHSDocuments/Coccidioidomycosis.pdf>

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Valley Fever is a disease that can spread when persons are exposed to *Coccidioides immitis* ("Cocci") fungus spores during ground disturbance.³⁴ Impacts to human health from Valley Fever can be severe, cause long lasting health problems, and can even result in death.³⁵ The fungus lives in the top 2 to 12 inches of soil, and when disturbed by activities such as digging, construction activities (e.g. site preparation and grading), dust storms, or during earthquakes, the fungal spores become airborne.³⁶ The Project will disturb up to 15 acres of soil during site preparation phase and 90 acres of soil during the grading phase which may lead to the release of fungus spores resulting in impacts to Project workers and nearby sensitive receptors.³⁷

According to the California Department of Public Health, the Valley Fever case rate in San Bernardino County has steadily increased from a case rate of 1.4 cases per 100,000 residents in 2015 to 10.7 per 100,000 residents in 2020, and 11.4 per 100,000 residents in 2021.³⁸ In San Bernardino County, there were 233 and 250 cases in 2020 and 2021 respectively, and the County had the ninth highest number of cases among California's 58 counties in 2020 and the eighth highest in 2021.³⁹

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Despite the known presence of Valley Fever in the Project's vicinity and the potential impacts posed by exposure to the fungus spores, the DEIR fails to provide any information regarding the prevalence of *Cocci* fungus spores in the Project's vicinity, fails to discuss available construction worker Valley Fever training,⁴⁰ and fails to include any Valley Fever-specific mitigation in the Project's Mitigation Monitoring and Reporting Program ("MMRP"). The lack of information precludes meaningful analysis and mitigation of the potential health impacts the Project will cause to onsite construction workers and other individuals in close proximity to the

³⁴ Clark, pp. 3-4.

³⁵ California Department of Public Health ("CDPH"), Valley Fever Basics (May 7, 2020), available at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/ValleyFeverBasics.aspx>.

³⁶ Clark Comments, p. 4.

³⁷ DEIR, Appendix B, p. 128.

³⁸ California Department of Public Health, Epidemiologic Summary of Valley Fever (Coccidioidomycosis) in California, 2020-2021 (hereinafter "Valley Fever Report") (December 2022) p. 5. Available at <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CocciEpiSummary2020-2021.pdf>

³⁹ Valley Fever Summary, p. 5.

⁴⁰ California Labor Code § 6709 mandates that employers at worksites in counties where Valley Fever is highly endemic (i.e. where the annual incidence rate is greater than 20 cases per 100,000 persons per year) provide effective awareness training on Valley Fever to all employees. Labor Code § 6709(a-d). Although San Bernardino County Valley Fever incidents have not yet reached 20 per 100,000, they are steadily rising, indicating that the Valley Fever worker awareness training described in Section 6709 should be used at the Project site.

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Project site from disturbing soils which may be contaminated with *Cocci* spores site during Project construction.

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

4.8
Cont.

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

An EIR must fully disclose all potentially significant impacts of a Project and implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.⁴¹ An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.⁴²

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.⁴³ Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.⁴⁴ In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will 'determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements.'⁴⁵

4.9

Additionally, CEQA requires agencies to commit to all feasible mitigation measures to reduce significant environmental impacts.⁴⁶ In particular, the lead agency may not make required CEQA findings, including finding that a project impact is significant and unavoidable, unless the administrative record

⁴¹ CEQA Guidelines § 15064(b).

⁴² *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

⁴³ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

⁴⁴ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

⁴⁵ *Id.*, *Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

⁴⁶ CEQA Guidelines § 15002(a)(2).

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demonstrates that it has adopted all feasible mitigation to reduce significant environmental impacts to the greatest extent feasible.⁴⁷

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.’”⁴⁸

4.9
Cont.

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

The DEIR concludes that the transportation impacts of the Project will be less than significant.⁴⁹ However, the transportation impacts analysis is flawed with respect to the analysis of the Project’s trip generation, trip length, and the vehicle miles traveled (“VMT”) impacts. In addition, the DEIR’s incorrect and unsupported conclusions with respect to VMT and trip generation undermine the DEIR’s analyses of the Project’s air quality, energy, and GHG emissions impacts, which rely heavily on DEIR’s trip generation and VMT calculations in their respective analyses.

4.10

1. The DEIR Incorrectly Calculates the Project’s Operational Trip Generation

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

4.11

The DEIR’s transportation impacts analysis relies on the trip generation rates available in the Institute of Transportation Engineers, Trip Generation Manual, 11th Edition (“ITE Manual”) for Category 154 – High-Cube Transload and Short-Term Storage.⁵⁰ Based on the ITE Manual Category 154, the DEIR estimates that the Project will generate 1.4 vehicle trips per 1,000 square feet of building area, or 573 daily trips, with the AM and PM peak hours generating 33 and 41 trips respectively.⁵¹

⁴⁷ PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090, 15091; *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

⁴⁸ *Berkeley Jets*, 91 Cal.App.4th at 1355.

⁴⁹ DEIR, p. 5.9-10.

⁵⁰ DEIR, p. 5.9-11.

⁵¹ DEIR, p. 5.9-11.

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The DEIR lacks substantial evidence to support the estimated trip generation because the DEIR unreasonably and without justification relies on an unreasonably low trip generation rate in the ITE Manual for high-cube warehouse uses. Mr. Marshall found that the ITE Manual provides a range of trip generation rates that are applicable to the Project.⁵² Mr. Marshall explains that the ITE Manual provides five separate categories that are applicable to high-cube warehouse, each with different trip generation rates per 1,000 square feet as follows⁵³:

- 154 High-Cube Transload and Short-Term Storage Warehouse – 1.4 trips
- 155 High-Cube Fulfillment Center Warehouse
 - Non-Sort – 1.81 trips
 - Sort – 6.44 trips
- 156 High-Cube Parcel Hub Warehouse – 4.63 trips
- 157 High-Cube Cold Storage Warehouse – 2.12 trips

4.11
Cont.

As Mr. Marshall explains, the DEIR's project description is so general that the Project could end fall within any of these categories. The DEIR lacks support for its assumption that the Project will generate the 1.4 trips provided under Category 154, the least trip intensive use of all ITE warehouse categories.

Moreover, a 2019 study of warehouse trip generation rates completed for the Western Riverside Council of Governments ("WRCOG Study")⁵⁴ analyzed actual trip generation rates from 16 warehouses in the Inland Empire region and found that the ITE Categories underestimate trip generation for fulfillment centers by 50 percent, with an average trip generation for fulfillment centers in Category 154 resulting in 2.2 trips per 1,000 square feet.⁵⁵ The WRCOG Study also details that the parcel hubs analyzed in the region generated as many as 14 trips per 1,000 square feet.⁵⁶ Mr. Marshall explains that the Project could generate ten times the number of trips analyzed in the DEIR, 5,730 trips per day, if the Project were used as a parcel hub.

According to the DEIR, "[a]lthough a tenant has not been identified, the Project building occupant is assumed to be a warehouse distribution and logistics

⁵² Marshall, p. 3.

⁵³ Marshall, p. 3.

⁵⁴ Western Riverside Council of Governments Technical Advisory Committee, Staff Report, High-Cube Warehouse Trip Generation Study and Proposed TUMF Calculation Handbook Update (February 21, 2019) (hereinafter "WRCOG Study") PDF, p. 53. available at https://wrcog.us/AgendaCenter/ViewFile/Agenda/_02212019-292

⁵⁵ *Id.* PDF p. 43.

⁵⁶ *Id.* PDF p. 50.

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operator, a light manufacturer or a similar industrial use.”⁵⁷ Based on the variability of trip generation rates for high-cube warehouses reported in the ITE Manual, and the results of the WRCOG Study, it is evident that the DEIR underestimated the Project’s operational trips. . If the City does not know what warehouse tenants will occupy the Project, nor what the full range of warehouse uses of the Project will be, the City must analyze the most intensive reasonably foreseeable uses of the Project site.

4.11
Cont.

. To reasonably analyze the full scope of the Project’s impacts related to future tenant uses, analysis of the Projects trip generation should therefore use the most conservative estimate from the WRCOG Study and present the data in a revised and recirculated DEIR for public review.

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

The DEIR relies on the City’s *Traffic Impact Analysis Guidelines for Vehicle Miles Traveled (VMT) and Level of Service Assessment (LOS)*⁵⁸ (“TIA Guidelines”) to determine whether the Project could be screened from further analysis.⁵⁹ The TIA Guidelines provide that, if a project meets one of the following criteria, then the VMT impact of the project is considered less-than significant and no further analysis of VMT would be required:

4.12

- A. The project is located within a Transit Priority Area (“TPA”).
- B. The project is located in a low VMT generating area.
- C. Project Type Screening (the project generates fewer than 110 daily vehicle trips or is considered a local-serving land use).⁶⁰

Based on the above criteria, the City found that a VMT analysis was required for the Project as none of the screening criteria were met.⁶¹ According to the TIA Guidelines “[p]rojects not screened through the steps above should complete VMT analysis and forecasting through the SBTAM [San Bernardino Transportation Analysis Model] model to determine if they have a significant VMT impact.”⁶² The

⁵⁷ DEIR, p. 3-19.

⁵⁸ City of Hesperia, *Traffic Impact Analysis Guidelines for Vehicle Miles Traveled (VMT) and Level of Service Assessment (LOS)* (hereinafter “TIA Guidelines”) (July, 2020) available at <https://hesperia.legistar.com/LegislationDetail.aspx?ID=4594071&GUID=16A01131-8BF7-42F8-BC5C-1E1CB2902AC7&Options=&Search=>

⁵⁹ DEIR, 5.9-9.

⁶⁰ TIA Guidelines, pp. 24 – 26.

⁶¹ DEIR, p. 5.9-10.

⁶² TIA Guidelines, p. 27.

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TIA Guidelines provide that a project would result in a significant project-generated VMT impact if either of the following conditions are satisfied:

1. The baseline project-generated VMT per service population exceeds the San Bernardino County regional average baseline of 32.7% VMT per service population, or
2. The cumulative project-generated VMT per service population exceeds the San Bernardino County regional average baseline of 32.7% VMT per service population.⁶³

The DEIR states that the TIA Guidelines were followed and reports:

[T]he Project would have a less than significant impact on VMT in the baseline and cumulative conditions. The 2022 Project VMT per service population would be 27.7, which is 15 percent below the County's regional average of 32.7. The Cumulative Project (future scenario) VMT per service population would be 23.3, which is 28.78 percent below the County's regional average of 32.7.⁶⁴

Mr. Marshall found that that DEIR's analysis likely underreports the average trip length which he calculated to be 11.7 miles to and from the Project site based on the information available in the DEIR.⁶⁵ It is unclear how the DEIR calculated the average trip length and DEIR's reliance on a lower trip length results in a failure to accurately analyze Project VMT.

First, it is unclear which version of the SBTAM was used in the City's analysis. Mr. Marshall found that, while the DEIR does not specify which version of SBTAM was applied, it does state that it relies on a 2016 base year.⁶⁶ However, he also found that, according to the *SBTAM Model Development and Validation Report and User's Guide*⁶⁷ the SBTAM relies on a 2008 base year which was validated with 2001 household survey data.⁶⁸ The City must provide additional information regarding the SBTAM version used and the source of the data set relied on in the SBTAM.

⁶³ TIA Guidelines, p. 28.

⁶⁴ DEIR, p. 5.9-10.

⁶⁵ Marshall, p. 6.

⁶⁶ Marshall, p. 6.

⁶⁷ San Bernardino County Transportation Authority, *SBTAM Model Development and Validation Report and User's Guide* (December 2012) available at <https://www.gosbcta.com/plan/san-bernardino-transportation-analysis-model/>

⁶⁸ Marshall, p. 6.

