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### **Via Email and Overnight Mail**

Ron Bess, Associate Planner  
City of Sacramento Community Development Department  
300 Richards Boulevard, 3rd Floor  
Sacramento, CA 95811  
**Email:** [Rbess@cityofsacramento.org](mailto:Rbess@cityofsacramento.org)

### **Re: Preliminary Comments on the Initial Study/Mitigated Negative Declaration for the HP Hood Cold Storage Expansion Project (DR21-034; SCH No. 2021120483)**

Dear Mr. Bess:

We are writing on behalf of **Sacramento Residents for Responsible Development** ("Sacramento Residents") to provide preliminary comments on the Initial Study/Mitigated Negative Declaration ("IS/MND") prepared for the HP Hood Cold Storage Expansion Project, DR21-034 / SCH No. 2021120483 ("Project") prepared by the City of Sacramento ("the City"), proposed by HP Hood, LLC ("Applicant").

The Project is proposed to be located at 8340 Belvedere Avenue (APN: 061-0140-071-000 and 061-0140-092-0000) in the City of Sacramento. The proposed Project consists of the new construction of a 94,400-square-foot cold storage facility and associated site improvements on the 27.15-acre existing light industrial project site. The proposed expansion building will include an automated storage and retrieval system ("AS/RS") warehouse, low bay truck dock, additional truck dock expansion offices, employee and utility areas, blow molding expansion, and wastewater treatment. Proposed site improvements include an additional 41 covered car parking spaces, landscaping, and a new on-site access road between the parking lot expansion and Safeway Distribution Driveway to the north. The existing on-site fire pump, storage tank, and trash compactors will be relocated to

5980-003acp

alternative on-site locations to accommodate the new construction. The Project will require a deviation from current zoning building height requirements.

As explained more fully below, an EIR is required because substantial evidence supports a fair argument that the Project may result in significant impacts. As a result of its shortcomings, the IS/MND lacks substantial evidence to support its conclusions and fails to properly mitigate the Project's potentially significant impacts to public health, air quality, energy, water supply, greenhouse gases ("GHGs"), biological resources, noise, transportation, and aesthetics. Instead, substantial evidence supports a fair argument that the Project will result in significant and unmitigated impacts in these areas. The City cannot approve the Project until the errors in the IS/MND are remedied and substantial evidence supporting its conclusions is provided in an environmental impact report ("EIR"). We reserve the right to supplement these comments at later proceedings and hearings related to the Project.<sup>1</sup>

## I. STATEMENT OF INTEREST

Sacramento Residents 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 and public service impacts of the Project. Sacramento Residents includes the International Brotherhood of Electrical Workers Local 340, Plumbers & Steamfitters Local 447, Sprinkler Fitters Local 669, the District Council of Ironworkers and their members and their families; and other individuals that live and/or work in the City of Sacramento and Sacramento County.

Individual members of Sacramento Residents live, work, recreate, and raise their families in the City and in the 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 on site.

In addition, Sacramento Residents has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe

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<sup>1</sup> 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.  
5980-003acp

working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for businesses and industries to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

## II. THE CITY FAILED TO PROVIDE TIMELY ACCESS TO DOCUMENTS INCORPORATED BY REFERENCE IN THE IS/MND

Sacramento Residents was not provided with access to the entire IS/MND or to the documents referenced and incorporated by reference in the IS/MND during the public comment period, as required by CEQA. As a result, Sacramento Residents was unable to complete a full review and analysis of the IS/MND and all reference documents prior to submitting these comments.

First, the City failed to make the IS/MND's appendices available for public review during the entire comment period. The IS/MND, and its Notice of Availability ("NOA"), state that the Draft Mitigated Negative Declaration is available on the City's website, and clarify that, due to the COVID 19 crises and current City public counter closures, the IS/MND *was not* available for review in printed form at City offices, as otherwise required by CEQA Section 21092 and CEQA Guidelines Section 15072.<sup>2</sup> However, the IS/MND's appendices were not available on the City's website until January 18, 2022, just two days before the close of the public comment period. These include Appendix A - HP Hood AQ GHG Memo, Appendix B - HP Hood Phase 1 ESA Report, Appendix C - HP Geotechnical Report, Appendix D - HP Hood VMT Analysis Memo, and Appendix E - VMT Memo.<sup>3</sup> The IS/MND's appendices contain the analysis and evidence on which the IS/MND relies to support its conclusions regarding the Project's impacts. The appendices are therefore critical chapters of the IS/MND, without which the public cannot meaningfully comment on the adequacy of the IS/MND.<sup>4</sup> After we specifically requested access to the appendices, the City uploaded them to the website on 1/18/22, but failed to extend the public comment period.

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<sup>2</sup> IS/MND, pg. 20 (stating that the Draft Mitigated Negative Declaration is available online at: <http://portal.cityofsacramento.org/Community-Development/Planning/Environmental/Impact-Reports>); See Pub. Resources Code, § 21092, subd. (b)(1); 14 Cal. Code Reg. § 15072, subd. (g)(4).

<sup>3</sup> Available at <http://www.cityofsacramento.org/Community-Development/Planning/Environmental/Impact-Reports>.

<sup>4</sup> *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699. 5980-003acp

January 20, 2022

Page 4

Second, the City failed to provide timely access to the documents referenced and relied upon in the IS/MND. On January 14, 2022, we submitted a written request for immediate access to the documents referenced in the IS/MND.<sup>5</sup> Although the City posted the IS/MND appendices to the City's website, the City still has not provided Sacramento Residents with access to any of the documents referenced and relied upon in the IS/MND which are not already available online. This is a violation of CEQA which improperly truncates the public review period on the IS/MND, and requires an extended comment period.

CEQA requires that "all documents referenced" – and the CEQA Guidelines require that "all documents incorporated by reference" – in a negative declaration shall be "readily accessible to the public during the lead agency's normal working hours" during the entire public comment period.<sup>6</sup> Courts have held that the failure to provide even a few pages of CEQA documents for a portion of the review period invalidates the entire process, and that such a failure must be remedied by permitting additional public comment.<sup>7</sup> It is also well settled that a CEQA document may not rely on hidden studies or documents that are not provided to the public.<sup>8</sup> The IS/MND's appendices and supporting reference documents contain critical portions of the IS/MND's analysis. Without access to these critical documents during the public comment period on the DEIR, Sacramento Residents and other members of the public were precluded from having the meaningful opportunity to comment on the IS/MND that is required by CEQA.

