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SENT VIA EMAIL

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Re: Comment on Mitigated Negative Declaration, 4416 Azusa Canyon Road (SCH 2021120500), Site Plan & Design Review DA No. 04-2020, and Resolution No. 813(22) and Resolution No. 814(22).

Dear Ms. Jones, Ms. Chou, and Honorable Planning Commissioners:

I am writing on behalf of **Supporters Alliance for Environmental Responsibility (“SAFER”)** regarding the Initial Study and Mitigated Negative Declaration (“IS/MND”) prepared for the 4416 Azusa Canyon Road Project (SCH 2021120500), including all actions related or referring to the proposed construction of a 129,830 square-foot speculative concrete tilt-up warehouse, office, and manufacturing facility with associated passenger vehicle parking, located at the northeastern corner of the Azusa Canyon Road/Los Angeles Street intersection, on APN 8417-004-006, in the City of Irwindale (“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 Irwindale (“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.

I. PROJECT BACKGROUND AND DESCRIPTION

The proposed Azusa Canyon Road Project is for the construction of a 129,830 square-foot speculative concrete tilt-up building and associated passenger vehicle parking. The building consists of 9,160 square feet of office space, 17,000 square feet of manufacturing space, and 103,670 square feet of warehousing space. The property has a gross square footage of 256,664 square feet (5.89 acres) and a net square footage of 251,096 square feet (5.76 acres). There is a required street dedication along Azusa Canyon Road of 5,568 square feet (.13 acres). According to the City of Irwindale Planning Commission Staff Report for the Project (“Staff Report”), there is no prospective user at this time. (Staff Report, p. 4.) The Project is located at 4416 Azusa Canyon Road (APN: 8417-004-006) in Irwindale, California.

The Project Applicant is requesting a Site Plan and Design Review (DA) for the construction of the building and associated parking. The Project site is designated in the General Plan as Industrial/Business Park and Residential. The property is currently zoned M-1 (Light Manufacturing). The site is surrounded by Industrial Businesses (M-2, Heavy Manufacturing) to the north, south, and east, and the Public Works Yard & Olive Pit (M-1, Light Manufacturing & Q, Quarry) to the west. (Staff Report, p. 2.)

The Staff Report provided the following background information and history about the site:

Based on a review of historical information, the project site appears to have been used as an orchard from at least 1928 until around 1952, when the site became vacant. The current main building was constructed in 1956 and was used by PepsiCo as a bottling plant. The site is presently developed with one building of approximately 62,713 square feet in the western half of the site, a large metal shed north of the building, and a loading dock and large truck yard on the eastern portion of the site (LACOA 2021). The building is a single-story structure of concrete tilt-up construction on a concrete slab floor. The bottling plant ceased operation in December 2020 and the site has remained vacant. (Staff Report, p. 2.)

The construction of the new industrial building will require the demolition of the existing building located on the site.

The City’s Community Development Department Planning Division is recommending that the Planning Commission:

- 1) Adopt Resolution No. 813(22) entitled “ A Resolution of the Planning Commission of the City of Irwindale Recommending that the City Council adopt the Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP) for the Construction of one (1) Speculative Industrial Tilt-Up Building Totaling ±129,830 Square Feet For Property Located at 4416 Azusa Canyon Road, Irwindale, CA 91706 (APN: 8417-004-006) in the M-1 (Light Manufacturing) Zone and Making Certain Findings of Fact, Pursuant to the California Environmental Quality Act[; and]

- 2) Adopt Resolution No. 814(22) entitled, "A Resolution of the Planning Commission of the City of Irwindale Recommending that the City Council approve Site Plan and Design Review (DA) No. 04-2020) for the Construction of one (1) Speculative Industrial Tilt-Up Building Totaling ±129,830 Square Feet For Property Located at 4416 Azusa Canyon Road, Irwindale, CA 91706 (APN: 8417-004-006) in the M-1 (Light Manufacturing) Zone and Making Certain Findings of Fact; subject to the City Council adoption of the MND and MMRP and subject to the attached Conditions of Approval.

