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Via E-mail

March 7, 2022

Robert Gran Jr., Chairperson
Honorable Members of the Planning
Commission
City of Madera
205 W. 4th St.
Madera, CA 93637

Robert Smith, Senior Planner
Planning Department
City of Madera
205 W. 4th St.
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Re: Comment on the Mitigated Negative Declaration for Amond World Cold Storage Warehouse, SPR 2021-41

Dear Chair Gran Jr. and Honorable Members of the Planning Commission:

I am writing on behalf of **Laborers' International Union of North America, Local Union No. 294** regarding the Initial Study and Mitigated Negative Declaration ("IS/MND") prepared for the Amond World Cold Storage Warehouse (SPR 2021-41), including all actions related or referring to the proposed construction, use, and maintenance of a 235,000 square foot (sf) warehouse with refrigerated storage area, administrative office, shipping office and flatbed annex building and a 250,000 sf warehouse and storage facility on 30.16 acres on the westside of Golden State Boulevard between Avenue 16 and 17 in the City of Madera ("Project").

After reviewing the IS/MND, we conclude the IS/MND fails as an informational document, and that there is a fair argument that the Project may have adverse environmental impacts. Therefore, we request that the City of Madera ("City") prepare an environmental impact report ("EIR") for the Project pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, et seq.

This comment has been prepared with the assistance of environmental consulting firm Soil/Water/Air Protection Enterprise ("SWAPE"), expert wildlife biologist Shawn Smallwood, Ph.D, and acoustics, noise, and vibration consulting firm Wilson Ihrig. SWAPE's, Dr. Smallwood's, and Wilson Ihrig's comments and curriculum vitae are

attached as Exhibits A, B, and C hereto, respectively, and are incorporated herein by reference in their entirety.

I. PROJECT DESCRIPTION

The proposed Project would consist of a cold storage warehouse for agricultural products built in two phases on two parcels totaling 30.16 acres. The first phase would include a 235,000 sf warehouse with refrigerated storage area, a 4,000 sf administrative office, a 2,204 sf shipping office, and a 12,544 sf flatbed annex building. The second phase would include a 250,000 sf warehouse and storage facility with a ground mount solar PV array. The Project would also include an on-site stormwater retention basin.

There are single-family residential uses located to north of the Project, as well as vacant land to the north and south, and industrial uses to the east and west. Each phase of construction is anticipated to last nine months. The Project site has a Madera General Plan land use designation of Industrial, which provides for both light and heavy industrial development.

II. LEGAL STANDARD

As the California Supreme Court has held “[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.” *Communities for a Better Env’t v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-320 (*CBE v. SCAQMD*) (citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504–505). “Significant environmental effect” is defined very broadly as “a substantial or potentially substantial adverse change in the environment.” Pub. Res. Code (“PRC”) § 21068; see also 14 CCR § 15382. An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.” *No Oil, Inc.*, 13 Cal.3d at 83. “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” *Communities for a Better Env’t v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 109 (*CBE v. CRA*).

The EIR is the very heart of CEQA. *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214 (*Bakersfield Citizens*); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927. The EIR is an “environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return.” *Bakersfield Citizens*, 124 Cal.App.4th at 1220. The EIR also functions as a “document of accountability,” intended to “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its

action.” *Laurel Heights Improvements Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392. The EIR process “protects not only the environment but also informed self-government.” *Pocket Protectors*, 124 Cal.App.4th at 927.

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

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

This ‘fair argument’ standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. The lead agency’s decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.

Kostka & Zischke, *Practice Under CEQA*, §6.29, pp. 273–74. The Courts have explained that “it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency’s determination. Review is de novo, with a

preference for resolving doubts in favor of environmental review.” Pocket Protectors, 124 Cal.App.4th at 928 (emphasis in original).

III. DISCUSSION

A. There is Substantial Evidence of a Fair Argument that the Project May Result in Significant Air Quality, Health Risk, and Greenhouse Gas Impacts.

Matt Hagemann, P.G., C.Hg., and Dr. Paul E. Rosenfeld, Ph.D., of the environmental consulting firm SWAPE reviewed the IS/MND’s analysis of the Project’s impacts from air quality, health risk, and greenhouse gases. SWAPE’s comment letter and CVs are attached as Exhibit A and their comments are briefly summarized here.

1. The IS/MND relied on unsubstantiated input parameters to estimate project emissions and thus the project may result in significant air quality impacts.