The City's failure to post the IS/MND appendices online is also inconsistent with AB 819 (Levine, 2021). Effective January 1, 2022, Assembly Bill (AB) 819 (Levine) requires electronic filing of specified environmental documents and notices to the Office of Planning and Research ("OPR"). It amended Section 21082.1 of the Public Resources Code to require that a lead agency "[s]ubmit, in an electronic form as required by the Office of Planning and Research, the draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration to

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<sup>5</sup> Letter from J. Lauraine to City, re *Request for Immediate Access to Documents Referenced or Relied Upon in the MND – HP Hood Cold Storage Expansion Project* (January 4, 2022).

<sup>6</sup> Pub. Resources Code § 21092(b)(1); 14 C.C.R. § 15072(g)(4); see *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

<sup>7</sup> *Ultramar v. South Coast Air Quality Man. Dist.*, *supra* at 699.

<sup>8</sup> *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 831 ("Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.").  
5980-003acp

the State Clearinghouse.”<sup>9</sup> Further, “[t]he lead agency shall post all environmental review documents described in subdivision (a) on its internet website, if any.”<sup>10</sup> Here, the appendices are not available on CEQAnet.<sup>11</sup> Further, all environmental review documents were not available on the City’s website for the entirety of the comment period. Thus, the City’s approach conflicts with AB 819.

We therefore request that the City provide Sacramento Residents with immediate access to all IS/MND reference documents that are not currently available on its website, and restart the public comment period on the IS/MND once access to the documents has been provided. We reserve our right to submit supplemental comments on the IS/MND and the Project at a future date following our review of these documents.

### III. THE PROJECT DESCRIPTION IS INADEQUATE

The IS/MND does not meet CEQA’s requirements because it fails to include an accurate and complete Project description, rendering the entire analysis inadequate. California courts have repeatedly held that “an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.”<sup>12</sup> CEQA requires that a project be described with enough particularity that its impacts can be assessed.<sup>13</sup> Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project’s impacts and undermining meaningful public review.<sup>14</sup> Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.<sup>15</sup>

CEQA Guidelines section 15378 defines “project” to mean “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the

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<sup>9</sup> Pub. Res. Code. Section 21082.1 (c)(4).

<sup>10</sup> Pub. Res. Code. Section 21082.1 (d).

<sup>11</sup> The Project page on CEQAnet is <https://ceqanet.opr.ca.gov/2021120483>.

<sup>12</sup> *Stoepthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 17; *Communities for a Better Environment v. City of Richmond* (“*CBE v. 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.

<sup>13</sup> 14 CCR § 15124; see, *Laurel Heights I, supra*, 47 Cal.3d 376, 192-193.

<sup>14</sup> *Id.*

<sup>15</sup> *Sundstrom v. County of Mendocino* (“*Sundstrom*”) (1988) 202 Cal.App.3d 296, 311. 5980-003acp

environment.”<sup>16</sup> “The term “project” refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term project does not mean each separate governmental approval.”<sup>17</sup> Courts have explained that a complete description of a project must “address not only the immediate environmental consequences of going forward with the project, but also all “*reasonably foreseeable* consequence[s] of the initial project.”<sup>18</sup> “If a[n]...EIR...does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decision-making cannot occur under CEQA and the final EIR is inadequate as a matter of law.”<sup>19</sup>

#### **A. The IS/MND Fails to Provide Information About the Blow Molding Expansion**

The Project involves a “blow molding expansion,” but no information is provided regarding this expansion. Blow molding (or moulding) is a manufacturing process for forming and joining together hollow plastic parts. The IS/MND fails to provide any information regarding the extent of the expansion or the environmental impacts of blow molding. Blow molding requires water to cool or heat the plastic products and in finishing operations, which may increase the Project’s impacts on water consumption, wastewater, and greenhouse gases.<sup>20</sup> Blow molding can be energy intensive.<sup>21</sup> There is no indication that blow molding activities have been contemplated in any of the IS/MND’s environmental analyses. The IS/MND thus fails to disclose a critical project component and its associated environmental impacts. The IS/MND fails as an informational document.

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<sup>16</sup> CEQA Guidelines § 15378.

<sup>17</sup> *Id.*, § 15378(c).

<sup>18</sup> *Laurel Heights I*, 47 Cal. 3d 376, 398 (emphasis added); see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449-50.

<sup>19</sup> *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal. App. 4th 1186, 1201.

<sup>20</sup> United States Environmental Protection Agency, Plastic Product Manufacturing, Section 4.2.4, available at [https://ordspub.epa.gov/ords/guideme\\_ext/f?p=guideme:gd::::gd:rp\\_4\\_2\\_4](https://ordspub.epa.gov/ords/guideme_ext/f?p=guideme:gd::::gd:rp_4_2_4) (last accessed 1/19/22).

<sup>21</sup> Compressed Air Best Practices, Blow Molding Equipment: Review and Process Steps to Minimize Energy Usage, <https://www.airbestpractices.com/system-assessments/end-uses/blow-molding-equipment-review-and-process-steps-minimize-energy-usage> (last accessed 1/19/22).

5980-003acp

## **B. The IS/MND Fails to Explain the Project's End Uses**

The IS/MND fails to describe the end uses of the Project. The IS/MND discloses that the Project will include an automated storage and retrieval system (“ASRS”) warehouse, low bay truck dock, additional truck expansion offices, employee and utility areas, blow molding expansion, and wastewater treatment. But no information is provided regarding what these features will be used for. It is undisclosed what will be stored in the cold storage, what will the blow molding expansion be used for, what sources of wastewater will be treated by the wastewater treatment feature, etc.

Similarly, the IS/MND fails to explain the relationship between the Project and the existing facility. For example, the IS/MND does not explain whether the cold storage warehouse will be the first of its kind on the facility, or whether the Project's cold storage will be an expansion of existing cold storage capacity. To understand, disclose, and effectively mitigate the impacts of the instant Project, the IS/MND must provide basic information regarding the existing facility's operations. The IS/MND fails as an informational document.