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4.12
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4.13

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Second, San Bernardino County is a member of the Southern California Association of Governments ("SCAG"). SCAG provides "state-of-the-art transportation models to support SCAG's planning program"⁶⁹ Mr. Marshall found that the trip length calculated in the DEIR is much closer to the average trip length found in SCAG's outdated 2016 transportation model of 12.5 miles.⁷⁰ The SCAG transportation model was updated in 2020 with refined calculations and reports average trip lengths to be 20.6 miles, nearly twice the average trip length in the DEIR.⁷¹

4.13
Cont.

Third, Mr. Marshall, found that, if only half of the truck trips generated by the Project traveled to the Ports of Long Beach and Los Angeles (the closest ports to the Project site), the VMT generated by those trips alone would equal the total VMT calculated in the DEIR.⁷² Since the ports are principal shipping hubs for goods transported to warehouses for commercial distribution, it is reasonable that a warehouse distribution use of the Project site would utilize transload facilities in the Ports, significantly increasing the Project's VMT.

4.14

The City must prepare and recirculate a revised VMT analysis which clearly identifies the specific transportation modeling parameters relied on, and which includes accurate truck trip lengths and truck VMT in its modeling.

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

As discussed above, the Project may result in significant VMT impacts. Pursuant to the City's TIA Guidelines, when a Project exceeds the threshold, the Project applicant may choose to mitigate the Project's impacts through one of the following methods:⁷³

4.15

1. Modify the project's-built environment characteristics to reduce VMT generated by the project.
2. Implement Transportation Demand Management ("TDM") measures to reduce VMT generated by the project.

⁶⁹ Southern California Association of Governments, Transportation Models (accessed July 12, 2023) available at <https://scag.ca.gov/transportation-models>

⁷⁰ Marshall, p. 7.

⁷¹ Marshall, p. 7.

⁷² Marshall, p. 8.

⁷³ TIA Guidelines, p. 29.

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3. Participate in a VMT fee program and/or VMT mitigation exchange/banking program (if they exist) to reduce VMT from the project or other land uses to achieve acceptable levels.

Attachment B to the TIA Guidelines evaluates the effectiveness of several TDM measures adapted from 2010 guidance issued by the California Air Pollution Control Officers Association ("CAPCOA").⁷⁴ However, the TIA Guidelines do not include an analysis of the VMT reduction strategies available in the CAPCOA *Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity* ("Handbook").⁷⁵ The CAPCOA Handbook published in 2021 provides various strategies to reduce VMT and GHG emissions which should be considered for implementation where a project will have a significant VMT impact.⁷⁶ The Handbook includes data regarding GHG emissions and proven effective methods that a local agency can employ to reduce GHG impacts, including reduction in GHG impacts from VMT.⁷⁷

While the TIA Guidelines evaluate several mitigation measures contained in the CAPCOA guidance from 2010, it fails to include measures from the Handbook that could further reduce Project VMT. The Handbook states that employee based VMT reduction (and GHG emissions reduction) for a project could be as great as 45 percent with the implementation of the following measures:

- T-6. Implement Commute Trip Reduction Program
- T-7 Implement Commute Trip Reduction Marketing
- T-8 Provide Ridesharing Program
- T-9 Implement Subsidized or Discounted Transit Program
- T-10 Provide End-of Trip Bike Facilities
- T-11 Provide Employer-Sponsored Vanpool
- T-12 Price Workplace Parking
- T-13 Implement Employee Parking Cash-Out⁷⁸

Many of the individual measures included in the Handbook offer high potential reductions *even if only one measure is used*. For example, the maximum

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⁷⁴ TIA Guidelines, p. 41.

⁷⁵ California Air Pollution Control Officers Association ("CAPCOA") Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity (hereinafter "CAPCOA Handbook") (December 2021) available at https://www.airquality.org/ClimateChange/Documents/Final%20Handbook_AB434.pdf

⁷⁶ CAPCOA Handbook, p. 2.

⁷⁷ CAPCOA Handbook, p. 35.

⁷⁸ CAPCOA Handbook, pp. 89-115.

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reduction produced by “T-11 Provide Employer-Sponsored Vanpool” is 20.4 percent.⁷⁹

The DEIR fails to include any mitigation measures to reduce the Project’s VMT impacts and fails to include analysis of the feasibility of the methods provided in the TIA Guidelines or CAPCOA Handbook to reduce the Project’s potentially significant impacts. The City must evaluate the feasibility and effectiveness of mitigation measures to reduce the Project’s VMT impacts in a revised and recirculated DEIR for the Project.

4.15
Cont.

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

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

The DEIR fails to disclose the potential presence of *Cocci* fungus spores at the Project site and fails to discuss or require any Valley Fever employee training measures to protect Project construction workers from Valley Fever exposure. As a result, the DEIR fails to analyze the Project’s threat of Valley Fever exposure to workers and sensitive receptors, and fails to include critical mitigation measures to reduce the health risk impacts of Valley Fever.

4.16

According to the DEIR’s air quality analysis, Project construction will include 10 days of site preparation which will disturb 15 acres of soil, and 30 days of grading activities which will disturb 90 acres of soil at the Project site.⁸⁰ Dr. Clark explains that, when soil containing Valley Fever spores is disturbed by construction activities, the spores become airborne, exposing construction workers and other nearby sensitive receptors to potential infection.⁸¹ Sensitive receptors on and near the Project site, including workers and those who live or work nearby, are at risk from exposure from disturbed dust during Project construction.⁸²

Dr. Clark states that the most at-risk populations are construction and agricultural workers.⁸³ Additionally, he notes that the potentially exposed population in surrounding areas is much larger than construction workers because the nonselective raising of dust during Project construction will carry the very small

⁷⁹ CAPCOA Handbook, p. 104.

⁸⁰ DEIR, Appendix B, p. 239.

⁸¹ Clark Comments, p. 5.

⁸² Clark Comments, p. 5.

⁸³ Clark Comments, p. 4.

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spores which measure 0.002–0.005 millimeters into nonendemic areas, potentially exposing large non-Project-related populations.⁸⁴ Furthermore, the small fungus spore particles will not be controlled by the conventional construction dust-control measures under the Mojave Desert Air Quality Management District (“MDAQMD”) Rule 403.⁸⁵ Thus, off-site sensitive receptors may have a significant risk of exposure to Valley Fever spores with no mitigation.

4.16
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The DEIR must be revised and recirculated to include an analysis of the Project’s significant Valley Fever impacts, and to require that any and all mitigation measures that will reduce Valley Fever risks are incorporated as binding mitigation in the Project’s MMRP.

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

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

In his comments, Dr. Clark proposes a variety of feasible mitigation measures the DEIR should consider and adopt in a revised DEIR to reduce potential health impacts from Valley Fever.⁸⁶ The following mitigation measures identified in Dr. Clark’s comments are based on actual experience during construction of projects in areas affected by the fungi that cause Valley Fever, these measures should be included in the DEIR’s mitigation measures in addition to the requirements under MDAQMD Rule 403:

4.17

- Include specific requirements in the Project’s Injury and Illness Prevention Program regarding safeguards to prevent Valley Fever.
- Control dust exposure through the following methods:
- Apply chemical stabilizers at least 24-hours prior to high wind event;
- Apply water to all disturbed areas a minimum of three times per day. Watering frequency should be increased to a minimum of four times per

⁸⁴ Clark Comments, p. 5.

⁸⁵ Clark Comments, p. 5; Mojave Desert Air Quality Management District, Rule 403: Fugitive Dust Control (October 26, 2020) available at <https://www.mdaqmd.ca.gov/rules/rule-book/regulation-iv-prohibitions>; DEIR, p. 5.2-8 (note: the DEIR incorrectly refers to MDAQMD Rule 403.2 -Fugitive Dust Control for the Mojave Desert Planning Area, which was rescinded on October 26, 2020)

⁸⁶ Clark Comments, pp. 6-8.

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- day if there is any evidence of visible wind-driven fugitive dust;
- Provide National Institute for Occupational Safety and Health (NIOSH)-approved respirators for workers with a prior history of Valley Fever.
 - Half-face respirators equipped with a minimum N-95 protection factor for use during worker collocation with surface disturbance activities. Half-face respirators equipped with N-100 or P-100 filters should be used during digging activities. Employees should wear respirators when working near earth-moving machinery.
 - Prohibit eating and smoking at the worksite, and provide separate, clean eating areas with hand-washing facilities.
 - Avoid outdoor construction operations during unusually windy conditions or in dust storms.
 - Consider limiting outdoor construction during the fall to essential jobs only, as the risk of cocci infection is higher during this season.
- Prevent transport of cocci outside endemic areas:**
- Prevent spillage or loss of bulk material from holes or other openings in the cargo compartment's floor, sides, and/or tailgate;
 - Provide workers with coveralls daily, lockers (or other systems for keeping work and street clothing and shoes separate), daily changing and showering facilities.
 - Clothing should be changed after work every day, preferably at the work site.
 - Train workers to recognize that cocci may be transported offsite on contaminated equipment, clothing, and shoes; alternatively, consider installing boot-washing.
 - Post warnings onsite and consider limiting access to visitors, especially those without adequate training and respiratory protection.
- Improve medical surveillance for employees:**
- Employees should have prompt access to medical care, including suspected work-related illnesses and injuries.
 - Work with a medical professional to develop a protocol to medically evaluate employees who have symptoms of Valley Fever.
 - Consider preferentially contracting with 1-2 clinics in the area and communicate with the health care providers in those clinics to ensure that providers are aware that Valley Fever has been reported in the area. This will increase the likelihood that ill workers will receive prompt, proper and consistent medical care.
 - Respirator clearance should include medical evaluation for all new

4.17
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employees, annual re-evaluation for changes in medical status, and annual training, and fit-testing.

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

Any mitigation measures must be included in the DEIR and be fully enforceable through permit conditions, agreements or other legally binding instruments.⁸⁷ Failure to include enforceable mitigation measures is considered a failure to proceed in the manner required by CEQA.⁸⁸ In order to meet this requirement, mitigation measures must be incorporated directly into the EIR to be enforceable.⁸⁹

4.17
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The DEIR must be revised and recirculated to include mitigation measures such as the those proposed by Dr. Clark to reduce the impacts of exposure to Valley Fever causing fungus spores and mitigate impacts to sensitive receptors.

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

The DEIR's air quality modeling fails to account for the reasonably foreseeable use of the Project as a cold storage warehouse. Additionally, the Project's trip generation rates are unsupported and cannot be relied upon by the City to determine that the Project will not have significant air quality impact from mobile sources. The DEIR's reliance on unsupported assumptions regarding the Project's future use, trip generation rates and VMT undermine the Project's air quality analysis and prevent the City from finding that the Project will not result in significant air quality impacts.

4.18

First, as detailed above, the future use of the Project as a cold storage warehouse is a reasonably foreseeable use that must be analyzed in the DEIR's air quality analysis. Dr. Clark found that refrigeration for cold storage uses could result in a significant impact on air quality if implemented in the Project.⁹⁰

Second, the Project's transportation impact analysis fails to accurately analyze the Project's operational truck trip generation rates and likely

⁸⁷ CEQA Guidelines § 15126.4(a)(2).

⁸⁸ *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 672.

⁸⁹ *Lotus v. Dept of Transportation* (2014) 223 Cal. App. 4th 645, 651-52.

⁹⁰ Clark, p. 11.

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underestimates the Project's VMT. The Project's air quality analysis relies on the transportation impact analysis' trip generation numbers and VMT in order to calculate the Project's air emissions and analyze the Project's air quality and GHG emissions impacts.⁹¹ The DEIR's failure to accurately calculate the Project's trip generation results in a corresponding failure to accurately calculate the emissions from truck traffic during Project operation. The Project's transportation impact analysis must be corrected to accurately analyze the Project's air quality impacts in a revised DEIR.

4.18
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D. The DEIR Fails to Disclose, Analyze, and Mitigate the Project's Potentially Significant Energy Resources Impacts

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

CEQA Guidelines Appendix F identifies the following means to achieve the goal of conserving energy: decreasing overall per capita energy consumption, decreasing reliance on fossil fuels, and increasing reliance on renewable energy sources.⁹² In order to ensure that energy impacts are considered in project decisions, CEQA requires that EIRs include a discussion of the potential energy impacts of proposed projects and a detailed statement of mitigation measures designed to "minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy."⁹³

4.19

Appendix F directs the lead agency to consider the energy impacts of project operation, the effects on local and regional energy supplies, the effects on peak and base electricity demand, compliance with existing energy standards, and other effects on energy resources.⁹⁴ Further, Appendix F notes an EIR should consider whether the project involves "Unavoidable Adverse Effects" such as "wasteful, inefficient and unnecessary consumption of energy during the project construction,

⁹¹ DEIR, Appendix B, p. 44. (explaining that the "[t]rip generation rates used in CalEEMod for the project were based on the project's Traffic Impact Analysis")

⁹² Appendix F at § I.