SWAPE found that the IS/MND incorrectly estimated the Project’s construction and operational emissions and therefore cannot be relied upon to determine the significance of the Project’s impacts on local and regional air quality. The IS/MND relies on emissions calculated from the California Emissions Estimator Version CalEEMod.2020.4.0 (“CalEEMod”). IS/MND, p. 4-48. This model, which is used to generate a project’s construction and operational emissions, relies on recommended default values based on site specific information related to a number of factors. Ex. A, p. 2. CEQA requires any changes to the default values to be justified by substantial evidence. *Id.*

SWAPE reviewed the IS/MND’s CalEEMod output files and found that the values input into the model were inconsistent with information provided in the IS/MND. Ex. A, p. 2. As a result, the IS/MND’s air quality analysis cannot be relied upon to determine the Project’s emissions.

Specifically, SWAPE found that the following values used in the IS/MND’s air quality analysis were either inconsistent with information provided in the IS/MND or otherwise unjustified:

1. Failure to Model All Proposed Land Uses. Ex. A, p. 2-3.
2. Unsubstantiated Reductions to Architectural and Area Coating Emission Factors and Areas. Ex. A, p. 3-5.
3. Incorrect Construction Schedule. Ex. A, p. 5-6.
4. Failure to Substantiate Amount of Required Material Import and Export. Ex. A, p. 6-7.
5. Incorrect Application of Operational Mitigation Measures. Ex. A, p. 7-8.

As a result of these errors in the IS/MND, the Project's construction and operational emissions were underestimated and cannot be relied upon to determine the significance of the Project's air quality impacts.

2. An updated air model analysis found that the Project will have a significant air quality impact.

To more accurately determine the Project's construction and operational emissions, SWAPE prepared an updated CalEEMod model using more site-specific information and corrected input parameters. See Ex. A, p. 8. SWAPE's updated analysis demonstrates that the Project's construction-related ROG emissions for Phase I and Phase II are 370.3 and 365.7, respectively, both of which exceed the applicable SJVAPCD threshold of 100 pounds per day. *Id.* at 8-9. Thus, SWAPE's application of the model is substantial evidence of a fair argument that the Project may result in a potentially significant air quality impact. An EIR should be prepared to adequately assess and mitigate the potential air quality impacts that the Project may have on the surrounding environment.

3. There is substantial evidence of a fair argument that the Project may have a significant health impact as a result of Diesel Particulate emissions.

One of the primary emissions of concern regarding health effects for land development projects is diesel particulate matter ("DPM"), which can be released during Project construction and operation. DPM consists of fine particles with a diameter less than 2.5 micrometers including a subgroup of ultrafine particles (with a diameter less than 0.1 micrometers). Diesel exhaust also contains a variety of harmful gases and cancer-causing substances. Exposure to DPM is a recognized health hazard, particularly to children whose lungs are still developing and the elderly who may have other serious health problems. According to the California Air Resources Board ("CARB"), DPM exposure may lead to the following adverse health effects: aggravated asthma; chronic bronchitis; increased respiratory and cardiovascular hospitalizations; decreased lung function in children; lung cancer; and premature deaths for those with heart or lung disease.¹

The IS/MND failed to conduct a quantified construction health risk analysis ("HRA"), resulting in an inadequate health risk emissions analysis. SWAPE identifies three main reasons for why the IS/MND's evaluation of health risk impacts and subsequent less-than-significant conclusion is incorrect.

¹ See CARB Resources - Overview: Diesel Exhaust & Health, available at <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health>).

First, the IS/MND's failure to prepare a construction HRA is inconsistent with CEQA's requirement to correlate potential emissions with adverse impacts on human health. *Id.* at 10. SWAPE identifies potential emissions of DPM from exhaust stacks of construction equipment during the Project's 18 months of construction. *Id.* In failing to connect Toxic Air Contaminant emissions to potential health risks to nearby receptors, the Project fails to meet the CEQA requirement that projects correlate increases in project-generated emissions to adverse impacts on human health caused by those emissions. *Id.*; See *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 510.