## **C. The IS/MND Fails to Substantiate the Claim that the Project Will Not Require Use of Backup Generators**

The IS/MND states that the Project would not use generators, but fails to explain how the Project would handle power outages. This claim requires substantiation, as cold storage warehouses commonly utilize backup generators, due to their need for a constant energy supply to power refrigeration.<sup>22</sup> The IS/MND does not explicitly state what goods will be stored in the Project's cold storage

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<sup>22</sup> California Air Resources Board, Comments re: Notice of Preparation (NOP) for the United States Cold Storage Hesperia Project (Project) Draft Environmental Impact Report (DEIR), State Clearinghouse No. 2020069036 (July 24, 2020), available at <https://ww2.arb.ca.gov/sites/default/files/classic/toxics/ttdceqalist/uscoldstorage.pdf> (stating that the HRA prepared for the Project should account for all potential health risks from Project-related diesel PM emission sources such as backup generators, TRUs, and heavy-duty truck traffic); Kusing Power Generator, <http://ksdieselgenerator.com/2019/backup-generator-for-cold-storage-room.html>, last visited 6/21/2021 (“Backup power supply is necessary for cold storage room to remain functional to avoid deterioration of high value-added goods such as vegetables and food stored in the room after long period of power failure”); East Coast Power Systems, Electrical Power Systems for Warehouses, <https://www.ecpowersystems.com/resources/electrical-power-systems/electrical-power-systems-for-warehouses/> (explaining that some warehouses that deal with refrigeration have to have multiple power backup generators by law).  
5980-003acp

facilities. It is reasonable to infer that any product requiring cold storage is unlikely to be properly maintained without access to cold storage, a condition that would occur during power outages in which electricity would not be available to support the Project's refrigeration equipment. It is reasonably foreseeable that the goods stored at the Project site may be dairy products, since the Project is an expansion of an existing industrial dairy facility which currently operates on the site. Dairy products can quickly perish without refrigeration, so it is likely that backup generators will be required. The IS/MND does not identify an alternate source of emergency power, and thus lacks support for the assertion that backup generation would not be used at the Project site. Moreover, the IS/MND does not prohibit use of backup generators as a condition of approval or mitigation measure. Thus, the Applicant is not prevented from using backup generators in the future. Therefore, the IS/MND must include backup generators in the project description, and analyze the impacts of those generators, or provide substantial evidence explaining how Project operation will be maintained during power outages without the use of generators, and analyze the impacts of this alternative power source.

A failure to identify backup generators impacts the adequacy of the IS/MND's environmental analyses. Backup generators commonly rely on fuels such as natural gas or diesel,<sup>23</sup> and thus can significantly impact air quality, GHG emissions, and public health through toxic diesel particulate ("DPM") emissions.<sup>24</sup> Backup generators increase operational emissions during testing periods and unscheduled

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<sup>23</sup> SCAQMD, Fact Sheet on Emergency Backup Generators, <http://www.aqmd.gov/home/permits/emergency-generators> ("Most of the existing emergency backup generators use diesel as fuel").

<sup>24</sup> California Air Resources Board, Emission Impact: Additional Generator Usage Associated with Power Outage (January 30, 2020), available at <https://ww2.arb.ca.gov/resources/documents/emissions-impact-generator-usage-during-psps> (showing that generators commonly rely on gasoline or diesel, and that use of generators during power outages results in excess emissions); California Air Resources Board, Use of Back-up Engines for Electricity Generation During Public Safety Power Shutoff Events (October 25, 2019), available at <https://ww2.arb.ca.gov/resources/documents/use-back-engines-electricity-generation-during-public-safety-power-shutoff> ("When electric utilities de-energize their electric lines, the demand for back-up power increases. This demand for reliable back-up power has health impacts of its own. Of particular concern are health effects related to emissions from diesel back-up engines. Diesel particulate matter (DPM) has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of DPM is small enough to be inhaled deep into the lungs and make them more susceptible to injury. Much of the back-up power produced during PSPS events is expected to come from engines regulated by CARB and California's 35 air pollution control and air quality management districts (air districts)").



events. Unscheduled events include, but are not limited to, Public Safety Power Shutoff (PSPS) events and extreme heat events. Extreme heat events are defined as periods where in the temperatures throughout California exceed 100 degrees Fahrenheit.<sup>25</sup> From January, 2019 through December, 2019, Southern California Edison reported 158 of their circuits underwent a PSP event.<sup>26</sup> In 2021, the Governor Of California declared that during extreme heat events the use of stationary generators shall be deemed an emergency use under California Code of Regulations (CCR), title 17, section 93115.4 sub. (a) (30) (A)(2). The number of Extreme Heat Events is likely to increase in California with the continuing change in climate the State is currently undergoing.

Power produced during PSPS or extreme heat events is expected to come from engines regulated by CARB and California's 35 air pollution control and air quality management districts (air districts).<sup>27</sup>

According to the California Public Utilities Commission ("CPUC") de-energization report<sup>28</sup> in October 2019, there were almost 806 PSPS events that impacted almost 973,000 customers (~7.5% of households in California) of which ~854,000 of them were residential customers, and the rest were commercial/industrial/medical baseline/other customers. CARB's data also indicated that on average each of these customers had about 43 hours of power outage in October 2019.<sup>29</sup> Using the actual emission factors for each diesel backup generator engines in the air district's stationary backup generator database, CARB staff calculated that the 1,810 additional stationary running during a PSPS in October 2019 generated 126 tons of NO<sub>x</sub>, 8.3 tons or particulate matter, and 8.3 tons of DPM.

For every PSPS or Extreme Heat Event ("EHE") triggered during the operational phase of the project, significant concentrations of DPM will be released

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<sup>25</sup> Governor of California. 2021. Proclamation of a state of emergency. June 17, 2021.

<sup>26</sup> SCAQMD. 2020. Proposed Amendment To Rules (PARS) 1110.2, 1470, and 1472. Dated December 10, 2020. [http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1110.2/1110-2\\_1470\\_1472/par1110-2\\_1470\\_wgm\\_121020.pdf?sfvrsn=6](http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1110.2/1110-2_1470_1472/par1110-2_1470_wgm_121020.pdf?sfvrsn=6).

<sup>27</sup> CARB. 2019. Use of Back-up Engines For Electricity Generation During Public Safety Power Shutoff Events. October 25, 2019.