⁹³ PRC § 21100(b)(3); CEQA Guidelines, Appendix F, Energy Conservation ("Appendix F"), § I. Appendix F defines "Unavoidable Adverse Effects" as "wasteful, inefficient and unnecessary consumption of energy during the project construction, operation, maintenance and/or removal that cannot be feasibly mitigated."

⁹⁴ Appendix F §§ I, II.C, II.D.

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operation, maintenance and/or removal that cannot be feasibly mitigated.”⁹⁵ Here, DEIR falls short of the mandates of Appendix F.

First, the DEIR fails to adequately analyze the significance of the Project’s energy impacts related to the Project’s use of fossil fuels consumed by Project related vehicle trips. One of the stated goals in Appendix F is to *decrease* reliance on fossil fuels.⁹⁶ The DEIR states that the Project will increase gasoline consumption in the City of Hesperia by 0.01 percent and diesel consumption by 0.03 percent and concludes that the increased fuel consumption from the Project is minimal and therefore not significant.⁹⁷ However, the DEIR fails to establish a threshold for fossil fuel consumption that would be significant. Therefore, the conclusion that the increased fuel consumption resulting from Project operation would not be significant is unsupported.

4.19
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The City must determine the appropriate threshold against which to measure the Project’s fossil fuel consumption in order to determine whether the Project will result in a significant impact to energy resources. The analysis in the DEIR is deficient insofar as it does not assess or consider the significance of the increase in fossil fuel usage for the Project on energy resources consistent with Appendix F and does not consider mitigation to “minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.”⁹⁸

Additionally, as detailed in the analysis of the Project’s transportation impacts above, the DEIR fails to accurately account for the Project’s trip generation, which Mr. Marshall found could result in a tenfold increase in operational trips. Increased trip generation would lead to increased fossil fuel use, and therefore, energy use, from Project related vehicle trips.

4.20

Second, another stated goal for conserving energy set forth in Appendix F is “increasing reliance on renewable energy sources.”⁹⁹ Appendix F further states that “Mitigation Measures may include: ... 4. Alternate fuels (particularly renewable ones) or energy systems.”¹⁰⁰ Here, the DEIR fails to analyze the effectiveness of implementing the energy conservation measures outlined in the City’s 2010 Climate Action Plan (“CAP”)¹⁰¹ by stating that the Project will “comply with the Project

⁹⁵ Appendix F § II.F.

⁹⁶ Appendix F § II.F. (emphasis provided)

⁹⁷ DEIR, p. 5.5-6.

⁹⁸ PRC § 21100(b)(3).

⁹⁹ Appendix F § I.

¹⁰⁰ Appendix F § II.D.4.

¹⁰¹ City of Hesperia, Climate Action Plan (July 2020)

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would comply with the CALGreen Code, regarding building energy efficiency and other green building standards.”¹⁰²

4.20
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The DEIR’s discussion of renewable energy generation is virtually non-existent and fails to provide a meaningful “investigation into renewable energy options that might be available or appropriate for the project.”¹⁰³ In *California Clean Energy Comm. v. City of Woodland*, the court held that the city’s EIRs failed to comply with the requirements of Appendix F by not discussing or analyzing renewable energy options.¹⁰⁴ The court determined that “the City’s EIRs omit any discussion or analysis of renewable energy options for Gateway II. CEQA is violated when an EIR contains no discussion of a potentially significant environmental consideration.”¹⁰⁵

Here, the DEIR states that the “proposed Project is subject to the CALGreen Code Title 24 building energy efficiency requirements that offer builders better windows, insulation, lighting, ventilation systems, and other features”.¹⁰⁶ Additionally, the DEIR states that “[t]he Project would provide a solar-ready roof in order to promote utilization of solar energy.”¹⁰⁷ However, the DEIR fails to include a discussion of additional energy use reduction strategies and fails to provide any analysis of additional measures that could be implemented to reduce the Project’s GHG emissions and energy impacts. The DEIR must be revised to adequately analyze potential renewable energy generation for the Project and sufficiently analyze the related energy impacts.

4.21

Finally, compliance with the Building Code and other energy efficiency requirements does not, by itself, constitute an adequate assessment of measures that can be taken to address the energy impacts during construction and operation of the Project. In *Ukiah Citizens for Safety First v. City of Ukiah*, the court held that the EIR inadequately described the energy impacts of a Costco project where the EIR relied on the project’s compliance with energy conservation standards to conclude that energy consumption would be less than significant, and did not separately evaluate energy impacts from transportation, construction, or operation.¹⁰⁸ Here, the DEIR relies on the California Building Code and Title 24 energy efficiency standards, and the implementation of sustainable design features

4.22

¹⁰² DEIR, p. 5.6-17.

¹⁰³ *California Clean Energy Comm. v. City of Woodland* (2014) 225 Cal. App. 4th 173, 213.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ DEIR, p. 5.6-13.

¹⁰⁷ DEIR, p. 5.6-20.

¹⁰⁸ *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal. App. 4th 256, 263-266.

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under the CALGreen code to support the less than significant determination.¹⁰⁹ However, as described above, additional analysis is necessary under the requirements of Appendix F to support a determination that the Project would not result in the wasteful, inefficient, and unnecessary consumption of energy during construction and operations.

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

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

Pursuant to Appendix G of the CEQA Guidelines, a project will have a significant adverse environmental impact on land use and planning if it will cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.¹¹⁰ Here, the DEIR fails to disclose inconsistency with the City's General Plan and Specific Plan which result in a significant adverse environmental impact on land use and planning.

4.23

Under California law, a general plan serves as a "charter for future development"¹¹¹ and embodies "fundamental land use decisions that guide the future growth and development of cities and counties."¹¹² The general plan has been aptly described as "the constitution for all future developments" within a city or county.¹¹³ Further, the "propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements."¹¹⁴ The consistency doctrine has been described as the "linchpin of California's land use and development laws; it is the principle which infuses the concept of planned growth with the force of law."¹¹⁵

The City's General Plan Conservation Element includes objectives and policies that aspire to protect the citizens of the City from the harmful effects of air pollution. Implementation Policy: CN-8.5 states that the City shall "[m]inimize

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¹⁰⁹ DEIR, p. 5.6-20.

¹¹⁰ CEQA Guidelines, Appendix G §X(b).

¹¹¹ *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 54.

¹¹² *City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521, 532.

¹¹³ *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors of El Dorado County* (1998) 62 Cal.App.4th 1334, 1335.

¹¹⁴ *Citizens of Goleta Valley v. Board of Supervisors of County of Santa Barbara* (1990) 52 Cal.3d 553, 570.

¹¹⁵ *Corona-Norco Unified School District v. City of Corona* (1993) 17 Cal.App.4th 985, 994.

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exposure of sensitive receptor land uses and sites to health risks related to air pollution.”¹¹⁶ As demonstrated above, the presence of *Cocci* fungus spores in the soils of the Project site pose a significant health risk to City residents and remains unmitigated. This impact conflicts with the Conservation Element of the General Plan as the Project must implement additional mitigation measures to mitigate the health risk presented by exposure to *Cocci* fungus spores.

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Cont.

Additionally, the DEIR fails to adequately analyze the Project’s VMT impacts leading to inconsistency with Specific Plan Policy C-2.2. which directs new development to increase trip reduction efforts.¹¹⁷ As demonstrated above, the DEIR fails to include any mitigation measures to reduce the Project’s trip generation, trip length and VMT. The DEIR lacks justification to conclude that the Project is consistent with Policy C-2.2. and must provide an analysis of trip reduction measures such as those provided in the TIA Guidelines and the CAPCOA Handbook in order to reduce trips generated by the Project.

4.25

F. The DEIR Fails to Adequately Analyze the Project’s Cumulative Impacts

CEQA requires the lead agency to include a reasonable and good faith analysis of cumulative impacts in an EIR.¹¹⁸ The analysis must be sufficiently detailed to correspond to the severity of the impact and the likelihood that it will occur.¹¹⁹ While an EIR may provide less detail in its cumulative impact analysis than for project-specific effects, the discussion must provide sufficient specificity to enable the agency to make findings that a project will, or will not, have a significant cumulative impact where the possible effects of the project are “individually limited but cumulatively considerable.”¹²⁰ Under CEQA, an EIR must either: include a list of past, present, and probable future projects near a project site; or provide a summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect.¹²¹

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Here, the DEIR fails to include a list of past, present, and probable future projects in the vicinity of the Project site resulting in the failure to adequately

¹¹⁶ General Plan, p. CN-50.

¹¹⁷ Specific Plan, p. 29.

¹¹⁸ 14 §§ C.C.R 15130(a); 15065(a); 15355(b); *Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 109.

¹¹⁹ 14 C.C.R § 15130(b); *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 729 (EIR inadequate for failure to include “some data” on cumulative groundwater impacts).

¹²⁰ PRC § 21083(b)(2); 14 C.C.R §§ 15064(h)(1), 15065(a)(3); 14 C.C.R § 15130(b).

¹²¹ CEQA Guidelines §§ 15130(b)(1)(A)-(B)

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analyze the cumulative impacts of the Project. The DEIR states “[t]he cumulative impacts discussion in each sub-section is based on the environmental impacts of the Project combined with the related environmental impacts of projects planned in the Project vicinity.”¹²² However, the DEIR fails to identify or provide a list of past, present and probable future projects in the vicinity, thereby thwarting any meaningful cumulative impacts analysis. The DEIR states that Table 4-8 identifies other cumulative projects in the Project’s vicinity.¹²³ However, the DEIR fails to include the referenced Table 4-8. The City recently certified two EIRs for warehouse development projects adjacent to the Project site, the first being the I-15 Industrial Park Project¹²⁴ located immediately east and west of the Project site, and the second, the Poplar 18 Project¹²⁵ which is located immediately south of the Project site.

The I-15 Industrial Park proposes to develop up to 1,850,000 square feet of industrial/warehouse space¹²⁶ and the Poplar 18 Project proposes to develop 414,700 square feet of industrial/warehouse space.¹²⁷ The DEIR for this Project fails to identify the Poplar 18 Project and states that the I-15 Industrial Park is proposed for the parcels directly east and west of the Project site, providing no additional information regarding the scope and size of the project. The City failed to provide the necessary information needed to analyze whether the cumulative air quality, health risk, noise, GHG emissions, energy, water use, and transportation impacts of the Project are significant as required under CEQA, thereby preventing meaningful review of the Project’s environmental impacts by decisionmakers and the public. Finally, we note that the DEIRs prepared for the I-15 and Poplar 18 projects both include a list of cumulative projects that include the location and proposed size of developments in the vicinity of each project which are referenced throughout the respective documents with regard to the potential cumulative impacts of each project.¹²⁸

4.26
Cont.¹²² DEIR, p. 4-1.¹²³ DEIR, p. 5-2.¹²⁴ City of Hesperia, Notice of Determination, I-15 Industrial Park Project (SCH No. 2021060397) (February 8, 2023) available at <https://www.cityofhesperia.us/DocumentCenter/View/18048>¹²⁵ City of Hesperia, Notice of Determination, Poplar 18 Project (SCH No. 2022080248) (March 10, 2023) available at <https://www.cityofhesperia.us/DocumentCenter/View/18119>¹²⁶ City of Hesperia, DEIR, I-15 Industrial Park Project (hereinafter “I-15 Project DEIR”) (SCH No. 2021060397) (July 2022) available at <https://www.cityofhesperia.us/DocumentCenter/View/17660>¹²⁷ City of Hesperia, Notice of Determination, Poplar 18 Project (hereinafter “Poplar 18 DEIR”) (SCH No. 2022080248) (November 2022) available at <https://www.cityofhesperia.us/DocumentCenter/View/17968>¹²⁸ I-15 Project DEIR, p. 3-4, see also Poplar 18 DEIR, pp. 3-3 – 3-4.