Pursuant to CEQA's environmental review requirements, the City prepared an IS to determine whether the Project may have a significant adverse effect on the environment, and based on its findings, prepared an MND to mitigate those significant adverse effects on the environment from the Project. (Staff Report, pp. 2-3.) According to the Staff Report, the impacts of the proposed Project would be mitigated to less-than-significant levels with the implementation of mitigation measures for the following areas:

2
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- Air Quality
- Cultural Resources
- Geology and Soils
- Hazards and Hazardous Materials
- Transportation
- Tribal Cultural Resources
- Mandatory Findings of Significance

Based on the information provided in the IS/MND and associated appendices, however, we recommend that the Planning Commission not adopt Resolution Nos. 813(22) and 814(22) until the City prepares an EIR to adequately analyze and mitigate the air quality, greenhouse gas, hazards and hazardous materials, and transportation impacts related to the proposed Project.

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; *Brenwood 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*

3

(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.)

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

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

commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.

(See *Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 124-25 (“*Save Our Peninsula*”).) As the court of appeal has explained, “the impacts of the project must be measured against the ‘real conditions on the ground,’” and not against hypothetical permitted levels. (*Id.* at 121-23.)

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III. DISCUSSION

There is a fair argument that the project may have unmitigated adverse environmental impacts. An EIR is therefore required to adequately analyze and mitigate the impacts from the proposed Project.

4

A. There is Substantial Evidence of a Fair Argument that the Project Will Have Significant Soil Contamination Impacts.

The IS/MND contains substantial evidence of a fair argument that the Project may have significant health and environmental impacts due to contaminated soil, and the evidence in the record does not support that the potential impacts will be mitigated to a level of significance.

Specifically, the IS/MND provides evidence that there may be significant impacts from soil contamination on the Project site, but fails to adequately analyze or mitigate those impacts. For example, the IS/MND states:

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The project site had three 10,000-gallon underground storage tanks (UST) that were installed in 1975 and removed in 1995, and one 12,000-gallon diesel UST that was installed in 1990 and removed in 2013. The three 10,000-gallon USTs were removed under the oversight of the Los Angeles County Underground Storage Tank Program and the RWQCB. The 12,000-gallon UST was removed under the oversight of the LACFD. The former USTs are considered historical RECs.

Based on the lack of closure documentation from the regulatory agencies for the 12,000-gallon UST, there is a small chance for the potential release of petroleum products, and a vapor risk may be present at the site. Therefore, potential impacts could occur as a result of excavation and handling of on-site soils. However, with the implementation of Mitigation Measure HAZ-1, impacts would be reduced to a less than significant level. (IS/MND, pp. 89-90 (emphasis added).)

Moreover, the IS/MND states:

The site was identified on the State Water Resources Control Board's Leaking Underground Storage Tank Information System as a leaking UST (or LUST) site. The project site is listed due to a leak of gasoline reported on July 22, 1991. Currently, the case is listed as completed. The RWQCB indicates case closure for the three former 10,000-gallon USTs, **but documentation of agency closure was not found on the RWQCB or Los Angeles County websites for the 12,000-gallon diesel UST that was installed in 1990.**

Based on the lack of closure documentation from the regulatory agencies for the 12,000-gallon UST, there is a small chance for the potential release of petroleum products, and a vapor risk may be present at the site. However, compliance with applicable laws and regulations and implementation of mitigation measure HAZ-1 would reduce impacts to a less than significant level. (IS/MND, p. 92 (emphasis added).)

As such, this identification of potentially significant soil contamination impacts as result of the Project is substantial evidence of a fair argument that the Project involves significant risks to public health and the environment from soil contamination. (See, e.g., 89-90, 92.) Additionally, the IS/MND's mitigation measure HAZ-1 addressing the potential significant impacts from the contaminated soil at the Project site, although inadequate, also provides substantial evidence that the Project could cause significant health and environmental impacts. (*Id.*, p. 91.) Thus, the Project requires an EIR that includes adequate analysis and mitigation measures of soil contamination impacts.