<sup>28</sup> <https://www.cpuc.ca.gov/deenergization/> as cited in CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage.

<sup>29</sup> CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage. 5980-003acp

that are not accounted for in the City's analysis. In 2021, two EHEs have been declared so far. For the June 17, 2021 EHE, the period for which stationary generator owners were allowed to use their BUGs lasted 48 hours. For the July 9, 2021 EHE, the period for which stationary generator owners were allowed to use their backup generators lasted 72 hours. These two events would have tripled the calculated DPM emissions from the Project for the year if the project had been completed.

Overall, due to the significance environmental impacts associated with backup generators, the IS/MND must be revised to disclose any backup generators that may foreseeably be required for the Project.

#### **D. The IS/MND's Description of the Project's Transportation Requirements is Inconsistent.**

The IS/MND transportation analysis claims “[t]he proposed project does not propose creating any more traffic through either employee trips, or truck trips as a part of the current operations... The amount of employees is expected to remain the same as current operations.”<sup>30</sup> The IS/MND apparently contradicts this claim in its air quality analysis, which states: “[o]nce the project is constructed, the project would include diesel truck traffic associated with loading and unloading of products at the warehouse.” And the IS/MND's Air Quality and Greenhouse Gas Analysis states: “Using the default trip rates, the proposed project would generate approximately 179 average daily trips, a mix of employee and truck trips.” It is thus unclear whether the Project will involve an increase in truck trips.

Clarity on this topic is necessary to evaluate the Project's air quality, greenhouse gas, and transportation impacts. Regarding transportation impacts, the IS/MND reasons that because the Project would not involve any increase in vehicle trips, there would be a less than significant transportation impact. The City will have to revisit this conclusion if the Project will in fact generate vehicle trips as identified in the air quality analysis. As a result of these inconsistencies, the IS/MND thus fails as an informational document: an accurate, stable and finite

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<sup>30</sup> IS/MND, pg. 58.  
5980-003acp

project description is the *sine qua non* of an informative and legally sufficient EIR.”<sup>31</sup>

#### **IV. THERE IS A FAIR ARGUMENT THAT THE PROJECT MAY CAUSE SIGNIFICANT IMPACTS THAT REQUIRE THE CITY TO PREPARE AN EIR**

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.<sup>32</sup> “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR protects not only the environment, but also informed self-government.”<sup>33</sup> 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.”<sup>34</sup>

CEQA’s purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.<sup>35</sup> CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the “fair argument” standard. Under that standard, a lead agency “shall” prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.<sup>36</sup>

In contrast, a mitigated negative declaration may be prepared only when, after preparing an initial study, a lead agency determines that a project may have a significant effect on the environment, but:

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<sup>31</sup> *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. 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.

<sup>32</sup> See Pub. Resources Code, § 21000; CEQA Guidelines, § 15002.

<sup>33</sup> *Citizens of Goleta Valley v. Bd. of Supervisors* (“*Goletta Valley*”) (1990) 52 Cal.3d 553, 564, internal citations omitted.

<sup>34</sup> *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

<sup>35</sup> See Pub. Resources Code, § 21100

<sup>36</sup> Pub. Resources Code, §§ 21080, subd. (d), 21082.2, subd. (d); CEQA Guidelines, §§ 15002, subd. (k)(3), 15064, subds. (f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (“*Laurel Heights II*”) (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150–151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (“*Quail Botanical*”) (1994) 29 Cal.App.4th 1597, 1601–1602.

- (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review *would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur*, and (2) there is *no substantial evidence* in light of the whole record before the public agency that the project, as revised, *may* have a significant effect on the environment.<sup>37</sup>

Courts have held that if “no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.”<sup>38</sup> The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.<sup>39</sup> An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.<sup>40</sup>

“Substantial evidence” required to support a fair argument is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”<sup>41</sup> According to the CEQA Guidelines, when determining whether an EIR is required, the lead agency is required to apply the principles set forth in Section 15064, subdivision (f):

[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR. 13 Pub. Resources Code, § 21064.5 (emphasis added).

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<sup>37</sup> Pub. Resources Code, § 21064.5 (emphasis added).

<sup>38</sup> See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.

<sup>39</sup> *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754

<sup>40</sup> *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 (“*Friends of B Street*”) (“If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

<sup>41</sup> CEQA Guidelines, § 15384, subd. (a).  
5980-003acp

Furthermore, CEQA documents, including EIRs and MNDs, must mitigate significant impacts through measures that are “fully enforceable through permit conditions, agreements, or other legally binding instruments.”<sup>42</sup> Deferring formulation of mitigation measures to post-approval studies is generally impermissible.<sup>43</sup> Mitigation measures adopted after Project approval deny the public the opportunity to comment on the Project as modified to mitigate impacts.<sup>44</sup> If identification of specific mitigation measures is impractical until a later stage in the Project, specific performance criteria must be articulated and further approvals must be made contingent upon meeting these performance criteria.<sup>45</sup> Courts have held that simply requiring a project applicant to obtain a future report and then comply with the report’s recommendations is insufficient to meet the standard for properly deferred mitigation.<sup>46</sup>

With respect to this Project, the MND fails to satisfy the basic purposes of CEQA. The MND fails to adequately disclose, investigate, and analyze the Project’s potentially significant impacts, and fails to provide substantial evidence to conclude that impacts will be mitigated to a less than significant level. Because the MND lacks basic information regarding the Project’s potentially significant impacts, the MND’s conclusion that the Project will have a less than significant impact on the environment is unsupported.<sup>47</sup> The City failed to gather the relevant data to support its finding of no significant impacts. Moreover, substantial evidence shows that the Project may result in potentially significant impacts. Therefore, a fair argument can be made that the Project may cause significant impacts requiring the preparation of an EIR.

#### **A. The City Failed to Disclose and Analyze Potentially Significant Health Risks**

A lead agency’s significance determination must be supported by accurate scientific and factual data.<sup>48</sup> An agency cannot conclude that an impact is less than

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<sup>42</sup> CEQA Guidelines, § 15126.4, subd. (a)(2).

<sup>43</sup> *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; Pub. Resources Code, § 21061.