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

In September 2022, the California Office of the Attorney General (“OAG”) released an updated version of its guidance document titled *Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act* (“Best Practices”).¹²⁹ The Best Practices were developed to aid local agencies to achieve CEQA compliance, and promote environmentally-just development when they are considering warehouse project proposals.¹³⁰ The OAG developed the Best Practices based on knowledge gained from monitoring, providing comments on, and litigating, warehouse development projects in California.¹³¹ The Best Practices state that while CEQA analysis is necessarily project-specific, the document provides feasible best practices and mitigation measures which were adapted from actual warehouse projects in California.¹³² The purpose of the Attorney General’s guidance is to ensure that warehouse projects reduce their individual *and* cumulative impacts on the communities in which they are located to the greatest extent feasible.

4.27

The Best Practices provide examples of environmentally superior methods of developing warehouse projects and offers sample mitigation measures that a local agency should consider when evaluating the environmental impacts of warehouse industrial projects. Here, the proposed Project defies many of the recommendations in the Best Practices which recommend that local jurisdictions take care when considering potential impacts from air quality and GHG emissions from project construction and operation. The DEIR does not comply with many of the recommendations and fails to include mitigation measures that conform with the Best Practices, which for construction include:

- Requiring off-road construction equipment to be zero-emission, where available, and all diesel-fueled off-road construction equipment, to be equipped with CARB Tier IV-compliant engines or better, and including this requirement in applicable bid documents, purchase orders, and contracts, with successful contractors demonstrating the ability to supply

¹²⁹ California Office of the Attorney General, Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act (hereinafter “Best Practices”) (September 2022) available at <https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf>

¹³⁰ Best Practices, p. 1.

¹³¹ Best Practices, p. 1.

¹³² Best Practices, p. 1.

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the compliant construction equipment for use prior to any ground-disturbing and construction activities.¹³³

- Here, the DEIR fails to include mitigation measures specifying the engine tiers of construction equipment. Furthermore, the air quality analysis specifies that the Project will be constructed with CARB Tier 2 equipment.¹³⁴
- Prohibiting grading on days with an Air Quality Index forecast of greater than 100 for particulates or ozone for the project area.¹³⁵
 - The DEIR fails to include any such mitigation measure.
- Limiting the amount of daily grading disturbance area.¹³⁶
 - The DEIR fails to include any such mitigation measure.
- Providing electrical hook ups to the power grid, rather than use of diesel-fueled generators, for electric construction tools, such as saws, drills and compressors, and using electric tools whenever feasible.¹³⁷
 - The DEIR states that the Project will use an 84-horsepower diesel generator during Project construction 8 hours a day for 300 days, resulting in 2,400 hours of generator run time and causing 7,638 gallons of diesel to be consumed.¹³⁸

4.27
Cont.

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

- Requiring all heavy-duty vehicles entering or operated on the project site to be zero-emission beginning in 2030.¹³⁹
 - The DEIR does not include any mitigation measures related to zero-emission heavy-duty vehicles. Regarding infrastructure for zero-emission trucks, the DEIR states that “The proposed Project would be designed and constructed in accordance with the 2022 Title 24 Part 6 and Part 11 requirements, which includes ZEV designated parking spaces and charging stations.”¹⁴⁰ However, the DEIR does not specify the number or location of charging stations.
- Requiring on-site equipment, such as forklifts and yard trucks, to be electric with the necessary electrical charging stations provided.¹⁴¹

¹³³ Best Practices, p. 8.

¹³⁴ DEIR, Appendix B, p. 57.

¹³⁵ Best Practices, p. 8.

¹³⁶ DEIR, Appendix B, p. 57.

¹³⁷ Best Practices, p. 8.

¹³⁸ DEIR, Appendix B, PDF p. 247.

¹³⁹ Best Practices, p. 8.

¹⁴⁰ DEIR, p. 5.6-14.

¹⁴¹ Best Practices, p. 9.

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- The DEIR states “[t]he outdoor cargo handling equipment used during loading and unloading of trailers (e.g., yard trucks, hostlers, yard goats, pallet jacks, forklifts) would be non-diesel powered, *in accordance with contemporary industry standards*.”¹⁴² However, the DEIR does not include any support for the claim that contemporary industry standards dictate the use of non-diesel powered cargo handling equipment. Additionally, the DEIR’s statement does not preclude the use of gasoline or propane powered equipment. Finally, the DEIR fails to include binding mitigation measures to require that all on-site equipment be electric.
- Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations.¹⁴³
 - The DEIR contains no mitigation measures regarding the use of zero-emission light and medium duty vehicles by future tenants.
- Forbidding trucks from idling for more than two minutes and requiring operators to turn off engines when not in use.¹⁴⁴
 - The DEIR states that vehicle idling at the site will be restricted to 5 minutes.¹⁴⁵

4.27
Cont.

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

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

VII. THE CITY LACKS SUBSTANTIAL EVIDENCE TO APPROVE THE PROJECT’S LAND USE ENTITLEMENTS

The Project requires City Planning Commission approval of two discretionary land use entitlements, Development Plan Review and a Conditional Use Permit.¹⁴⁶ In order to approve the entitlements, the City Planning Commission must find that:

4.28

¹⁴² DEIR, p. 3-19. (emphasis provided)

¹⁴³ Best Practices, p. 9.

¹⁴⁴ Best Practices, p. 9.

¹⁴⁵ DEIR, p. 5.2-21.

¹⁴⁶ City of Hesperia, Development Code (hereinafter “Development Code”) § 16.12.110 (E).

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- A. The site for the proposed use is adequate in size and shape to accommodate all yards, open spaces, setbacks, walls and fences, parking areas, fire and building code considerations, and other features pertaining to the application;
- B. The proposed use will not have a substantial adverse effect on abutting property or the permitted use thereof, and will not generate excessive noise, vibration, traffic, or other disturbances, nuisances or hazards;
- C. The proposed use is consistent with the goals, policies, standards and maps of the development code, general plan, and other applicable codes and ordinances adopted by the city;
- D. The site for the proposed use has adequate access, meaning that the site design incorporates street and highway limitations.¹⁴⁷

4.28
Cont.

As demonstrated above, the DEIR's transportation and air quality analyses undercount truck trips and associated emissions. As a result, the City lacks substantial evidence to find that the Project will not generate excessive traffic or air pollution. The DEIR's failure to analyze and mitigate Valley Fever impacts further undermines the City's ability to find that the Project would not result in health hazards to people on neighboring properties. There is also substantial evidence demonstrating that the Project is not consistent with goals and policies of the City's General Plan and the Specific Plan, thereby preventing the Planning Commission from making the finding required for C above.

4.29

The City must prepare and recirculate a revised DEIR for the Project which adequately analyzes and mitigates the Project's potentially significant air quality, health risk, transportation, GHG emissions and energy impacts in order for the Planning Commission to make the findings necessary to approve the Project.

VIII. CONCLUSION

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

4.30

¹⁴⁷ Development Code § 16.12.125.

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Thank you for your attention to these comments.

4.30
Cont.

Sincerely,



Kevin Carmichael

KTC:acp

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Response to Comment Letter 4: CARE CA, dated July 17, 2023

Response to Comment 4.1: This comment states that the commenter is writing on behalf of CARECA and summarizes the project description. This comment also states that they have reviewed the DEIR and conclude that the DEIR fails to comply with the requirements of CEQA because the DEIR does not accurately disclose and fails to mitigate potentially significant air quality, health risk, GHG, and transportation impacts. The comment concludes that the City must revise and recirculate the DEIR. This comment does not provide substantial evidence of any environmental impact. The comment is introductory in nature. No further response is warranted.

Response to Comment 4.2: This comment provides a statement of interest from CARECA and background on the organization. The comment does not raise a specific issue with the adequacy of the DEIR evaluation or raise any other CEQA issue. Therefore, no further response is required or provided.

Response to Comment 4.3: This comment provides an overview of the legal background and purposes of CEQA. More specifically, the comment states that CEQA is designed to inform decision makers and the public about the potential significant environmental effects of a project, requires public agencies to avoid or reduce environmental damage when feasible, and requires an EIR to include enough detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project. The comment is introductory in nature and does not raise a specific issue with the adequacy of the DEIR evaluation or raise any other CEQA issue. Therefore, no further response is required or provided.

Response to Comment 4.4: This comment states that the DEIR fails to comply with the requirements of CEQA as described above in Response 4.3. This comment further claims that the DEIR used inaccurate and flawed information to base its conclusions, underestimated the severity of the Project's impacts, and therefore, did not mitigate impacts to the fullest extent feasible. The comment is speculative and does not provide substantial evidence to contradict the conclusions provided by project-level studies and analyses by qualified professionals. Since the comment does not identify the alleged grounds or raise a specific issue for its assertion that the DEIR fails to comply with the requirements of CEQA as described above, no further response is required or provided.

Response to Comment 4.5: This comment states that the DEIR failed to describe the Project through a complete and stable description of Project components, rendering the DEIR's impact analysis inadequate. More specifically, the comment states that the DEIR failed to include information about the use of Transportation Refrigeration Units (TRU's) and potential cold storage warehouse use of the Project. Or more accurately, the comment states that the DEIR inconsistently analyzed TRU's as the AQ report (Appendix B) assumed TRU's would account for 10 percent of truck traffic at the Project during operation, however the DEIR states elsewhere that TRU's are not a foreseeable use of the Project site.

The comment incorrectly states that that the DEIR failed to describe the Project through a complete and stable description of Project components, rendering the DEIR's impact analysis inadequate. Pursuant to State CEQA Guidelines Section 15124, the project description "should not supply extensive detail beyond that needed for the evaluation and review of the environmental impact." The proposed project is thoroughly described in Section 3.0, *Project Description*. The DEIR accurately states that the "proposed Project is not designed or anticipated to accommodate any warehouse cold storage or refrigerated uses". The inclusion of TRU's in the Air Quality analysis and AQ report (Appendix B) offers a conservative analysis of the proposed Project and does not trigger the need for cold storage or TRUs to be incorporated into the Project Description. At the time the AQ report was initiated, the option for cold storage was considered; however, the applicant later determined that cold storage would be prohibited. Therefore, the analysis is conservative and Project impacts would not exceed those identified in the technical studies prepared for the Project. The Project Description provides accuracy, completeness, and stability. Furthermore, the addition of cold storage or use of TRU's included in any future changes to proposed building use would require further environmental analysis and additional CEQA approval for the proposed changes, which will be reflected in a binding

condition of approval imposed by the City. The comment does not contain any information requiring changes to the DEIR or requiring recirculation of the DEIR. Therefore, no further response is warranted.

Response to Comment 4.6: This comment reiterates the statement in Response 4.5 that the Project failed to analyze the potential environmental impacts that would result from the reasonably foreseeable use of the Project as a cold storage warehouse. The comment states that cold storage warehouses and refrigerated trucks (TRU's) are not restricted in the CIBP zone and are therefore allowed under the same discretionary review required for the warehouse use. The comment continues to state that there is no condition restricting the use of cold storage at the Project site and it is reasonably foreseeable that future tenants of the building may implement cold storage or refrigeration in their operations. The comment does not provide substantial evidence of any environmental impact. Furthermore, the addition of cold storage or use of TRU's included in any future changes to proposed building use would require further environmental analysis and additional CEQA approval for the proposed changes, which will be reflected in a binding condition of approval imposed by the City. The comment does not contain any information requiring changes to the DEIR or requiring recirculation of the DEIR. Therefore, no further response is warranted.