CEQA requires that an environmental document include a description of the project's environmental setting or "baseline" at the time environmental review commences. (CEQA Guidelines § 15063(d)(2).) 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 Environment v. S. Coast Air Qual. Mgmt. Dist.* (2010) 48 Cal. 4th 310, 321.) Section 15125(a) of the CEQA Guidelines (14 CCR, § 15125(a)) states in pertinent part that a lead agency's environmental review under CEQA:

... must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant."

(See, *Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 124–25 ("Save Our Peninsula").) As the court of appeal has explained, "the impacts of the project must be measured against the 'real conditions on the ground,'" and not against hypothetical permitted levels. (*Save Our Peninsula*, 87 Cal.App.4th 99, 121–23.) As the court has explained, using such a skewed baseline "mislead(s) the public" and "draws a red herring across the path of public input." (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal. App.4th 645, 656; *Woodward Park Homeowners v. City of Fresno* (2007) 150 Cal.App.4th 683, 708–11.)

However, the IS/MND fails to consider baseline conditions for soil vapor. (See, IS/MND, p. 90 (“Based on the lack of closure documentation from the regulatory agencies for the 12,000-gallon UST, there is a small chance for the potential release of petroleum products, and a vapor risk may be present at the site.”); 92 (same).) Thus, the IS/MND relies on a baseline for soil contamination that will exist in the future, rather than the current baseline of potentially heavily contaminated conditions. Therefore, the IS/MND for the Project is in violation of CEQA.

In addition, the IS/MND relies on deferred mitigation of soil contamination impacts. (See, IS/MND, p. 91; see also, MMRP, pp. 5-6 (“Any subsurface materials exposed during construction activities that appear suspect for contamination, either from visual staining or odors, shall require immediate cessation of excavation activities.”); see, *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* (2011) 197 Cal. App.4th 327, 331-332 (“*CREED*”) (holding that an agency may not rely on a corrective action plan to mitigate potential impacts of site contamination when the plan’s mitigation measures for contaminated soil are not disclosed in the record).) Therefore, the Project relies for mitigation on measures that are not set forth in the IS/MND and not required as mitigation measures. CEQA prohibits this type of “deferred mitigation,”

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A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307.)

[R]eliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA’s goals of full disclosure and informed decisionmaking; and[,] consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment. (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92.)

The IS/MND relies on such “tentative plans for future mitigation” that were rejected in the cases of *CREED*, *Sundstrom*, and *CBE v. Richmond*. As such, the IS/MND fails to comply with CEQA. Thus, a new document, such as an EIR, must be prepared setting forth base conditions and specific mitigation measures that will be implemented.

B. The IS/MND Fails to Adequately Analyze and Mitigate the Project’s Transportation Impacts.

The IS/MND and its associated Transportation Analysis, included as Appendix I to the IS/MND, fail to adequately address transportation impacts for two reasons. First, the IS/MND’s Transportation Analysis does not include a vehicle miles traveled (“VMT”) analysis, even though it was required to under CEQA. Second, the IS/MND’s Transportation Analysis improperly relies on the City of Fontana Truck Trip Generation Study (August 2003) to determine the Project’s operational emissions.

6

1. The IS/MND's Transportation Analysis Fails to Adequately Evaluate and Mitigate the Project's VMT Impacts.

The IS/MND and its Transportation Analysis fail to properly evaluate VMT impacts related to the Project. According to the Project's Transportation Analysis:

The County of Los Angeles Guidelines require VMT analysis for development projects that are estimated to generate a net increase of 110 or more daily vehicle trips. Daily vehicle trips are specifically related to on-road passenger vehicles (cars and light trucks). Heavy trucks are not included in a VMT traffic impact analysis. (IS/MND, Appx. I, p. I-63).