<sup>44</sup> *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical*, *supra*, 29 Cal.App.4th at pg. 1604, fn. 5.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Pub. Resources Code, § 21064.5.

<sup>48</sup> 14 C.C.R. § 15064(b).  
5980-003acp

significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.<sup>49</sup>

These standards apply to an EIR's analysis of public health impacts of a Project. In *Sierra Club v. County of Fresno*, the California Supreme Court affirmed CEQA's mandate to protect public health and safety by holding that an EIR fails as an informational document when it fails to disclose the public health impacts from air pollutants that would be generated by a development project.<sup>50</sup> In *Sierra Club*, the Supreme Court held that the EIR for the Friant Ranch Project—a 942-acre master-planned, mixed-use development with 2,500 senior residential units, 250,000 square feet of commercial space, and open space on former agricultural land in north central Fresno County—was deficient as a matter of law in its informational discussion of air quality impacts as they connect to adverse human health effects.<sup>51</sup> As the Court explained, “a sufficient discussion of significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact.”<sup>52</sup> The Court concluded that the County's EIR was inadequate for failing to disclose the nature and extent of public health impacts caused by the project's air pollution. As the Court explained, the EIR failed to comply with CEQA because after reading the EIR, “the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin.”<sup>53</sup> CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.<sup>54</sup>

Furthermore, in *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (“*Berkeley Jets*”), the Court of Appeal held that a CEQA document must analyze the

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<sup>49</sup> *Kings County Farm Bureau*, 221 Cal.App.3d at 732.

<sup>50</sup> *Sierra Club*, 6 Cal.5th at 518–522.

<sup>51</sup> *Id.* at 507–508, 518–522.

<sup>52</sup> *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

<sup>53</sup> *Id.* at 518. CEQA's statutory scheme and legislative intent also include an express mandate that agencies analyze human health impacts and determine whether the “***environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.***” (Public Resources Code § 21083(b)(3) (emphasis added).) Moreover, CEQA directs agencies to “take immediate steps to identify any critical thresholds for the ***health and safety of the people*** of the state and take all coordinated actions necessary to prevent such thresholds being reached.” (Public Resources Code § 21000(d) (emphasis added).)

<sup>54</sup> *Sierra Club*, 6 Cal.5th at 518–522.

5980-003acp

impacts from human exposure to toxic substances.<sup>55</sup> In that case, the Port of Oakland approved a development plan for the Oakland International Airport.<sup>56</sup> The EIR admitted that the Project would result in an increase in the release of TACs and adopted mitigation measures to reduce TAC emissions, but failed to quantify the severity of the Project's impacts on human health.<sup>57</sup> The Court held that mitigation alone was insufficient, and that the Port had a duty to analyze the health risks associated with exposure to TACs.<sup>58</sup> As the CEQA Guidelines explain, "[t]he EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected."<sup>59</sup>

The failure to provide information required by CEQA makes meaningful assessment of potentially significant impacts impossible and is presumed to be prejudicial.<sup>60</sup> 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.<sup>61</sup>

Here, the IS/MND acknowledges that diesel particulate matter ("DPM") is a toxic air contaminant that can cause health impacts at certain concentrations.<sup>62</sup> The IS/MND further acknowledges that construction activities associated with the Project would generate DPM through use of diesel-fueled vehicles and equipment.<sup>63</sup> And once the project is constructed, the project would include diesel truck traffic associated with loading and unloading of products at the warehouse.<sup>64</sup> The IS/MND reasons that health impacts from DPM would be less than significant due to the distance of sensitive receptors from the Project, and CARB's In-Use Off-Road Diesel Vehicles regulation, which limits idling to 5 minutes or less. However, the IS/MND fails to quantify the emissions reductions and resulting health risk that the City assumes would result from idling reductions.

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<sup>55</sup> 91 Cal.App.4th at 1369–1371.

<sup>56</sup> *Id.* at 1349–1350.

<sup>57</sup> *Id.* at 1364–1371.

<sup>58</sup> *Id.*

<sup>59</sup> 14 C.C.R. § 15003(b).

<sup>60</sup> *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236–1237.

<sup>61</sup> *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

<sup>62</sup> IS/MND, pg. 16.

<sup>63</sup> IS/MND, pg. 22.

<sup>64</sup> *Id.*

As in *Berkeley Jets*, the IS/MND fails to quantify concentrations of DPM sensitive receptors will be exposed to, and fails to compare the resultant health impacts against applicable thresholds. The applicable threshold is set by the Sacramento Metropolitan Air Quality Management District (“SMAQMD”), which provides that there is a significant health impact when TAC exposures create a risk of 10 in 1 million for stationary sources, or substantially increase the risk of exposure to TACs from mobile sources.<sup>65</sup> Although the City’s analysis points to factors that might mitigate the severity of health impacts from DPM, the analysis lacks specificity and does not enable the public to compare emissions against standards of significance. This approach is in clear violation of the requirement discussed in *Sierra Club* and *Berkeley Jets* to disclose a project’s potential health risks to a degree of specificity that would allow the public to make the correlation between the project’s impacts and adverse effects to human health.

The failure to prepare a quantified health risk analysis also conflicts with scientific authority. California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (“OEHHA”)<sup>66</sup> guidance recommends that exposure from projects lasting more than 6 months be evaluated for the duration of the project and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (“MEIR”).<sup>67</sup> The Project’s construction and operations will last more than 6 months. Therefore, an analysis of health risk impacts posed to nearby sensitive receptors from Project operation must be included in an EIR for the Project.

## **B. The IS/MND Fails to Adequately Analyze Potentially Significant Air Quality Impacts**

The IS/MND states that “[o]ff-road sources include the use of forklifts and hostlers; however, these are all planned to be electric.” The IS/MND’s analysis of the Project’s air quality impacts relies on this assumption – the City’s air quality analysis states that “Operational Off-Road Equipment - Assumed warehouse

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<sup>65</sup> IS/MND, pg. 19.

<sup>66</sup> OEHHA is the organization responsible for providing recommendations and guidance on how to conduct health risk assessments in California. See OEHHA organization description, available at <http://oehha.ca.gov/about/program.html>.