Second, the California Department of Justice recommends the preparation of a quantitative HRA pursuant to the Office of Environmental Health Hazard Assessment ("OEHHA"), the organization responsible for providing guidance on conducting HRAs in California, as well as local air district guidelines. OEHHA released its most recent guidance document in 2015 describing which types of projects warrant preparation of an HRA. See "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/hotspots2015.html. OEHHA recommends that projects lasting at least 2 months be evaluated for cancer risks to nearby sensitive receptors, a time period which this Project easily exceeds. Ex. A, p.10. SWAPE therefore recommends that health risk impacts from the project be evaluated, and an EIR is required to analyze these impacts. *Id.*

Third, the IS/MND's claim that there will be a less than significant impact without having evaluated the combined lifetime cancer risk from Project construction and operation *together* represents a failure under OEHHA guidelines. *Id.* at 11. OEHHA guidance states that "the excess cancer risk is calculated separately from each age grouping and then summed to yield cancer risk at the receptor location." *Id.* SWAPE recommends that an updated analysis be prepared which quantifies the Project's construction and operational health risks together. *Id.*

SWAPE prepared a screening-level HRA to evaluate potential impacts from Project construction. SWAPE used AERSCREEN, a screening-level air quality dispersion model. *Id.* at 11. SWAPE applied a sensitive receptor distance of 250 meters and analyzed impacts to individuals at different stages of life based on OEHHA and SJVAPCD guidance utilizing age sensitivity factors. *Id.* at 11-14.

SWAPE found that the excess cancer risks at a sensitive receptor located approximately 250 meters away over the course of Project construction is approximately 39.63 in one million for infants *Id.* at 13. Moreover, **the excess lifetime cancer risk over the course of a Project operation of 30 years is approximately 45.01 in one million.** *Id.* The risks to infants and lifetime residents exceed SJVAPCD's threshold of 20 in one million.

SWAPE's analysis constitutes substantial evidence that the Project may have a significant health impact as a result of diesel particulate emissions. An EIR including

discussion of a completed health risk assessment must be prepared disclosing the health risk impacts from toxic air contaminants from Project construction.

4. The IS/MND failed to adequately analyze the Project's greenhouse gas impacts and thus the Project may result in significant greenhouse gas emissions.

The IS/MND estimates that in 2023, the Project would generate net annual GHG emissions of 10,213 metric tons of carbon dioxide equivalent per year ("MT CO₂e/year"), without regulations and design features, and 3,786 MTCO₂e/year with them. IS/MND, p.4-50, Table 4-10. In 2030, the IS/MND estimates 10,190 MTCO₂e/year without regulations and design features, and 3,321 MTCO₂e/year with them. *Id.* The IS/MND relies on consistency with CARB's Adopted Scoping Plans and GHG Reduction Goals for 2050 under Executive Order S-3-05 to conclude that the project would have a less-than-significant GHG impact. However, SWAPE states that the IS/MND's analysis and conclusion about greenhouse gas impacts is incorrect for two reasons:

1. Incorrect and Unsubstantiated Air Model. Ex. A, p. 16.
2. Unsubstantiated Reduction Measures. Ex. A, p. 16-17.

SWAPE's analysis demonstrates a potentially significant GHG emission impact from the project that necessitates mitigation, and it proposes numerous feasible mitigation measures. The City must prepare an EIR with an updated GHG analysis and requiring the implementation of these measures.

B. The Project Will Have Significant Adverse Biological Impacts That the IS/MND Fails to Adequately Analyze and Mitigate.

Shawn Smallwood, Ph.D. reviewed the IS/MND's analysis of the Project's biological impacts. Dr. Smallwood's comment letter and CV are attached as Exhibit B and his comments are briefly summarized here.

1. The IS/MND is inadequate in its characterization of the existing environmental setting as it relates to wildlife.

Dr. Smallwood visited the site on February 21, 2022 and reconnoitered the area for 2 hours and 10 minutes with the use of binoculars. Ex. B, p.1. During that visit, he observed the presence of 25 species of vertebrate wildlife at the Project site, five of which are special-status species. *Id.* at 2, see Table 1, Ex. B, p. 3. Dr. Smallwood found that after being disked last year, the site was "covered by ruderal grassland species," and bordered by eucalyptus and other trees. *Id.* at 1. Dr. Smallwood observed birds using the site and its surroundings throughout his time visiting the area, and concluded that the site is "inherently rich in wildlife species, and [] offers wildlife opportunities for

forage, refugia, and breeding that are otherwise rapidly disappearing from [the] region.” *Id.* at 3.