Based on the County of Los Angeles Guidelines and the IS/MND Transportation Analysis's evaluation of VMT impacts, the IS/MND determined the following:

Under SB 743, a city can decide to screen out certain projects from needing a complete VMT analysis. OPR has advised that certain projects could be cleared from further analysis based on size, type, location, and/or proximity to a major transit stop or high-quality transit. The City of Irwindale adopted its VMT thresholds on November 11th, 2020. Since the City of Irwindale's VMT thresholds do not include screening criteria, the County of Los Angeles' Guidelines were used. The County requires VMT analysis for development projects that are estimated to generate a net increase of 110 or more daily vehicle trips... *The passenger car trip generation for the proposed project is 197 daily trips, but the estimated trip generation for the Pepsi bottling plant is 88 daily trips. Therefore, the net increase in the proposed project's passenger car trip generation is 109 vehicles per day, just under the threshold of 110 vehicles per day* (see Table 25). Therefore, proposed project would not require further VMT analysis and would have a less than significant impact. (IS/MND, p. 134 (emphasis added).)

However, the Transportation Analysis relies on a faulty methodology to determine that the City is not required to analyze VMT impacts for the proposed Project. To determine trip generation, the Transportation Analysis for the Project relies on the following flawed methodology:

In order to estimate the traffic characteristics of the Project, trip-generation statistics published in the Institute of Transportation Engineers (ITE) Trip Generation (10th Edition, 2017) manual for ITE Land Use Code 150 (Warehousing) and 140 (Manufacturing) are utilized.... The Project is anticipated to generate 262 trip-ends per day with 29 AM peak hour trips and 35 PM peak hour trips, with the mixture of passenger car and truck trips as shown in Table 1. (IS/MND, Appx. I, p. I-75 (emphasis added).)

Even though the majority of the Project site is planned for a “stand-alone concrete tilt-up warehouse, office, and manufacturing facility,” the use of the Institute of Transportation Engineers (ITE) Trip Generation Land Use Code 150 (Warehousing) is improper because the particular nature of the Project’s use is not defined and the tenant or end user is ultimately unknown. (IS/MND, pp. 8, 25 (“The specific business(es) and/or tenant(s) that would ultimately occupy the proposed building are unknown at this time.”).) Regardless of this uncertainty, the Transportation Analysis continues to base its evaluation of VMT impacts for the Project on the assumption that the ITE Trip Generation Manual Land Use Code 150 will be applicable. “Warehousing” is defined by the ITE generically as: “A warehouse is primarily devoted to the storage of materials, but it may also include office and maintenance areas.” According to the ITE manual, this is specifically considered a “long-term storage facility.” However, the zoning designation for the Project is considerably broader than the specific land use associated with Land Use Code 150. According to the IS/MND:

The prevailing planning and regulatory plans that govern development and use of the project site are the Irwindale General Plan, Irwindale Zoning Code (Title 17 [Zoning]), and Irwindale Commercial and Industrial Design Guidelines. The general plan land use designation of the project site is Industrial/Business Park, and the site is zoned Light Manufacturing (M-1). Land devoted to Industrial/Business Parks may range in size from 10 acres up to 100 acres, subdivided into smaller lots and developed with industrial buildings of varying sizes. (IS/MND, p. 29.)

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Based on the zoning designation for the Project site, the future tenant is permitted to implement land uses other than those described as “warehousing” in the ITE trip generation manual (Land use Code 150). For example, the zoning designation for the Project site could also include ITE Land Use Code 155 (High-Cube Fulfillment Center Warehouse) and 156 (High-Cube Parcel Hub Warehouse), which are considered distribution-focused centers/warehouses. However, there is a major distinction between warehousing and distribution land uses in the ITE trip generation manual. The “trips per unit” rate for Land Use Code 150 (Warehousing) is 0.19, while the “trips per unit” rate for Land Use Code 155 (High-Cube Fulfillment Center Warehouse) and 156 (High-Cube Parcel Hub Warehouse) are 1.37 and 0.64, respectively.¹ Hence, the trip generation rates of Land Use Code 155 and 156 would be significantly higher than that of Land Use Code 150. Because the zoning designation permits such distribution centers/warehouses, the IS/MND’s Transportation Analysis should have considered the VMT impacts of the full range of allowed uses for the Project site in case the future tenant or user decides to operate the facility pursuant to Land Use Codes 155 and 156, rather than Land Use Code 150. By using the lowest-level of trip generation to justify not including a VMT analysis of the proposed Project, the IS/MND fails to adequately evaluate transportation impacts of the

¹ For the ITE Trip Generation Manual (10th Edition) “Trips Per Unit” rates for Industrial Land Use Codes, see:
https://www.troutdaleoregon.gov/sites/default/files/fileattachments/public_works/page/966/ite_land_use_list_10th_edition.pdf.