Response to Comment 4.7: This comment provides an overview of the CEQA definition of the environmental setting and the requirements of accurately describing the baseline of a project in order to properly determine impacts. The comment also states that the DEIR failed to accurately disclose the baseline environmental conditions related the health risk impacts and as a result lacks the necessary information with which to make an impact determination on sensitive receptors from construction. The comment does not provide substantial evidence of any environmental impact. Section 4.0, *Environmental Setting*, outlines the baseline of the proposed Project and discusses the environmental setting by topic area, including Air Quality. Likewise, existing air quality conditions are discussed at length in Section 5.2.3, including the attainment status of criteria pollutants in the Mojave Desert Air Basin. Since the comment does not identify the alleged grounds for its assertion that the DEIR's environmental setting fails under CEQA relating to health risk impacts, no further response is required or provided.

Response to Comment 4.8: This comment asserts that the DEIR fails to include any information on the presence of Valley Fever in the vicinity of the Project site. In addition, this comment asserts that the DEIR must analyze the potential impacts of Valley Fever exposure to project construction workers and sensitive receptors and mitigate its potentially significant impacts on health.

The air quality analysis contained in Section 5.2, Air Quality, of the DEIR and the AQ/HRA/GHG/Energy Report (Appendix B of the DEIR) were prepared using the guidelines identified by the MDAQMD in its California Environmental Quality Act (CEQA) and Federal Air Conformity Guidelines.¹ Neither the MDAQMD CEQA and Federal Air Conformity Guidelines nor the *State CEQA Guidelines* include requirements or thresholds of significance for addressing Valley Fever. The closest sensitive receptors include residential uses located approximately 2,200 feet (ft) southeast of the project site along Muscatel Street, residential uses approximately 2,800 ft north of the project site along Main Street, and residential uses located approximately 2,900 ft southeast of the project site along Seal Beach Drive. In addition, Canyon Ridge High School is located approximately 2,800 ft southeast of the project site. These distances are sufficient for particulate matter to settle prior to reaching the nearest sensitive receptor. In addition, crosswinds influenced by adjacent traffic intersections would help dissipate any particulate matter associated with the construction phase of the project. Therefore, any Valley Fever spores suspended with the dust would not reach the sensitive receptors. Dust control measures, required by MDAQMD Rule 403.2, would reduce the exposure of the workers. Dust from the construction of the project is not anticipated to exacerbate or significantly add to the existing exposure of people to Valley Fever. The comment cites data from the California Department of Public Health that the rate of Valley Fever in San Bernardino County was 11.4 per 100,000 residents in

¹ Mojave Desert Air Quality Management District (MDAQMD). 2020. California Environmental Quality Act (CEQA) and Federal Air Conformity Guidelines. Website: <https://www.mdaqmd.ca.gov/home/showpublisheddocument/8510/638126583450270000> (accessed August 2023).

2021. For context, this is an extremely low rate of occurrence compared to counties where Valley Fever is prevalent: the highest is Kern County (306 cases per 100,000) and the second highest is Tulare County (65.8 cases per 100,000).² Therefore, in accordance with the CEQA Guidelines, it is appropriate for the City not to focus the DEIR's analysis on this issue. CEQA also does not require mitigation where there is no significant impact. CEQA Guidelines 15126.4(a)(3). The comment does not contain any information requiring changes to the DEIR or requiring recirculation of the DEIR. Therefore, no further response is warranted.

Response to Comment 4.9: This comment provides an overview of CEQA requirements to disclose all potentially significant impacts of a Project and to implement all feasible mitigation measures to reduce those impacts to less than significant levels. The comment states that the failure to proceed in a manner required by CEQA and an agency's failure to proceed in a manner by CEQA such as the failure to disclose environmental effects or alternatives are subject to a less deferential standard than challenges to an agency's factual conclusions. The comment also states that a clearly inadequate or unsupported study is entitled to no judicial deference.

The comment does not provide substantial evidence of any environmental impact. The commenter provides no evidence supporting their claims that the DEIR fails to adequately disclose and mitigate potentially significant impacts. Under CEQA Guidelines Section 15384, argument, speculation, unsubstantiated opinion or narrative, evidence that is not credible, and evidence of social and economic impacts does not constitute substantial evidence. As discussed throughout the DEIR and Chapter 2, *Errata*, of the FEIR, all potentially significant impacts have been disclosed and feasible mitigation measures have been included to reduce potentially significant impacts. As discussed in Section 8.0, *Alternatives*, feasible alternatives were provided to be considered by the City of Hesperia. Thus, no further response is warranted.

Response to Comment 4.10: The comment states that the transportation analysis is flawed, specifically, the Project's trip generation, trip length and VMT impacts. The comment also states that the flawed analysis affects the analyses of the Project's air quality, energy, and GHG emissions impacts. This comment is speculative and does not provide substantial evidence supporting the commenter's claim that the trip generation is flawed, and subsequently, the technical studies supported by the trip generation are also flawed. The trip generation accurately reflects the proposed Project in anticipated trips. No further response is warranted.

Response to Comment 4.11: The comment states that the trip generation is underestimated because the analysis utilizes the trip rate for High-Cube Transload and Short-Term Storage warehouse from the Institute of Transportation Engineers (ITE). The comment asserts that because the project proposes to construct a speculative warehouse, the highest trip rate should be evaluated.

This is incorrect as the project applicant has stated that a fulfillment center, parcel hub, or cold storage warehouse is not planned for the site and the site is not designed to accommodate either a fulfillment center or parcel hub. Furthermore, the project applicant has agreed to the following condition of approval to ensure that the trip generation of the site does not exceed the trip generation evaluated in the EIR.:

Prior to the issuance of a business compliance certificate, any new tenant or operator of the facility shall: 1) submit an operational plan and trip generation analysis prepared by a licensed traffic engineer for review and approval demonstrating the proposed operations and projected traffic associated with the new tenant or operator is the same or less than the projected traffic assumed in the approved entitlements for the facility; and 2) sign a statement acknowledging acceptance of all operational conditions of approval associated with the approved entitlements for the facility. If the proposed operations and trip generation represent a significant

² California Department of Public Health. 2022. Epidemiologic Summary of Valley Fever (Coccidioidomycosis) in California, 2021-2021. Website: <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CocciEpiSummary2020-2021.pdf>. Accessed August 2023.

change in operational characteristics or more than ten percent increase in trip generation beyond what was entitled, a modification to the conditional development permit shall be required prior to the start of operations.

The comment also asserts that the selected trip rates are low based on comparison of the selected trip rate with the WRCOG trip generation study. However, the WRCOG study specifically studies fulfillment centers and parcel hubs. Transload and short-term storage facilities have a different operational profile as outlined in the ITE High-Cube Warehouse Vehicle Trip Generation Analysis (October 2016). As noted in that study, a transload facility has a focus on consolidation and distribution of larger loads whereas fulfillment centers typically serve e-commerce retailers and distribute smaller packages to end users. As noted previously, the project applicant does not propose a fulfillment center or a parcel hub and would be required to modify the conditional development permit if either use is proposed in the future.

Response to Comment 4.12: The comment notes that the VMT screening analysis as well as the VMT analysis and evaluation of thresholds was prepared in accordance with the City's Traffic Impact Analysis Guidelines. The comment also notes that the VMT analysis underestimates the project trip length, which the comment states is 11.7 miles to and from the project site. A reference document calculating the trip length of 11.7 is provided. The reference document notes that VMT would be comprised of commute travel and truck travel and therefore the average trip length of 11.7 is low. It should be noted that per the City's Guidelines and the CEQA Guidelines, VMT is a measure of passenger car travel only, therefore the VMT reported in the EIR does not include truck trips. Furthermore, the VMT attributable to the project is not calculated using an average trip length. As noted in the comment and in the EIR, the VMT analysis was prepared using the San Bernardino Transportation Analysis Model (SBTAM), which assigns a trip length to each trip generated by the project based on the origin and destination of that trip. The total project VMT is then divided by the employment to determine the VMT per employee for the purposes of determining project VMT impacts. Trip length is not determined for this calculation by the analyst as asserted in the comment. No revisions to the DEIR or further response is warranted.

Response to Comment 4.13: The comment states that it is unclear which version of the SBTAM model was used for the analysis. The latest version of the SBTAM model, as received from SBCTA was utilized in the analysis. The comment notes that the SBTAM Model Development and Validation Report and User's Guide cites a 2008 base year. However, this is an outdated report and does not describe the model used in the analysis. As described in the VMT analysis, both the 2016 base year and 2040 future year models were used to forecast the existing and buildout VMT for the project.

The comment also cites an average trip rate for the SCAG region from a "2020 report on the updated model" to be 20.6 miles and cites this number as further evidence that the trip length was underestimated. As stated previously in the Response to Comment 4.12, the average trip length is not a user calculated number in the analysis and therefore cannot be underestimated by the analyst. Furthermore, application of an average trip length for the entire six-county SCAG region to a project-specific analysis would be egregiously inaccurate and not standard practice for evaluation of project-specific VMT impacts.

Response to Comment 4.14: The comment states that the DEIR underestimates truck trip lengths for the Project and does not account for trip lengths to the Port of LA and Port of Long Beach. The comment states that the DEIR must be revised to calculate truck emissions based on reasonably foreseeable and accurate truck trip lengths, that would significantly increase the Project's VMT. Additionally, the comment states that City of Hesperia must prepare and recirculate a revised VMT analysis which clearly identifies the specific transportation modeling parameters relied on. This comment is speculative and does not provide substantial evidence supporting the commenter's claim that the Project relies on inaccurate truck trip lengths. The commenter is referred to Responses 4.11 through 4.13. No further response is required or provided.

Response to Comment 4.15: The comment states that based on previous comments, the Project could result in significant VMT impacts, therefore the Project should choose to mitigate impacts through one of the methods provided in the City's TIA Guidelines. The comment also refers to Attachment B of the TIA Guidelines and

states that it evaluates the effectiveness of several Transportation Demand Management measures adapted from CAPCOA guidance, but that the TIA Guidelines do not include analysis of the VMT reduction strategies available in the CAPCOA Handbook. The comment concludes that the DEIR fails to include mitigation measures to reduce the Project's VMT impacts and fails to include analysis of feasibility of methods provided in TIA Guidelines or CAPCOA Handbook to reduce the Project's potentially significant impacts therefore the City must evaluate these methods and revise and recirculate the DEIR.

As stated above, this comment is speculative and the Project's Transportation Analysis accurately reflects anticipated trips. Further, the EIR determined that VMT impacts would be less than significant therefore no mitigation is required. No further response is warranted.

Response to Comment 4.16: This comment states that the DEIR fails to disclose the potential presence of Cocci fungus spores at the Project site and fails to discuss Valley Fever employee training to protect construction workers from Valley Fever and as a result the DEIR fails to include critical mitigation measures to reduce health risk impacts. The comment further states that sensitive receptors on or near Project site are at risk from exposure from disturbed dust during Project construction, including construction and agricultural workers which are the most at-risk populations, according to air quality and health risk expert, Dr. Clark. The comment concludes that small fungus spore particles are not controlled by conventional dust-control measures under the MDAQMD thus there is a significant risk to exposure and the DEIR must revise and recirculate to include an analysis of the Project's Valley Fever impacts and include relevant mitigation measures in the Project's MMRP.

Refer to Response to Comment 4.8. Section 5.2, Air Quality of the DEIR appropriately analyzed air quality per CEQA guidelines which doesn't include requirements or thresholds of significance for addressing Valley Fever. No further response is warranted.

Response to Comment 4.17: This comment claims that the DEIR fails to disclose the potential presence of Cocci fungus spores at the project site and fails to discuss or require any Valley Fever employee training measures to protect project construction workers from Valley Fever exposure. This comment also claims that the DEIR fails to analyze the project's threat of Valley Fever exposure to workers and sensitive receptors, and fails to include critical mitigation measures to reduce the health risk impacts of Valley Fever.

Refer to Response to Comment 4.8. As noted above, there are no CEQA standards for Valley Fever exposure. In addition, based on the distances to the nearest sensitive receptors, particulate matter will settle prior to reaching the nearest sensitive receptor and any Valley Fever spores suspended with the dust would not reach the sensitive receptors. Dust control measures, required by MDAQMD Rule 403.2, would reduce exposure of the workers. Dust from the construction of the project is not anticipated to exacerbate or significantly add to the existing exposure of people to Valley Fever.