Every CEQA document must start from a “baseline” assumption. The CEQA “baseline” is the set of environmental conditions against which to compare a project’s anticipated impacts. *Communities for a Better Env’t. v. So. Coast Air Qual. Mgmt. Dist.* (2010) 48 Cal. 4th 310, 321. Dr. Smallwood found that the essential steps of the characterization of the Project site’s environmental setting were “grossly incomplete.” Ex. B, p. 6. The reconnaissance-level survey conducted for the site failed to report key information on the survey, including the time of day when the survey began and how long the biologist surveyed the site, which Dr. Smallwood stated are “the most important methodological elements of the survey.” *Id.* The survey also detected only 24% of the species that Dr. Smallwood observed, a discrepancy which Dr. Smallwood’s experience suggests is likely due to a brief site visit or a visit at a time of day least likely to detect wildlife. *Id.* at 6-7. Dr. Smallwood concludes that “the site is richer in wildlife than the 26 species documented there so far” by the MND survey and his own survey, and that “the environmental setting of the project remains insufficiently characterized as foundation for analysis of impacts to special-status species.” *Id.* at 8. He also notes that “[n]o reconnaissance-level survey is capable of detecting enough of the wildlife species that occur at a site to realistically characterize the site’s wildlife community.” *Id.* at 11.

Dr. Smallwood’s analysis next turned to the MND’s biological survey’s review of literature and databases for documented occurrences of species in the area. *Id.* at 11-14. The MND’s survey did not consult eBird or iNaturalist, which Dr. Smallwood states would have led to determinations of occurrence likelihoods for many more species. *Id.* at 11. In his review of databases, Dr. Smallwood identified 75 special-status species that had the potential to use the site, which demonstrates that the site “holds much more potential for supporting special-status species of wildlife than has been determined by the City of Madera.” *Id.* While the MND’s survey consulted the California Natural Diversity Data Base (“CNDDDB”), Dr. Smallwood stated that it misapplied CNDDDB by using it to screen out species not reported within 5 miles of the Project site. *Id.* He noted that “[w]hereas CNDDDB can be helpful for confirming occurrences of special-status species where they have been reported, it cannot be relied upon for determining absences of species.” *Id.*

A skewed baseline such as the one used by the City here ultimately “mislead(s) the public” by engendering inaccurate analyses of environmental impacts, mitigation measures and cumulative impacts for biological resources. See *San Joaquin Raptor Rescue Center*, 149 Cal.App.4th 645, 656; *Woodward Park Homeowners*, 150 Cal.App.4th 683, 708-711. This inaccurate baseline and the species identified by Dr. Smallwood warrants discussion and analysis in an EIR to ensure species are accurately detected and that any impacts are mitigated to a less than significant level. Because of the failure to characterize the site, a fair argument exists that the Project may have a significant impact on wildlife requiring the preparation of an EIR.

2. The IS/MND fails to accurately analyze potential biological impacts to wildlife.

The MND's analysis of biological impacts determined that due to the site's historical use as agricultural land and the disking and agricultural activity associated with that, it was highly disturbed and impacts would be less than significant. IS/MND, p.4-23, 4-29-4-32. Dr. Smallwood found, however, that "in the face of rapidly diminishing habitat, wildlife must make use of whatever opportunities remain available to them," and that "[m]any species of wildlife continue to use the site." Ex. B, p. 15. He then described five main impacts that were not adequately analyzed in the MND: habitat loss, wildlife movement, wildlife mortality, traffic impacts to wildlife, and cumulative impacts. *Id.* at 15-20.

a. Habitat Loss

Dr. Smallwood found that the MND did not address potential impacts of habitat loss to breeding birds. *Id.* at 15. There has been a 29% decline in birds in North America over the last approximately 50 years largely due to habitat loss and fragmentation, a trend which could be further exacerbated by this project. *Id.* Based on studies on the subject, Dr. Smallwood estimates that the presence of the Project on the site could lead to as many as 259 bird nests lost annually. *Id.* at 20. He further found that the reproductive capacity of the site would be lost, as the Project would prevent 751 fledglings per year, which would in turn contribute to the lost capacity of 855 birds per year. *Id.*

Because this impact was not addressed in the IS/MND and Dr. Smallwood has presented substantial evidence of a fair argument that habitat loss will impact species, the City must prepare an EIR to analyze the impact.