Project. Thus, an EIR should be prepared to adequately analyze and mitigate VMT impacts of the Project.

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2. The IS/MND Incorrectly Relies on the Fontana Truck Trip Study to Estimate the Project's Operational Emissions.

The IS/MND and Transportation Analysis rely on the City of Fontana's August 2003 Truck Trip Generation Study ("Fontana Study") to determine the operational passenger car and truck trip generation rates for the Project. (See, IS/MND, Appx. I, pp. 1-40-1-43, Tables 4-1-4-4; see also, Response to Comments, p. 1-7 ("As shown in Table 4-1 of the IS/MND, truck trips were factored further using vehicle mix data from the City of Fontana Truck Trip Generation Study (August 2003).")) However, the South Coast Air Quality Management District ("SCAQMD") has determined that the Fontana Study has limited applicability to warehouse projects, and therefore the Fontana Study should not be relied on to determine the Project's operational mobile-source emissions.

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Specifically, the SCAQMD staff found the following issues with the Fontana Study²:

- The overall trip rate is based on only four warehouses total, which includes two warehouses with zeros. In other words, the results of the Fontana Study were based on only two data points. As is disclosed in the Fontana Study, the daily trip rate was only based on data from a Target warehouse and a TAB warehouse.³
- The Fontana Study does not report any 24-hour daily truck trip rates. According to the Fontana Study, "[t]rip generation statistics for daily truck trips were not calculated because vehicle classifications counts could not be obtained from the driveway 24-hour counts."⁴

As such, the IS/MND's Transportation Analysis should not rely on the Fontana Study to estimate the Project's operational truck trip generation, and a revised Transportation Analysis

² "Warehouse Truck Trip Study Data Results and Usage" Presentation. SCAQMD Mobile Source Committee, July 2014, *available at*: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/high-cube-warehouse-trip-rate-study-for-air-quality-analysis/finaltrucktripstudymisc072514.pdf>, p. 10.

³ "Truck Trip Generation Study," City of Fontana, County of San Bernardino, State of California, August 2003, *available at*: <https://tampabayfreight.com/pdfs/Freight%20Library/Fontana%20Truck%20Generation%20Study.pdf>; p. 35.

⁴ "Truck Trip Generation Study," City of Fontana, County of San Bernardino, State of California, August 2003, *available at*: <https://tampabayfreight.com/pdfs/Freight%20Library/Fontana%20Truck%20Generation%20Study.pdf>, p. 6.

should be prepared and included in an EIR to adequately assess the Project's air quality and greenhouse gas impacts from transportation

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C. The IS/MND Failed to Adequately Analyze and Mitigate the Project's Air Quality and Greenhouse Gas Impacts.

1. The IS/MND Relied on Unsubstantiated Input Parameters to Estimate Project Emissions and Thus the Project May Result in Significant Air Quality Impacts.

After reviewing the IS/MND and Air Quality and GHG Background and Modeling's CalEEMod output files, included as Appendix A to the IS/MND, several model inputs used to generate a project's construction and operation emissions were found to not be consistent with information disclosed in the IS/MND. As a result, the Project's construction and operational emissions are underestimated. An EIR should be prepared to include an updated air quality analysis that adequately evaluates the impacts that construction and operation of the Project will have on local and regional air quality.

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Specifically, several values used in the IS/MND and the Air Quality and GHG Background and Modeling's air quality analysis were found to be either inconsistent with information provided in the IS/MND or otherwise unjustified, including:

1. Failure to Model All Proposed Land Use Types;
2. Incorrect Land Use Type;
3. Unsubstantiated Reduction to Parking Land use Size; and
4. Incorrect Application of Construction-Related Mitigation Measures.

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. Thus, an EIR is needed to adequately address the air quality impacts of the proposed Project, and to mitigate those impacts accordingly.