In addition, any exposure to workers would be subject to the OSH Act of 1970, 29 USC 654(a)(1), and other applicable Occupational Safety and Health Administration requirements, including Respiratory Protection (29 CFR 1910.134), which covers respirator use in the workplace. However, the proposed project would not exacerbate or significantly add to the existing exposure of people to Valley Fever and therefore mitigation to reduce CEQA impacts is not required.

Response to Comment 4.18: This comment states that the DEIR's reliance on unsupported assumptions regarding the Project's future use, trip generation rates, and VMT undermines the Project's Air Quality analysis. This comment also re-states the claims from Responses 4.5 and 4.6 about cold storage assumptions needing to be addressed as a reasonably foreseeable use, as it could result in a significant impact in the Air Quality analysis.

As discussed under Response to Comment 4.5 and 4.6, the Project's DEIR and supporting Air Quality analysis provide a conservative estimate of emissions that could be generated by the Project. However, the applicant

has requested that the proposed Project prohibit cold storage and TRUs. Therefore, additional environmental analysis would be required if future applicants propose such uses of the property.

Additionally, the comment claims that the DEIR fails to accurately calculate the Project's trip generation and therefore fails to accurately calculate the emissions from truck traffic during Project operation. The comment states that the Project's transportation impact analysis must be corrected to accurately analyze the Project's air quality impacts in a revised DEIR. The commenter provides no substantial evidence supporting their claims that the truck and worker trip lengths used in the DEIR are inadequate. Under CEQA Guidelines Section 15384, argument, speculation, unsubstantiated opinion or narrative, evidence that is not credible, and evidence of social and economic impacts does not constitute substantial evidence. The proposed Project trip generation is consistent with the proposed use (see Response to Comment 4.11), and previously used methodology and was reviewed and approved by the City of Hesperia Public Works Department. The commenter is referred to Responses 4.10 through 4.15 and Responses 4.5 and 4.6. Thus, the DEIR does not require recirculation and no further response is warranted.

Response to Comment 4.19: This comment asserts that additional analysis is necessary under the requirements of CEQA Guidelines Appendix F to support a determination that the project would not result in the wasteful, inefficient, and unnecessary consumption of energy during construction and operations. The DEIR fails to establish a threshold for fossil fuel consumption that would be significant. Therefore, the conclusion that the increased fuel consumption resulting from Project operation would not be significant is unsupported. Lead Agencies have discretion to formulate their own significance thresholds (See State CEQA Guidelines § 15064.7(b)). Setting thresholds requires the Lead Agency to make a policy judgment about how to distinguish significant impacts from less-than-significant impacts. Here, the City as the Lead Agency has determined that fossil fuel consumption consistent with the State and federal fuel economy standards would support the overall achievement of the State and federal fossil fuel reduction goals, and therefore, the Project's consistency with such would result in a less than significant impact on the wasteful, inefficient, and unnecessary consumption of energy during construction and operations.

Response to Comment 4.20: The commenter states that the DEIR fails to accurately account for the Project's trip generation, which could result in a tenfold increase in operational trips, and increased trip generation would lead to increased fossil fuel use from Project related vehicle trips. As discussed under Response to Comment 4.11, the Project's trip generation is appropriate and accurately reflects the operations of the proposed Project. Therefore, the comment is erroneous in asserting that the trip generation is flawed and that additional fuel impacts would result from the Project compared to what the DEIR discloses.

Additionally, the comment states that claims that the DEIR fails to analyze the effectiveness of implementing the energy conservation measures outlined in the City's 2010 Climate Action Plan (CAP) by stating that the Project will comply with the CALGreen Code. Section 5.6.2, Regulatory Setting, of the DEIR (pages 5.6-3 through 5.6-5) lists the 2022 California Green Building Standards Code (CALGreen Code) standards that would reduce GHG emissions and are applicable to the proposed Project. Further, as described on page 5.6-13 of the DEIR, the proposed Project is subject to the CALGreen Code Title 24 building energy efficiency requirements that offer builders better windows, insulation, lighting, ventilation systems, and other features as listed in Section 5.6.2 that reduce energy consumption. As discussed in the DEIR, compliance with the Title 24/CALGreen Code standards would be verified by the City during the building permitting process. Title 24 Standards contain energy efficiency requirements and establish performance metrics in the form of an "energy budget" based on energy consumption per square foot of floor space. For this reason, the Title 24 Standards include both a prescriptive option, allowing builders to comply by using methods known to be efficient, and a performance option, allowing builders complete freedom in their designs provided the building achieves the same overall efficiency as an equivalent building using the prescriptive option. Reference appendices are adopted along with the Title 24 Standards containing data and various compliance tools to help builders achieve compliance. As such, after approval and preparation of detailed building plans, the project would be required to demonstrate compliance with Title 24. Therefore, the comment is incorrect and no further revisions to the DEIR or response is warranted.

Response to Comment 4.21: This comment claims that the DEIR's discussion of renewable energy generation is virtually nonexistent and fails to provide a meaningful investigation into renewable energy options that might be available or appropriate for the Project. Additionally, the commenter claims that the DEIR fails to include a discussion of additional energy use reduction strategies and fails to provide any analysis of additional measures that could be implemented to reduce the project's GHG emissions and energy impacts.

As discussed in Chapter 3.0, *Project Description*, of the DEIR, the proposed project would comply with CALGreen Code policies related to sustainable design and energy conservation by incorporating the following features: installation of enhanced insulation; design structure to be solar ready; design electrical system to accommodate future renewable energy technologies, solar photovoltaic (PV) systems, and battery storage systems; installation of energy efficient lighting, heating and ventilation systems, and appliances; installation of drought-tolerant landscaping and water-efficient irrigation systems; and implementation of a City construction waste diversion program. In addition, as discussed on page 5.6-13 of the DEIR, as a customer of Southern California Edison (SCE), the proposed Project would purchase from an increasing supply of renewable energy sources and more efficient baseload generations. As demonstrated in Section 5.5, Energy, of the DEIR, and in the AQ/HRA/GHG/Energy Report (Appendix B of the DEIR), the proposed project would not result in inefficient, wasteful, and unnecessary consumption of energy, and the project would not result in a significant energy impact. Furthermore, as demonstrated in Section 5.6, Greenhouse Gas Emissions, and in the AQ/HRA/GHG/Energy Report (Appendix B of the DEIR), the proposed Project would also not result in a significant GHG impact. Because the Project would result in a less than significant impact on energy and GHG, the Project would not be required to mitigate the already less than significant impacts. As such, the comment is incorrect that the DEIR fails to provide a discussion of renewable energy and analysis of mitigation measures is not required. No further response is warranted.

Response to Comment 4.22: This comment states that compliance with the Building Code and other energy efficiency requirements does not, by itself, constitute an adequate assessment of measures that can be taken to address the energy impacts during construction and operation of the Project based on the case law established in *Ukiah Citizens for Safety First v. City of Ukiah*.

Refer to Response 4.20. As discussed in Section 5.5.4 of the DEIR, thresholds for impacts related to energy used in the analysis are consistent with Appendix G of the State CEQA Guidelines, which state that development of the proposed project would result in a significant impact related to energy if it would: result in a potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation; or conflict with or obstruct a State or local plan for renewable energy or energy efficiency. Section 5.5.4 of the DEIR provides calculations for the anticipated energy consumption of the proposed Project, which separately evaluates energy impacts from transportation, construction, and operation.

Further, Appendix F of the State CEQA Guidelines states that EIRs must include a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful, and unnecessary consumption of energy. As demonstrated in Section 5.5, Energy, and in the AQ/HRA/GHG/Energy Report (Appendix B of the DEIR), the proposed project would not result in inefficient, wasteful, and unnecessary consumption of energy, and the project would not result in a significant energy impact.

Response to Comment 4.23: This comment provides an overview of land use and planning as it applies to Appendix G of the CEQA Guidelines and under California law. The comment then states that the DEIR fails to disclose inconsistency with the City's General Plan and Specific Plan which result in a significant adverse environmental impact on land use and planning. The comment does not provide substantial evidence of any environmental impact. Under CEQA Guidelines Section 15126.2(a) states that "[a]n EIR shall identify and focus on the significant effects on the environment".

During the preparation the DEIR and in the Initial Study, attached as Appendix A of the DEIR, the Project was determined to have no potential to result in significant impacts to Land Use and Planning. The Initial Study disclosed that the Project would be consistent with the City's General Plan and Specific Plan. The DEIR included applicable plans and policies within each environmental topic section and provided analysis showing the Project's consistency and compliance with such. Additionally, per Chapter 2, *Errata*, of this FEIR, Table 7.7-1 *Consistency with General Plan Policies* and Table 7.7-2 *Consistency with Specific Plan Policies* have been included under Section 7.0, *Effects Found not Significant* to clearly illustrate the Project's consistency with the City's General Plan and Specific Plan. Since the comment does not identify the alleged grounds for its assertion and only speculates that the DEIR fails to disclose inconsistency with the City's General Plan and Specific Plan under CEQA, no further response is warranted.

Response to Comment 4.24: The comment states that the City's General Plan Conservation Element includes objectives and policies to protect the citizens of the City from harmful effects of air pollution and specifically refers to Implementation Policy CN-8.5. The comment also states that based on the other comments, the presence of Cocci fungus spores in the soil poses a health risk to City residents. The comment concludes that the Project conflicts with the Conservation element and therefore must implement mitigation measures to mitigate health risks. This comment is speculative in nature and does not provide substantial evidence of an environmental impact related to air quality. As shown in Table 7.7-2 *Consistency with General Plan Policies* under Section 7.0, *Effects Found not Significant*, the Project would be consistent with the City General Plan Policies. Further, responses related to Cocci fungus spores are discussed in Responses 4.8 and 4.17. No further response is warranted.

Response to Comment 4.25: The comment states that VMT impacts have not been analyzed inadequately and therefore are inconsistent with the Specific Plan Policy C-2.2. The comment also states that the DEIR does not provide appropriate mitigation to reduce the Project's trip generation, trip length and VMT. The comment concludes that the City must provide an analysis of trip reduction measures to reduce trips generated by the Project. This comment is speculative in nature and does not provide substantial evidence supporting the commenter's claim that VMT impacts have not been analyzed adequately. As described in Section 5.9, *Transportation* of the DEIR, VMT impacts for the proposed Project were determined to be less than significant as the Countywide roadway VMT per service population would be reduced with implementation of the Project. Therefore, the Project would be consistent with the Specific Plan Policy C-2.2. No further response is warranted.

Response to Comment 4.26: This comment states that the DEIR fails to include a list of past, present, and probable future projects in the vicinity of the Project site resulting in the failure to adequately analyze the cumulative impacts of the Project. The comment also states that without the list of past, present, and probable future projects, any meaningful cumulative impacts analysis is thwarted. The comment refers to the DEIR which states that Table 5-1 identifies other cumulative projects in the Project's vicinity, however the comment states that the DEIR fails to include the referenced Table 5-1. The comment references two recently certified EIRs for warehouse development projects adjacent to the Project site, the I-15 Industrial Park Project and the Poplar 18 Project. The comment summarizes each Project and states that both provide a cumulative list throughout the DEIRs. The cumulative projects list error has been corrected in Chapter 2 of the FEIR. As detailed in the DEIR, cumulative projects have been adequately considered and were analyzed throughout the document. Therefore, with the inclusion of Table 5-1, cumulative impacts are still considered less than significant, and no further response is warranted.

Response to Comment 4.27: This comment provides background on the California Office of the Attorney General's "Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act" and includes sample mitigation measures that a local agency should consider when evaluating the environmental impacts of warehouse industrial projects. The commenter asserts that the Project should consider and incorporate the listed mitigation measures as appropriate in order to mitigate air quality and GHG emissions of the Project. As provided in Section 5.5, *Air Quality*, and 5.6, *Greenhouse Gas Emissions*, the Project would result in a less than significant impact on air quality and GHG. Therefore,

mitigation would not be required for the Project. Further, the Project applicant has voluntarily incorporated the following best practices to further reduce the already less than significant air quality and GHG impacts, as provided in Chapter 2, Errata. Deletions are shown in strikethrough and addition are red shown in bold underlined.