b. Wildlife Movement

The IS/MND improperly dismisses the Project's potential to impact wildlife movement based on the fact that the site does not occur within a wildlife movement corridor. Ex. B, p. 16. However, this conclusion relies on an incorrect CEQA standard. A project will have a significant biological impact if it would "[i]nterfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors..." CEQA Guidelines, App. G. "The primary phrase of the CEQA standard goes to wildlife movement regardless of whether the movement is channeled by a corridor." Ex. B, p. 16. Dr. Smallwood states that the Project site is "critically important for wildlife movement because it composes an increasingly diminishing area of open space within a growing expanse of anthropogenic uses . . ." *Id.* He concludes that "[t]he project would interfere with wildlife movement in the region." *Id.*

Because of its reliance on a false CEQA standard for determining impacts on wildlife movement, the IS/MND contains no evidence to support the conclusion that the

Project will not have a significant impact on wildlife movement. An EIR must be prepared to analyze the Project's impacts on wildlife movement.

c. Wildlife Mortality

The Project site would be surrounded by a 6-foot-tall chain link fence, measuring about 1.9-km. IS/MND, p. 2-9. Dr. Smallwood states that fences "interfere with wildlife movement," "entangle wildlife," and "are barriers into which volant animals collide with lethal force." Ex. B, p. 16. Based on recent fatality monitoring of fencing surrounding utility-scale solar projects in California, Dr. Smallwood estimates that the Project would kill 27.4 birds per year, adding up to 2,740 birds killed over the course of 100 years. This represents an unanalyzed and unmitigated significant impact and an EIR must be prepared to assess the Project's impacts to wildlife from the proposed security fence. *Id.*

d. Traffic Impacts to Wildlife

According to the IS/MND, the Project will generate 1,068.5 new daily Vehicle Miles Traveled ("VMT"). Ex. B, p. 17. Yet the IS/MND provides no analysis of the impacts on wildlife that will be caused by this increase in traffic on the roadways servicing the Project. "Project-generated traffic would endanger wildlife that must, for various reasons, cross roads used by the Project's traffic." *Id.*

Vehicle collisions with special-status species is not a minor issue, but rather results in the death of millions of species each year. Dr. Smallwood explains:

. . . the US estimate of avian mortality on roads is 2,200 to 8,405 deaths per 100 km per year, or 89 million to 340 million total per year (Loss et al. 2014). Local impacts can be more intense than nationally. The nearest study of traffic-caused wildlife mortality was performed along a 2.5 mile stretch of Vasco Road in Contra Costa County, California. Fatality searches in this study found 1,275 carcasses of 49 species of mammals, birds, amphibians, and reptiles over 15 months of searches (Mendelsohn et al. 2009).

Ex. B, p. 17.

Using the IS/MND's estimates of VMT as a basis, Dr. Smallwood was able to predict the impacts to wildlife that could be caused by the project. *Id.* at 19. Dr. Smallwood calculates that operation of the Project over 50 years would accumulate 79,850 wildlife fatalities. *Id.* He therefore states that "the project-generated traffic would cause substantial, significant impacts to wildlife." *Id.* at 20. The IS/MND must be revised to include an analysis and mitigation of the result increased traffic from the Project will have on wildlife.

e. Cumulative Impacts

The IS/MND concludes that the Project's impacts would not be cumulatively considerable because of its relatively nominal impacts and mitigation measures that will be provided. IS/MND, p. 4-110. However, Dr. Smallwood states that the IS/MND's interpretation of the CEQA standard for cumulative impacts is erroneous. Ex. B, p. 20.

He also states that “[g]iven that North America has lost nearly a third of its birds over the past half century, and given that simple calculations reveal the project’s impacts would deny Californians of many birds, an appropriate cumulative effects analysis is warranted.” *Id.* An EIR should be prepared to adequately analyze potential cumulative impacts to wildlife caused by the Project.

As for the proposed mitigation measures, Dr. Smallwood first addresses the proposed preconstruction surveys for burrowing owls, and states that because ground squirrels occur on site, breeding-season detection surveys are necessary before preconstruction take-avoidance surveys. *Id.* Dr. Smallwood also states that while preconstruction surveys should be conducted for breeding birds, they “typically detect small fractions of the animals targeted.” *Id.* Lastly, he states that the Project’s potential to eliminate 30.16 acres of Swainson’s hawk habitat warrants a greater commitment to mitigation than that currently proposed by the MND. *Id.* at 21.