<sup>67</sup> OEHHA, Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments (February 2015), pp. 8-6, 8-15.  
5980-003acp



equipment, all are planned to be electric.”<sup>68</sup> Accordingly, the City’s CalEEMod model assumes the Project would have zero offroad emissions.<sup>69</sup> But the IS/MNBD lacks enforceable and binding language requiring offroad equipment to be electric. As a result, the City’s assumption that offroad sources would be electric is unsupported by substantial evidence. The IS/MND must be revised to identify a mitigation measure requiring offroad equipment to be electric.

### **C. The IS/MND Fails to Analyze Potentially Significant Energy Impacts**

The IS/MND states that the Project’s energy impacts are less than significant. CEQA provides that when the basis for an EIR’s finding that an impact is less than significant is not apparent from the facts and circumstances, the EIR must explain the reasons for the finding. An unsubstantiated conclusion that an impact is not significant, without supporting information or explanatory analysis, is insufficient; the reasoning supporting the determination of insignificance must be disclosed.<sup>70</sup> The caselaw provides that the key factor is not the length of the EIR’s analysis, but whether the analysis provides enough detail for the public to discern the analytic basis for the agency’s determination.<sup>71</sup>

Here, the IS/MND does not provide enough detail for the public to discern the basis for the City’s conclusion. The analysis lacks sufficient detail to address the significance thresholds in Appendix G of the California Environmental Quality Act (CEQA) Guidelines. According to the Guidelines, a project will normally have a significant adverse environmental impact on energy if it will:

- Result in a potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation.
- Conflict with or obstruct a State or local plan for renewable energy or energy efficiency.

The City’s approach to the energy analysis is to generally list the Project’s sources of energy consumption. For example, the IS/MND states:

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<sup>68</sup> Appendix A, pg. 27.

<sup>69</sup> *Id.* at 30.

<sup>70</sup> *City of Maywood v. Los Angeles Unif. Sch. Dist.* (2012) 208 CA4th 362, 393; *Protect the Historic Amador Waterways b. Amador Water Agency* (2004) 116 CA4th 1099, 1111.

<sup>71</sup> *Id.*, 116 CA4th 1099.

The proposed project includes the development of a 94,400 square foot cold storage facility and associated site improvements on the existing 27.15-acre project site. The amount of energy used at the project site would directly correlate to the size of the proposed buildings, the energy consumption of associated facilities and technology, and outdoor lighting. Other major sources of proposed project energy consumption include fuel used by vehicle trips generated during project construction and operation, and fuel used by off-road construction vehicles during construction.<sup>72</sup>

Although the IS/MND lists the sources of energy consumption, the IS/MND does not quantify or otherwise measure the energy consumption of these sources, or the impact on energy supplies. It is insufficient to merely state that the “[t]he amount of energy used at the project site would directly correlate to the size of the proposed buildings,” the IS/MND must explain what that amount is, and illustrate the significance of that amount. The IS/MND thus fails as an informational document.

The IS/MND states, in the air quality section: “the estimated potential increased electricity demand associated with operation of the proposed project is approximately 2,044,708 kilowatt hour per year, based on CalEEMod defaults. The proposed project’s estimated potential increased water demand is approximately 25.55 million gallons per year, based on CalEEMod defaults.” Reliance on CalEEMod defaults may be appropriate for measuring air quality impacts, but it does not constitute the site-specific analysis required by CEQA for an energy analysis. A site-specific analysis of the Project’s energy impacts would include the Project’s unique sources of energy consumption, such as the Project’s blow molding expansion and automated storage and retrieval system.

The City states that Project would be required to comply with Title 24 Efficiency Standards. But caselaw provides that an EIR should not rely solely on compliance with Title 24 standards to mitigate operational and construction energy impacts, and should not assume that mitigation for greenhouse gas emissions will serve as a substitute for an analysis of energy use impacts.<sup>73</sup> Even if compliance with Title 24 standards was sufficient evidence to conclude a project would not be wasteful, caselaw provides that a finding of compliance with Title 24 must be

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<sup>72</sup> IS/MND, pg. 39.

<sup>73</sup> *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 CA4th 256, 264; *Cal. Clean Energy Comm. v. City of Woodland* (2014) 225 CA4th 173, 208.  
5980-003acp

supported by substantial evidence.<sup>74</sup> Therefore, the City's conclusion that the Project will not be wasteful is unsupported by substantial evidence.

#### **D. The City Fails to Analyze Potentially Significant Impacts on Water Supply**

The IS/MND improperly defers analysis and mitigation of water supply impacts. The IS/MND states:

As part of the COAs for the proposed project, the City's Department of Utilities will require preparation of a water study for the project. The water study will be required to demonstrate the project's compliance with city requirements related to water service and will be submitted for review and approval to the City's Department of Utilities. Preparation and review of the water study will ensure that development of the project would include provision of adequate water infrastructure to support the proposed project.

Deferring formulation of mitigation measures to post-approval studies is generally impermissible.<sup>75</sup> Courts have held that simply requiring a project applicant to obtain a future report and then comply with the report's recommendations is insufficient to meet the standard for properly deferred mitigation.<sup>76</sup> A key purpose on environmental review is to provide information to the public regarding a project's impacts. By deferring analysis of the Project's water demands and impacts on water supply, the IS/MND fails as an informational document.

The conclusions of the City's water supply analysis are not supported by substantial evidence. The IS/MND states, "The proposed project is consistent with land use and zoning designations and would not generate an increase in demand from what has already been anticipated in the Master EIR. As such, adequate capacity is expected to be available to serve the proposed project's water demands." But consistency with land use policies in this case does not guarantee a less than significant impact: the Master EIR, in Impact 4.11-2, concluded that the potential increase in demand for potable water in excess of the City's existing diversion and

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<sup>74</sup> *Spring Valley Lake Ass'n v. City of Victorville* (2016) 248 CA4th 91, 103.

<sup>75</sup> *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; Pub. Resources Code, § 21061.

<sup>76</sup> *Id.*

treatment capacity, and which could require construction of new water supply facilities, would result in a significant and unavoidable effect.<sup>77</sup>

**E. The IS/MND Fails To Adequately Establish The Environmental Setting For Biological Resources And Fails To Adequately Disclose, Analyze, And Mitigate Potentially Significant Impacts On Biological Resources**

**i. The IS/MND Fails to Adequately Establish the Environmental Setting**

CEQA requires that a lead agency include a description of the physical environmental conditions in the vicinity of the Project as they exist at the time environmental review commences.<sup>78</sup> Here, the IS/MND states that 23 special-status wildlife species were identified during the database queries and desktop review.<sup>79</sup> However, neither the IS/MND nor the appendices disclose the actual list of species. As a result, the IS/MND fails as an informational document, and prevents analysis of impacts on potentially-present species.