Section 5.2, Air Quality, page 5.2-19

Operation

Implementation of the proposed Project would result in long-term emissions of criteria air pollutants from area sources generated by the proposed high-cube warehouse building and related vehicular emissions, landscaping, and use of consumer products. As shown in Table 5.2-6, the Project's operational activities would not exceed the numerical thresholds of significance established by the MDAQMD. Therefore, impacts would be less than significant. **To further reduce the already less than significant impacts, the Project would include best practices Best Practice Measures AQ-1 through AQ-8 as outlined in the California Office of the Attorney General's "Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act".**

Section 5.2, Air Quality, page 5.2-24

5.2.9 PROJECT DESIGN FEATURES /BEST PRACTICES

~~None.~~

Best Practice AQ-1: Prohibiting grading on days with an Air Quality Index forecast of greater than 100 for particulates or ozone for the project area.

Best Practice AQ-2: Forbidding idling of heavy equipment for more than three minutes.

Best Practice AQ-3: Providing information on transit and ridesharing programs and services to construction employees.

Best Practice AQ-4: Forbidding trucks from idling for more than two minutes and requiring operators to turn off engines when not in use.

Best Practice AQ-5: Posting both interior- and exterior-facing signs, including signs directed at all dock and delivery areas, identifying idling restrictions and contact information to report violations to CARB, the local air district, and the building manager.

Best Practice AQ-6: Running conduit to designated locations for future electric truck charging stations.

Best Practice AQ-7: Requiring facility operators to train managers and employees on efficient scheduling and load management to eliminate unnecessary queuing and idling of trucks.

Best Practice AQ-8: Providing tenants with information on incentive programs, such as the Carl Moyer Program and Voucher Incentive Program, to upgrade their fleets.

Section 5.6, Greenhouse Gas Emissions, page 5.6-12

As discussed above, a project would have less than significant GHG emissions if it would result in operational-related GHG emissions of less than 3,000 MT/year CO_{2e}. Based on the analysis results, the proposed Project would result in annual emissions of 2,207.5 MT/year CO_{2e}. Therefore, operation of the proposed Project would not generate significant GHG emissions that would have a significant effect on the environment and impacts would be less than significant. **To further reduce the already less than significant impacts, the Project would include Best Practices Measures AQ-1 through AQ-8 as outlined in the California Office**

of the Attorney General's "Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act".

Section 5.6, Greenhouse Gas Emissions, page 5.6-21 and 5.6-22

5.6.9 LEVEL OF SIGNIFICANCE BEFORE MITIGATION

Best Practices Measures AQ-1 through AQ-8 would voluntarily be applied to the Project and would support in the reduction of construction and operational GHG.

5.6.9~~10~~ LEVEL OF SIGNIFICANCE BEFORE MITIGATION

As a result of compliance with existing regulatory requirements, impacts GHG-1 and GHG-2 would be less than significant.

5.6.10~~11~~ MITIGATION MEASURES

No mitigation measures are required.

5.6.11~~12~~ LEVEL OF SIGNIFICANCE AFTER MITIGATION

Impacts GHG-1 and GHG-2 would be less than significant.

Response to Comment 4.28: This comment claims that the City lacks substantial evidence to approve the Project's land use entitlements consisting of a Development Plan Review and Conditional Use Permit. The comment states that in order to approve entitlements, the building and proposed use must be consistent with development standards, goals and policies in the General Plan, provide adequate access, and not generate excessive nuisances, disturbances or hazards. This comment does not provide substantial evidence that the Project is inconsistent with development standards or General Plan Policies. As shown in Table 7.7-2 Consistency with General Plan Policies under Section 7.0, Effects Found not Significant of Chapter 2 of the FEIR, the Project would be consistent with applicable General Plan Policies and Specific Plan Policies. Further, the DEIR provides substantial evidence and adequate analysis to support the conclusions that the Project would not result in any significant and unavoidable impacts related to access, excessive nuisances, disturbances or hazards. Further, appropriate findings for approval of entitlements would be considered and adopted by the Planning Commission at a public hearing.

Response to Comment 4.29: This comment states that based on the preceding comments, the transportation and air quality analyses undercount truck trips and associated emissions and that the City therefore lacks substantial evidence that the Project will not generate excessive traffic or air pollution. The comment also states that the DEIR doesn't analyze or mitigate Valley Fever. In addition, the comment states that the Project is inconsistent with goals and policies of the City's General Plan and Specific Plan. The comment concludes that the City must prepare and recirculate a revised DEIR for the Project with adequate analysis related to air quality, health risk, transportation, GHG emissions and energy impacts in order for the Planning Commission to make the findings necessary to approve the Project.

Refer to Responses to Comments 4.5 to 4.28. The comment does not provide substantial evidence of any environmental impact. Further, the Project would be consistent with applicable General Plan Policies and Specific Plan Policies as shown in Table 7.7-2 Consistency with General Plan Policies under Section 7.0, Effects Found not Significant of Chapter 2 of the FEIR. Appropriate findings for approval of the Project would be considered and adopted by the Planning Commission at a public hearing.

Response to Comment 4.30: This comment concludes the comment letter and states that the City of Hesperia has to fulfill its responsibilities under CEQA by preparing a legally adequate EIR that sufficiently addresses the potentially significant impacts described throughout the comment letter. Additionally, the comment states again that a revised EIR is necessary to ensure that the Project's significant environmental impacts are mitigated to less than significant levels. The comment is conclusory in nature and does not raise a specific issue with the adequacy of the DEIR evaluation. The commenters' concerns were addressed above in Responses 4.1 through 4.29, and appropriate revisions were made, as incorporated into Chapter 2, Errata. In reviewing the above listed comments and making the appropriate revisions, when necessary, no significant new information was incorporated, and further, the impacts disclosed in the DEIR accurately reflect the proposed Project and subsequent potential environmental impacts. Therefore, per CEQA Guidelines and CA Code of Regulations 15088.5, DEIR recirculation would not be warranted.

Chapter 4. Mitigation Monitoring and Reporting Program

4.1 Introduction

The California Environmental Quality Act (CEQA) requires a lead or public agency that approves or carries out a project for which an Environmental Impact Report has been certified which identifies one or more significant adverse environmental effects and where findings with respect to changes or alterations in the project have been made, to adopt a "...reporting or monitoring program for the changes to the project which it has adopted or made a condition of project approval in order to mitigate or avoid significant effects on the environment" (CEQA, Public Resources Code Sections 21081, 21081.6).

A Mitigation Monitoring and Reporting Program (MMRP) is required to ensure that adopted mitigation measures are successfully implemented for the Mesa Linda Street Development Project (Project). The City of Hesperia is the Lead Agency for the Project and is responsible for implementation of the MMRP. This report describes the MMRP for the Project and identifies the parties that will be responsible for monitoring implementation of the individual mitigation measures in the MMRP.

4.2 Mitigation Monitoring and Reporting Program

The MMRP for the Project will be active through all phases of the Project, including design, construction, and operation. The attached table identifies the mitigation program required to be implemented by the City for the Mesa Linda Street Development Project. The table identifies the Project Design Features; Regulatory Requirements (RRs); and mitigation measures required by the City to mitigate or avoid significant adverse impacts associated with the implementation of the Project, the timing of implementation, and the responsible party or parties for monitoring compliance.

The MMRP also includes a column that will be used by the compliance monitor (individual responsible for monitoring compliance) to document when implementation of the measure is completed. As individual Plan, Program, Policies; and mitigation measures are completed, the compliance monitor will sign and date the MMRP, indicating that the required actions have been completed.

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**TABLE 4-1: MITIGATION MONITORING AND REPORTING PROGRAM
MESA LINDA STREET DEVELOPMENT PROJECT EIR**

Regulatory Requirement /Project Design Feature/ Mitigation Measure	Timing	Responsible for Ensuring Compliance / Verification	Date Completed and Initials
AESTHETICS			
Mitigation Measure AES-1. Project buildings and elements shall include colors and tones that mimic the natural desert environment. The Project applicant shall present to the City of Hesperia a materials board showing the proposed building color palette for review and approval prior to issuance of the first building permit. City staff shall review the color palette to ensure that the selected colors and tones largely conform to those colors and tones already found in the surrounding natural desert landscape. The color palette, along with the Project design as a whole, shall also be reviewed to assure conformance with the development standards of the Hesperia Municipal Code and the Main Street and Freeway Corridor Specific Plan in order to promote the visual character and quality of the surrounding area.	Verified during review of final plan check.	City of Hesperia Planning Department.	
BIOLOGICAL RESOURCES			
Mitigation Measure BIO-1: Preconstruction Burrowing Owl Surveys - A preconstruction survey for resident burrowing owls shall be conducted by a qualified biologist within 30 days prior to commencement of grading and construction activities to ensure that no owls have colonized the site in the days of weeks preceding project activities. If ground disturbing activities in these areas are delayed or suspended for more than 30 days after the preconstruction survey, the area shall be resurveyed for owls. The preconstruction survey and any relocation activity shall be conducted in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012). - If active nests are identified on an implementing project site during the preconstruction survey, the nests shall be avoided, or the owls actively or passively relocated. To adequately avoid active nests, no grading or heavy equipment activity shall take place within at least 250 feet of an active nest during the breeding season (February 1 through August 31), and 160 feet during the non-breeding season.	Submittal of pre-construction survey for burrowing owls. Prior to construction and ground-disturbing activities.	City of Hesperia Planning Department and CDFW.	

Regulatory Requirement / Project Design Feature/ Mitigation Measure	Timing	Responsible for Ensuring Compliance / Verification	Date Completed and Initials
If burrowing owls occupy any implementing portion of the Project site and cannot be avoided, active or passive relocation shall be used to exclude owls from their burrows, as agreed to by the City of Hesperia Planning Department and the CDFW. Relocation shall be conducted outside the breeding season or once the young are able to leave the nest and fly. Passive relocation is the exclusion of owls from their burrows (outside the breeding season or once the young are able to leave the nest and fly) by installing one-way doors in burrow entrances. These one-way doors allow the owl to exit the burrow, but not enter it. These doors shall be left in place 48 hours to ensure owls have left the burrow. Artificial burrows shall be provided nearby. The implementing project area shall be monitored daily for one week to confirm owl use of burrows before excavating burrows in the impact area. Burrows shall be excavated using hand tools and refilled to prevent reoccupation. Sections of flexible pipe shall be inserted into the tunnels during excavation to maintain an escape route for any animals inside the burrow. The CDFW shall be consulted prior to any active relocation to determine acceptable receiving sites available where this species has a greater chance of successful long-term relocation. If avoidance is infeasible, then a Determination of Biologically Equivalent or Superior Preservation (DBESP) Report shall be required, including associated relocation of burrowing owls. If conservation is not required, then owl relocation shall still be required following accepted protocols. Take of active nests shall be avoided, so it is strongly recommended that any relocation occur outside of the nesting season.			
Mitigation Measure BIO-2: Sensitive Wildlife Surveys Coastal whiptail (<i>Aspidoscelis tigris stejnegeri</i>) and coast horned lizard (<i>Phrynosoma blainvillii</i>) have the potential to exist on the Project site and the potential to be impacted by construction activities. A qualified biological monitor shall be present on site during all ground disturbing activities to ensure no direct or indirect take of the species occurs. A pre-construction survey will be conducted three days prior to initiation of construction activities that would remove vegetation or otherwise disturb potential habitat. If the species occurs on site during Project activities, the biologist will have the authority to stop construction and allow the species time to evacuate the Project site.	Submittal of pre-construction survey for sensitive wildlife. Three days prior to initiation of construction activities.	City of Hesperia Planning Department and Qualified Biologist	

Regulatory Requirement /Project Design Feature/ Mitigation Measure	Timing	Responsible for Ensuring Compliance / Verification	Date Completed and Initials
- If a listed species is encountered and cannot be avoided until they voluntarily leave the work area, this plan will be amended to include: - Information on the site from which the species is to be removed and the proposed alternate habitat to which they are to be moved; - Identification of proposed biologists who will handle species movement; - The proposed method for capture and relocation for the species to the new site; and - Reference to any applicable protocol guidelines.			
Mitigation Measure BIO-3: Migratory Bird Treaty Act. Prior to issuance of a Grading Permit, the Project Applicant/Developer shall provide evidence of intention to comply with the Federal Migratory Bird Treaty Act by including a note on the Grading Plans that states as follows: - Project development ground disturbing and vegetation clearing activities should <u>not</u> occur during the bird nesting season of February 1 through September 15. - If avoidance of ground disturbing and vegetation clearing activities cannot be implemented and these activities will occur during the bird nesting season, the Project Applicant/Developer shall employ a qualified biologist who will conduct pre-construction nesting bird surveys during the nesting bird season within 3 (three) days prior to vegetation removal and/or construction activities. If active nests are found during nesting bird surveys, the nests will be flagged and a 500-foot buffer for raptors and a 250-foot buffer for migratory songbirds and shall be installed around the nests. The buffers shall remain in place until the young have fledged, and the nest becomes unoccupied.	Submittal of pre-activity nesting bird field survey results report (during Feb 1 – Sept 15). Within 3 days of commencement of construction activities.	City of Hesperia Planning Department.	
Mitigation Measure BIO-4: Jurisdictional Waters. Impacts to jurisdictional waters require mitigation through habitat creation, restoration, or enhancement as determined by consultation with the regulatory agencies during the permitting process:	Submittal of 1602 Streambed Alteration Agreement, Section 401 State Water Quality Certification, and	City of Hesperia Planning Department, CDFW, and RWQCB.	