2. The IS/MND Failed to Adequately Evaluate Health Risks from Diesel Particulate Matter Emissions and Thus the Project May Result in Significant Health Impacts as a Result of Diesel Particulate Matter Emissions.

An EIR should be prepared to evaluate the significant health impacts to individuals and workers from the Project's construction-related diesel particulate matter (DPM) emissions as a result of the proposed Project. The IS/MND's evaluation of the proposed Project's potential health risk impacts, as well as its subsequent conclusion that the Project would have a less-than-significant health risk impact is incorrect for two reasons. (See, IS/MND, pp. 58-62).

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First, by failing to prepare a quantified construction health risk assessment ("HRA"), the Project is inconsistent with CEQA's requirement to correlate the increase in emissions that the Project would generate to the adverse impacts on human health caused by those emissions. The

IS/MND's conclusion is also inconsistent with the most recent guidance published by the Office of Health Hazard Assessment ("OEHHA"). (See, "Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, *available at*: <https://oehha.ca.gov/media/downloads/cmr/2015guidancemanual.pdf>.)

Second, while the IS/MND includes an operational HRA, the HRA fails to evaluate the cumulative lifetime cancer risk to nearby, existing receptors as a result of Project construction and operation together. This is incorrect and, as a result, the IS/MND's evaluation cannot be relied upon to determine Project significance. OEHHA guidance requires that the excess cancer risk be calculated separately for all sensitive receptor age bins, then summed to evaluate the total cancer risk posed by all Project activities. Therefore, the IS/MND should have quantified the Project's construction and operational health risks, as well as compared the combined construction and operational health risks to the SCAQMD threshold of 10 in one million.

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Thus, to more accurately determine the health risks associated with construction-related DPM emissions from the Project, an EIR should be prepared that includes updated health risk calculations using correct guidance.

3. The IS/MND Failed to Adequately Analyze Greenhouse Gas Impacts and Thus the Project May Result in Significant Greenhouse Gas Emissions.

Review of the IS/MND and Air Quality and GHG Background and Modeling, included as Appendix A to the IS/MND, found that the IS/MND fails to adequately evaluate the GHG impacts of the proposed Project. The IS/MND estimates that the Project would generate net annual GHG emissions of 2,223 metric tons of carbon dioxide equivalents per year ("MT CO₂e/year"), which would not exceed the SCAQMD threshold of 3,000 MT CO₂e/year. (IS/MND, pp. 84-85, Table 13). Furthermore, the IS/MND's analysis relies upon the Project's consistency with the CARB Scoping Plan and SCAG 2020-2045 RTP/SCS to conclude that the Project would result in a less-than-significant GHG impact (*Id.*, pp. 85-87). However, the IS/MND's analysis, as well as the subsequent less-than-significant impact conclusion, is incorrect for three reasons.

11

First, the IS/MND's analysis relies upon a flawed air model, as discussed above. As a result, GHG emissions are underestimated and the IS/MND's quantitative GHG analysis should not be relied upon to determine Project significance. We will remodel emissions and compare emissions to the applicable thresholds.

Second, the IS/MND utilizes an outdated GHG threshold. When compared to the correct quantitative threshold, the Project's GHG emissions are demonstrably significant.

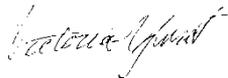
Third, the IS/MND fails to consider the performance-based standards underlying SCAG's RTP/SCS and CARB's Scoping Plan. As a result, the IS/MND's GHG significance determination regarding the Project's consistency with applicable plans and policies should not be relied upon. Instead, an EIR should be prepared that includes a quantitative consistency evaluation utilizing the appropriate standards as well as mitigation measures intended to reduce GHG emissions to less-than-significant levels.

IV. CONCLUSION

For the foregoing reasons, the IS/MND is inadequate and an EIR is required to analyze and mitigate the Project's potentially significant environmental impacts. SAFER reserves the right to supplement these comments in advance of and during public hearings concerning the Project. (*Galante Vineyards v. Monterey Peninsula Water Management Dist.*, 60 Cal. App. 4th 1109, 1121 (1997).) Thank you for your attention to these comments.

12

Sincerely,



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