The City relied on California Natural Diversity Data Base (“CNDDDB”) for determining occurrence likelihoods of special-status species. The City apparently failed to consult other major databases such as eBird and iNaturalist, which collectively contain a more comprehensive record. Sole reliance on CNDDDB is not supported by substantial evidence. The California Department of Fish and Wildlife cautions that sole reliance on CNDDDB is inappropriate as a basis for narrowing a list of potentially occurring species:

“We work very hard to keep the CNDDDB and the Spotted Owl Database as current and up-to-date as possible given our capabilities and resources. However, we cannot and do not portray the CNDDDB as an exhaustive and comprehensive inventory of all rare species and natural communities statewide. Field verification for the presence or absence of sensitive species will always be an important obligation of our customers...”<sup>80</sup>

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<sup>77</sup> IS/MND, pp. 68-69.

<sup>78</sup> CEQA Guidelines, § 15125, subd. (a).

<sup>79</sup> IS/MND, pg. 28.

<sup>80</sup> California Department of Fish and Wildlife, About the CNDDDB – Disclaimer, <https://wildlife.ca.gov/Data/CNDDDB/About>. 5980-003acp

Therefore, the IS/MND's environmental baseline – and the conclusions relying on that baseline – are incomplete. An EIR must be prepared that contains a complete and accurate environmental baseline.

**ii. The IS/MND Fails to Mitigate the Project's Habitat Loss Impacts**

The IS/MND acknowledges that the ruderal/disturbed areas in the project site provide potential habitat for burrowing owl. The IS/MND states that “[i]f burrowing owls are residing in the project site or on adjacent parcels, the project would have potential for adverse effects through injury or mortality, displacement, and loss of habitat.”<sup>81</sup> As a result, the City concludes that impacts are potentially significant unless mitigated. The IS/MND's mitigation involves conducting a pre-construction survey, and preparing a mitigation plan in consultation with the Department of Fish and Wildlife should any occupied owl burrows be detected.

But the mitigation measure identified by the IS/MND – MM BIO-1 – constitutes improperly deferred mitigation. Deferring formulation of mitigation measures is generally impermissible.<sup>82</sup> In *Preserve Wild Santee v. City of Santee* (“*Preserve Wild Santee*”), a plan for active habitat management did not describe anticipated management actions or include standards or guidelines for actions that might be taken.<sup>83</sup> The court held that if identification of specific mitigation measures is impractical until a later stage in the Project, specific performance criteria must be articulated and further approvals must be made contingent upon meeting these performance criteria.<sup>84</sup> Here, MM BIO-1 correctly states that its mitigation will be informed by CDFW's Staff Report on Burrowing Owl Mitigation. But MM BIO-1 fails to include any language requiring habitat compensation, an impact the IS/MND admits is potentially significant. Compensatory mitigation for habitat loss is recommended by the CDFW Staff Report, but the language of MM BIO-1 does not guarantee that the City would be required to comply with the Staff Report's recommendation. As a result, the City's mitigation measure lacks specific performance criteria for mitigating impacts to habitat. Further, MM BIO-1 states that the City will consult with CDFW in development of the mitigation plan, but

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<sup>81</sup> IS/MND, pg. 27.

<sup>82</sup> *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; Pub. Resources Code, § 21061.

<sup>83</sup> 210 Cal.App.4th 260, 281.

<sup>84</sup> *Id.*; see also *Sierra Club v. County of Fresno* (2018) 6 CA5th 502, 524; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical, supra*, 29 Cal.App.4th at pg. 1604, fn. 5.  
5980-003acp

does not require CDFW's recommendations to be followed. Courts have held that mitigation that does no more than allow approval by a county department without setting enforceable standards is inadequate.<sup>85</sup> The mitigation measure is thus improperly deferred.

Also, because the City fails to adopt any compensatory mitigation measures to mitigate habitat loss, the potentially significant habitat loss impact it identifies is yet unmitigated. Thus, the City's determination that habitat loss impacts are mitigated to a less-than-significant level is not supported by substantial evidence. An EIR must be prepared to analyze this potentially significant impact.

#### **F. The IS/MND Fails to Disclose Potentially Significant Noise Impacts**

The IS/MND claims that the Project would have a less than significant impact on external noise levels in the Project area. The City acknowledges that the project would result in potential minor long-term noise increases in the project area due to project-related traffic on area streets, project traffic circulating within the project site, facility operations on the project site, and from internal combustion engine-powered trucks operated on the project site.<sup>86</sup> But the City reasons that impacts would be less than significant due to the distance of sensitive receptors and because the project does not propose a substantial increase in existing traffic.<sup>87</sup> However, since the City failed to conduct a noise study to analyze how much noise will be produced by the Project's operation, the City's conclusions are not supported by substantial evidence. Further, the IS/MND is deficient as an informational document.

The IS/MND claims that impacts on internal noise levels at sensitive receptors will be less than significant. The City reasons that "project regulatory compliance with the City of Sacramento normally acceptable noise standard of 75 dBA LDN for industrial land uses will ensure the project does not result in residential interior noise levels of 45 dBA LDN or greater caused by noise level increases due to the project."<sup>88</sup> But this approach does not comply with CEQA. To meet CEQA's informational and analytical requirements, the IS/MND must analyze the noise generated by the Project, and measure the impact on sensitive receptors.

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<sup>85</sup> *Endangered Habitats League, Inc. v. County of Orange*, (2005) 131 Cal.App.4th 777, 794.

<sup>86</sup> IS/MND, pg. 53.

<sup>87</sup> IS/MND, pg. 53.

<sup>88</sup> IS/MND, pg. 53.

Merely stating that the Project will comply with noise standards does not discharge the City of its duty to analyze impacts in the IS/MND.