Regulatory Requirement /Project Design Feature/ Mitigation Measure	Timing	Responsible for Ensuring Compliance / Verification	Date Completed and Initials
- Impacts to the 2.95 acres of CDFW jurisdictional waters will require a 1602 Streambed Alteration Agreement from the CDFW. - Impacts to the 0.30 acres of Waters of the State would require a Section 401 State Water Quality Certification from the RWQCB. - Impacts to Waters of the State will be mitigated through land credits through purchases of credits at a California Department of Fish and Wildlife (CDFW)-approved mitigation bank for ephemeral stream at a 2:1 ratio.	purchase of land credits at a California Department of Fish and Wildlife (CDFW). During the permitting process.		
Mitigation Measure BIO-5: Relocation of Desert Native Plants (Hesperia Municipal Code Chapter 16.24). <u>In compliance with City Municipal Code 16.24.040 E., the building official shall require a preconstruction inspection prior to approval of development permits. Plant survey shall be completed prior to ground disturbance on the site. If any of the eight special status native desert plant species known to occur in the Project area are found on site during the surveys, the population size of the species and importance to the overall population should be determined. If a rare plant species occurs on the site and cannot be avoided, it should be transplanted and/or have seeds/topsoil collected in a manner approved by the county agricultural commissioner or other reviewing authority.</u> Prior to the issuance of grading permits, the Project Applicant shall submit an application and applicable fee paid to the City of Hesperia for removal or relocation of protected native desert plants under Hesperia Municipal Code Chapter 16.24 as required and schedule a preconstruction site inspection with the Planning Division and the Building Division. The application shall include certification from a qualified Joshua tree and native desert plant expert(s) to determine that proposed removal or relocation of protected native desert plants are appropriate, supportive of a healthy environment, and in compliance with the City of Hesperia Municipal Code. Protected plants subject to Hesperia Municipal Code Chapter 16.24 may be relocated on-site, or within an area designated as an area for species to be adopted later. The application shall include a detailed plan for the removal of all protected plants on the Project site. The plan shall be prepared by a qualified Joshua tree and native desert plant expert(s). The plan shall include, but not be limited to, the following measures: Salvaged plants shall be transplanted expeditiously to either their final on-site location, or to an approved off-site area. If the plants cannot be	Submit an application and applicable fee for removal or relocation of protected native desert plants and schedule a preconstruction site inspection. Prior to the issuance of grading permits.	City of Hesperia Planning Department and Building Division.	

Regulatory Requirement /Project Design Feature/ Mitigation Measure	Timing	Responsible for Ensuring Compliance / Verification	Date Completed and Initials
expeditiously taken to their permanent relocation area at the time of excavation, they may be transplanted in a temporary area (stockpiled) prior to being moved to their permanent relocation site(s). • Western Joshua trees shall be marked on their north facing side prior to excavation. Transplanted western Joshua trees shall be planted in the same orientation as they currently occur on the Project site, with the marking on the north side of the trees facing north at the relocation site(s). • Transplanted plants shall be watered prior to and at the time of transplantation. The schedule of watering shall be determined by the qualified tree expert and desert native plant expert(s) to maintain plant health. Watering of the transplanted plants shall continue under the guidance of qualified tree expert and desert native plant expert(s) until it has been determined that the transplants have become established in the permanent relocation site(s) and no longer require supplemental watering.			
Mitigation Measure BIO-6: Western Joshua Tree Lands (CESA). In the case that the California Fish and Game Commission lists western Joshua trees as threatened under the California Endangered Species Act, the following measure will be implemented <u>The western Joshua tree is a candidate threatened species under the California Endangered Species Act, and the following measures will be implemented:</u> • Prior to the initiation of Joshua tree removal, obtain California Endangered Species Act (CESA) Incidental Take Permit under Section 2081 of the Fish and Game Code. The Project Applicant will adhere to measures and conditions set forth within the Incidental Take Permit. • Mitigation for direct impacts to western Joshua trees shall be fulfilled through conservation of western Joshua trees at a 1:1 habitat replacement ratio, of equal or better functions and values to those impacted by the Project. Mitigation can be through purchases of credits at a California Department of Fish and Wildlife (CDFW)-approved mitigation bank for western Joshua tree. Additionally, no take of western Joshua tree will occur without authorization from CDFW in the form of an Incidental Take Permit pursuant to Fish and Game Code 2081 <u>while it is being considered as a candidate or if it is listed under the CESA.</u>	Obtain California Endangered Species Act (CESA) Incidental Take Permit. Prior to the initiation of Joshua tree removal.	City of Hesperia Planning Department and CDFW.	

Regulatory Requirement /Project Design Feature/ Mitigation Measure	Timing	Responsible for Ensuring Compliance / Verification	Date Completed and Initials
- Name, qualifications, business address, and contact information of a biological monitor (designated botanist) shall be submitted to CDFW at least 30 days prior to Project activities. The designated botanist shall be responsible for monitoring Project activities to help minimize and fully mitigate or avoid incidental take of Joshua trees. - An education program (Worker Environmental Awareness Program) shall be conducted for all persons employed or working in the project area before performing any work. - A trash abatement program shall be in place before starting project activities and throughout the duration of the Project to ensure that trash and food are contained in animal proof containers. - The boundaries of the Project site shall be clearly delineated, in consultation with the designated botanist, prior to project activities with posted signs, posting stakes, flags, and/or rope or cord. - Project-related personnel shall access the Project area using existing routes, or routes identified in the Project description, and shall not cross Joshua tree habitat outside or on route to the Project area. - The designated botanist shall have authority to immediately stop any activity that does not comply with the ITP, and/or to order any reasonable measure to avoid unauthorized take of an individual Joshua tree. - The Project analyzed impacts to western Joshua trees by applying the 186-foot and 36-foot buffer zone overlap with the project boundaries of two adjacent proposed developments. Any impacts to overlapping Joshua trees will be analyzed by CDFW to ensure no Joshua trees are mitigated twice. - The Western Joshua Tree Conservation Act is currently under consideration has been signed and put into effect by the California Governor's Office. In the event that the Western Joshua Tree Conservation Act is implemented for the project, effectively replacing the function of species protection providing a streamlined mitigation approach under CESA and Western Joshua tree conservation, alternative habitat replacement mechanisms, providing equal or better			

Regulatory Requirement /Project Design Feature/ Mitigation Measure	Timing	Responsible for Ensuring Compliance / Verification	Date Completed and Initials
function and value to existing mechanisms under CESA, will be implemented as required under state law.			
CULTURAL RESOURCES			
Mitigation Measure CUL-1: Archaeological Monitoring. Prior to the issuance of the first grading permit, the applicant shall provide a letter to the City Planning Division, or designee, from a qualified professional archeologist meeting the Secretary of Interior's Professional Qualifications for Archaeology as defined at 36 CFR Part 61, Appendix A, stating that qualified archeologists have been retained and will be present at pre-grade meetings and for all initial ground disturbing activities, up to five feet in depth. In the event that a resource is inadvertently discovered during ground-disturbing activities, work must be halted within 50 feet of the find until it can be evaluated by the qualified archaeologist. Construction activities could continue in other areas. If the find is considered a "resource" the archaeologist shall pursue either protection in place or recovery, salvage and treatment of the deposits. Recovery, salvage and treatment protocols shall be developed in accordance with applicable provisions of Public Resource Code Section 21083.2 and State CEQA Guidelines 15064.5 and 15126.4 in consultation with the City. Per CEQA Guidelines Section 15126.4(b)(3), preservation in place shall be the preferred means to avoid impacts to archaeological resources qualifying as historical resources. Consistent with CEQA Guidelines Section 15126.4(b)(3)(C), if unique archaeological resources cannot be preserved in place or left in an undisturbed state, recovery, salvage, and treatment shall be required at the developer/applicant's expense.	Retain archaeological monitor and submit letter. Prior to the issuance of the first grading permit.	City of Hesperia Planning Department.	
Mitigation Measure PAL-1: Paleontological Resource Management Plan. Prior to the start of construction, a Paleontological Resources Management Plan (PRMP) shall be prepared by a qualified Paleontologist and include the following procedures: Paleontological spot checks during ground-disturbing activities greater than 6 feet below the current ground surface, in order to identify if moderate sensitivity middle to early Pleistocene-age very old	Paleontological Resources Management Plan (PRMP) shall be prepared by a qualified Paleontologist Prior to the start of construction	City of Hesperia Planning Department.	

Regulatory Requirement /Project Design Feature/ Mitigation Measure	Timing	Responsible for Ensuring Compliance / Verification	Date Completed and Initials
axialchannel deposits (Qvoa) are being impacted. If sensitive sediments are observed, then paleontological monitoring will continue on a full-time basis in those areas. Development of an inadvertent discovery plan to expediently address treatment of paleontological resources should any be encountered during development associated with the Project. If these resources are inadvertently discovered during ground-disturbing activities, work must be halted within 50 feet of the find until it can be evaluated by a qualified paleontologist. Construction activities could continue in other areas. If the discovery proves to be significant, additional work, such as fossil collection and curation, may be warranted and would be discussed in consultation with the appropriate regulatory agency(ies).			
TRIBAL CULTURAL RESOURCES			
Mitigation Measure 6. The landowner will relinquish ownership of all cultural resources, including sacred items, burial goods and all archaeological artifacts that are found on the project area to the appropriate Tribe for proper treatment and disposition.	Relinquish ownership of all cultural resources to the appropriate Tribe during construction activities.	City of Hesperia Planning Department	
Mitigation Measure CUL-1: Archaeological Resources, as listed above.	Same as listed above.	Same as listed above.	

The Project would implement voluntary best practices which would include the following: Measures AQ-1 through AQ-8.

Best Practice AQ-1: Prohibiting grading on days with an Air Quality Index forecast of greater than 100 for particulates or ozone for the project area.

Best Practice AQ-2: Forbidding idling of heavy equipment for more than three minutes.

Best Practice AQ-3: Providing information on transit and ridesharing programs and services to construction employees.

Best Practice AQ-4: Forbidding trucks from idling for more than two minutes and requiring operators to turn off engines when not in use.

Best Practice AQ-5: Posting both interior- and exterior-facing signs, including signs directed at all dock and delivery areas, identifying idling restrictions and contact information to report violations to CARB, the local air district, and the building manager.

Best Practice AQ-6: Running conduit to designated locations for future electric truck charging stations.

Best Practice AQ-7: Requiring facility operators to train managers and employees on efficient scheduling and load management to eliminate unnecessary queuing and idling of trucks.

Best Practice AQ-8: Providing tenants with information on incentive programs, such as the Carl Moyer Program and Voucher Incentive Program, to upgrade their fleets.