C. There is Substantial Evidence that the Project Will Have Adverse Noise Impacts that the IS/MND Failed to Address.

Deborah Jue, Principal of Acoustics, Noise, and Vibration consulting firm Wilson Ihrig, reviewed the IS/MND for the Project and found that the IS/MND lacks quantitative thresholds to evaluate the suitability of its proposed mitigation measures. Wilson Ihrig’s comment letter and CV are attached as Exhibit C and their comments are summarized here.

1. The IS/MND contains errors in its references which render it inadequate as an informational document.

Wilson Ihrig first identified errors in several of the references in the IS/MND which should be corrected. Specifically, Wilson Ihrig found that there were corrupted graphics in the Project Description and that the IS/MND omitted a section of the Madera Municipal Code which defines Unlawful Noise. Ex. C, p. 1. This code section is important, as it defines unlawful noise as “. . . unnecessary noise or sound which is physically annoying to persons of ordinary and normal sensitivity . . .” Ex. C, p. 1-2; Madera Municipal Code § 3-11.01. These errors conflict with CEQA’s purpose that environmental documents serve as “informational document[s] which will inform public agency decisionmakers and the public generally of the significant environmental effect of a project . . .” CEQA § 15121(a). The IS/MND must be revised to correct these errors.

2. The thresholds of significance used in the IS/MND are not properly developed and the impact analyses are incomplete.

Wilson Ihrig next found that the IS/MND failed to define thresholds of significance, rendering the IS/MND’s analysis of noise impacts inadequate. Under CEQA, an MND “must clearly show that the mitigation would eliminate significant effects.” Ex. C, p. 2; *see also* CEQA § 15070(b). However, Wilson Ihrig found that the IS/MND failed to clearly define thresholds of significance for annoyance and sleep disruption. Ex. C, p. 2. These thresholds are necessary for an adequate assessment of

whether mitigation measures are sufficient to eliminate potentially significant impacts.
Id.

Madera Municipal Code § 3.11-01(A) prohibits a Project from generating unlawful noise, which is further defined as “annoying” noise. *Id.* Wilson Ihrig describes two potential methods for how the IS/MND could assess the Project’s potential for noise annoyance:

- 1) Absolute Noise Level: The first suggested method is to use absolute noise level as a measure, using the World Health Organization’s threshold of 55 dBA Leq, and the Madera General Plan’s threshold of 60 dBA Leq to assess whether the Project has a potential to cause annoying noise. Ex. C, p. 2. Based on the information in the IS/MND, the Project currently exceeds these thresholds, and Wilson Ihrig recommends that “Project noise should be limited to an hourly Leq of 55 dBA at the R/V park and 60 dBA hourly Leq near the Boles residences.” *Id.*
- 2) Relative Noise Increase: The second suggested method is to assess annoyance levels based on relative noise increase. The Madera General Plan has guidance on this threshold, defining significance as a 5 dB increase in the Ldn. Ex. C, p. 3.

The other threshold of significance that is inadequately defined in the IS/MND is sleep disruption. Although the IS/MND identifies a potential for a significant impact from sleep disruption and proposes mitigation measure NOISE-2 to limit this, there is no significance threshold against which these impacts are being evaluated, and therefore the assessment is incomplete. Ex. C, p. 3; IS/MND, p. 4-84. Wilson Ihrig suggests using the World Health Organization’s guidance of “45 dBA Leq (outdoors) to avoid sleep disturbance from a continuous source, and a limit of 60 dBA Lmax for intermittent sources for conventional homes.” Ex. C, p. 3.

Wilson Ihrig’s final note on the IS/MND’s discussion of potential impacts is that it lacks clarity. *Id.* Wilson Ihrig identifies several instances in which results regarding significance are not presented with sufficient clarity, and suggests a table which could help illustrate relevant thresholds and analysis. *Id.* at 3-4. Wilson Ihrig also notes that on-going construction noise has not been calculated for the Project, and recommends a method by which to do so. *Id.* at 4.

These comments identify unanalyzed and unmitigated significant noise impacts of the Project. As a result of these expert comments, a fair argument exists that the Project may have significant noise impacts and an EIR must be prepared to sufficiently address these impacts.

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IV. CONCLUSION

In light of the above comments, the City must prepare an EIR for the Project and the draft EIR should be circulated for public review and comment in accordance with CEQA. Thank you for considering these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Amalia Bowley Fuentes". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Amalia Bowley Fuentes

LOZEAU DRURY LLP