The IS/MND states that construction noise impacts will be less than significant after mitigation. MM NOI-1 provides:

The applicant shall ensure that construction activities are consistent with City Code Section 8.68.060, Exemptions. Project construction activities that may result in the generation of noise shall not occur outside of the hours of 7:00 a.m. and 6:00 p.m., on Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday, and outside the hours of 9:00 a.m. and 6:00 p.m. on Sunday, and all internal combustion engines used for project construction shall be equipped with intake and exhaust silencers and maintained in accordance with the equipment manufacturer's specifications.

This analysis is insufficient because, as stated earlier, the IS/MND does not actually analyze or quantify construction. Courts have held that it is insufficient to merely identify mitigation without analyzing the actual impact.<sup>89</sup>

Further, the IS/MND's reliance on City noise thresholds is unsupported by substantial evidence. The courts have held that reliance on a maximum noise level as the sole threshold of significance for noise impacts violates CEQA because it fails to consider whether the magnitude of changes in noise levels is significant.<sup>90</sup> In *Keep our Mountains Quiet v. County of Santa Clara*,<sup>91</sup> neighbors of a wedding venue sued over the County of Santa Clara's failure to prepare an EIR for a proposed project to allow use permits for wedding and other party events at a residential property abutting an open space preserve. Neighbors and their noise expert contended that previous events at the facility had caused significant noise impacts that reverberated in neighbors' homes and disrupted the use and enjoyment of their property.<sup>92</sup> Similar to the IS/MND in this case, the County's EIR relied on the noise standards set forth in its noise ordinance as its thresholds for significant noise exposure from the project, deeming any increase to be insignificant so long as the absolute noise level did not exceed those standards.<sup>93</sup> The Court examined a long line of CEQA cases which have uniformly held that conformity with land use

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<sup>89</sup> *Berkely Jets, supra*, 91 Cal.App.4th at 1364–1371.

<sup>90</sup> *King & Gardiner Farms, LLC*, 45 Cal.App.5th at 865.

<sup>91</sup> *Keep our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714.

<sup>92</sup> *Id.* at 724.

<sup>93</sup> *Id.* at 732.

regulations is not conclusive of whether or not a project has significant noise impacts<sup>94</sup> in holding that the County's reliance on the project's compliance with noise regulations did not constitute substantial evidence supporting the County's finding of no significant impacts.<sup>95</sup> Here, the IS/MND solely relies on consistency with the City's noise standards – without conducting a noise study to analyze the increase in noise or impacts on sensitive receptors. Thus, the IS/MND's analysis is flawed in the same way as *Keep our Mountains Quiet*. An EIR must be prepared to analyze this potentially significant impact.

The City's failure to conduct a noise study violates the requirements of the Sacramento 2035 General Plan Draft Master Environmental Impact Report. The Draft EIR states that “the continuing exposure of existing noise-sensitive land uses to noise levels in excess of City standards or to substantial noise increases as a result of the future growth under the proposed General Plan is considered a significant impact.”<sup>96</sup> As mitigation, the Draft EIR provides that “[f]or new development, proposed projects undergo CEQA review; on a case-by-case basis, a site-specific noise study would be required for any project that could exceed City noise standards.”<sup>97</sup> Here, the IS/MND acknowledges that the Project will generate noise during construction and operation, and construction noise impacts will be significant before mitigation. Since it is possible City noise standards could be exceeded, a site-specific noise study is required. Without a noise study, the significant noise impact identified in the Draft EIR is unmitigated.

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<sup>94</sup> *Id.*, citing *Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1338; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881–882; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1416 (project's effects can be significant even if “they are not greater than those deemed acceptable in a general plan”); *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354, (“CEQA nowhere calls for evaluation of the impacts of a proposed project on an existing general plan”).

<sup>95</sup> *Id.* at 732-734; see also *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 893, as modified on denial of rehearing (Mar. 20, 2020).

<sup>96</sup> Sacramento 2035 General Plan Draft Master Environmental Impact Report, pg. 4.8-17, available at <http://www.cityofsacramento.org/-/media/Corporate/Files/CDD/Planning/Environmental-Impact-Reports/2035-GP-Update/Public-Draft-MEIR081114.pdf?la=en>.

<sup>97</sup> *Id.* at 4.8-17.  
5980-003acp



### **G. The IS/MND Fails to Disclose Potentially Significant Aesthetic Impacts**

Appendix G of the CEQA Guidelines provides that a significant impact related to aesthetics would occur if the project would: “substantially interfere with an important scenic resource or substantially degrade the view of an existing scenic resource.” The proposed cold storage building is proposed at 100 feet in height and exceeds the M-1S zone maximum permitted height of 70 feet. Approval of the project as proposed would require the approval of a deviation by the City Design Director. Because the Project’s height is higher than what is anticipated by the City’s land use policies, it may result in interference with an important scenic resource or substantially degrade the view of an existing scenic resource. Important scenic resources in the City of Sacramento include major natural open space features such as the American River and Sacramento River, including associated parkways. But the IS/MND fails to analyze whether this deviation would have aesthetic impacts. This is a potentially significant impact that must be analyzed in an EIR.

### **I. CONCLUSION**

The City lacks substantial evidence to support the conclusions in the IS/MND that the Project will have less than significant impacts on public health, air quality, energy, water supply, greenhouse gases, biological resources, noise, transportation, and aesthetics. Moreover, substantial evidence supports a fair argument that these impacts may be significant and unmitigated. Due to the IS/MND’s deficiencies, the City cannot conclude that the Project’s impacts have been mitigated to a less than significant level.

The CEQA Guidelines require that an EIR be prepared if there is substantial evidence supporting a fair argument that any aspect of a project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial.<sup>98</sup> As discussed in detail above, there is a fair argument based on substantial evidence that the Project would result in significant adverse impacts not identified in the IS/MND. Moreover, there is substantial evidence the proposed mitigation measures will not reduce potentially significant impacts to a level of insignificance.

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<sup>98</sup> CEQA Guidelines § 15063(b)(1).  
5980-003acp

January 20, 2022  
Page 26

We urge the City to fulfill its responsibilities under CEQA by withdrawing the IS/MND and preparing an EIR to address the issues raised in this preliminary comment letter. This is the only way the City and the public can ensure the Project's significant environmental impacts are mitigated to less than significant levels.

Sincerely,



Aidan P. Marshall

APM:acp