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March 10, 2022

**Via Email and Electronic Filing**

Randy Hamilton, Chair  
c/o David Kwong, Secretary  
Planning Commission  
County of San Joaquin  
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**Via Email:** Alisa Goulart, [alisa.goulart@sigov.org](mailto:alisa.goulart@sigov.org);

**Re: Appeal of Site Approval No. PA-1900208 for the 14800 W.  
Schulte Road Logistics Center Project, PA-1900208 (SA) & PA-  
2000162 (ER) SCH: 2020110406**

Dear Chair Hamilton, Commissioners, Mr. Kwong, and Ms. Goulart

We write on behalf of **San Joaquin Residents for Responsible Development** (“San Joaquin Residents” or “Residents”) to appeal the San Joaquin County Community Development Department’s February 28, 2022 approval of the 14800 W. Schulte Road Logistics Center Project PA-1900208 (SA) and PA-2000162 (ER) (“Project”) proposed by LBA Fund VI-MM Industrial, LLC (“Applicant”), and to provide comments on the Final Environmental Impact Report<sup>1</sup> (“FEIR”) (SCH No. 2020110406) for the Project prepared by the County of San Joaquin (“County”) pursuant to the California Environmental Quality Act (“CEQA”).<sup>2</sup>

<sup>1</sup> County of San Joaquin, Final Environmental Impact Report: 14800 W. Schulte Road Logistics Center (November 2021) (hereinafter “FEIR”), *available at* <https://www.sigov.org/commdev/cgi-bin/cdyn.exe/file/Planning/EIR%20Schulte%20Road%20Logistics%20Center/EIR%20-%2014800%20W.%20Schulte%20Road%20Logistics%20Center/Final%20EIR.pdf>

<sup>2</sup> Pub. Resources Code (“PRC”) §§ 21000 *et seq.*  
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On July 1, 2021, we submitted comments on the Project's Draft EIR. The County released the FEIR on approximately February 10, 2022. On February 28, 2022, the Community Development Department approved the Project and issued conditions of approval in reliance on the FEIR.<sup>3</sup> The FEIR contains responses to some of our comments. However, the County's responses to comments in the FEIR ("Responses") and the FEIR fail to resolve all the issues we raised, as detailed below, and our comments still stand.<sup>4</sup> As a result of the deficiencies in the FEIR, the Planning Department lacked substantial evidence to approve the Project and make the findings required for the Site Approval Permit required under the County Code.<sup>5</sup> The Project's potentially significant, unmitigated impacts on air quality, public health, and traffic render the Project inconsistent with the findings required for a Site Approval Permit.

This appeal addresses the outstanding deficiencies in the County's environmental analysis and proposed mitigation for the Project. The appeal is supported by substantial evidence in the form of technical comments from qualified experts identifying significant, unmitigated transportation and air quality impacts that the FEIR fails to adequately address. The appeal was prepared with the assistance of air quality and GHG expert Dr. James Clark,<sup>6</sup> and transportation expert Daniel T. Smith Jr. P.E..<sup>7</sup> Their technical comments are attached hereto and incorporated by reference herein. These experts address the FEIR's failure to remedy the DEIR's analytical errors and omissions, and lack of adequate mitigation, that were described in detail in their DEIR comments.

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<sup>3</sup> Letter from A. Goulart to Applicant re Site Approval No. PA-1900208 of LBA Fund VI-MM Industrial, LLC (c/o Net Development Company) (APN[s]/Address: 209-240-23 / 14800 W. Schulte Rd., Tracy) (March 2, 2022).

<sup>4</sup> We incorporate our July 1, 2021 comments, along with their attachments and exhibits, herein by reference.

<sup>5</sup> San Joaquin Code § 9-818.6.

<sup>6</sup> **Exhibit A**, James J. Clark, Ph.D., Clark & Associates re: Comment Letter on Final Environmental Impact Report (FEIR) for 14800 West Schulte Road Logistics Center, Tracy, California (March 8, 2022) (hereinafter "Clark Comments").

<sup>7</sup> **Exhibit B**, Daniel T. Smith Jr. 14800 W. Schulte Road Project DEIR (SCH 2020110406) (March 2, 2022) (hereinafter "Smith Comments").

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We urge the Planning Commission to carefully consider these comments and to grant this appeal of the Project for the reasons stated herein. We reserve the right to supplement these comments at a later date, and at any later proceedings related to this Project.<sup>8</sup>

## I. STATEMENT OF INTEREST

San Joaquin Residents is an unincorporated association of individuals and labor organizations with members who may be adversely affected by the potential public and worker health and safety hazards and environmental and public service impacts of the Project. The association includes County residents: Steven M Dickinson, David Gracian, and, Tim Knoeb, the International Brotherhood of Electrical Workers Local 595, Plumbers & Steamfitters Local 442, Sheet Metal Workers Local 104, Sprinkler Fitters Local 669, District Council of Ironworkers and their members and their families, and other individuals that live, recreate and/or work in and around the County.

San Joaquin Residents supports the development of sustainable commercial and industrial centers where properly analyzed and carefully planned to minimize impacts on public health and the environment. Logistics centers like the Project should avoid adverse impacts to air quality, noise levels, transportation, and public health, and should take all feasible steps to ensure unavoidable impacts are mitigated to the maximum extent feasible. Only by maintaining the highest standards can commercial and industrial development truly be sustainable.

The individual members of San Joaquin Residents and the members of the affiliated labor organizations live, work, recreate and raise their families in and around the County. They would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work constructing the Project itself. They would be the first in line to be exposed to any health and safety hazards which may be present on the Project site. They each have a personal interest in protecting the Project area from unnecessary, adverse environmental and public health impacts.

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<sup>8</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.  
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San Joaquin Residents and its members also have an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for the members they represent. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for industry to expand in the County, and by making it less desirable for businesses to locate and people to live and recreate in the County, including the Project vicinity. Continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduces future employment opportunities.

Finally, San Joaquin Residents is concerned with projects that can result in serious environmental harm without providing countervailing economic benefits. CEQA provides a balancing process whereby economic benefits are weighed against significant impacts to the environment.<sup>9</sup> It is in this spirit we offer these comments.

## I. LEGAL DISCUSSION

### A. The County's Responses to Public Comments on the DEIR Are Inadequate

CEQA requires that a lead agency evaluate and prepare written responses to comments in a FEIR.<sup>10</sup> Agencies are required to provide “detailed written response to comments . . . to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and the public participation in the environmental review process is meaningful.”<sup>11</sup> When a comment raises a “significant environmental issue,” the written responses must describe the disposition of each such issue raised by commentators.<sup>12</sup> Specifically, the lead agency must address the comment “in detail giving reasons why” the comment was “not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice,”<sup>13</sup> particularly in

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<sup>9</sup> Pub. Resources Code § 21081(a)(3); *Citizens for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.

<sup>10</sup> PRC § 21091(d); 14 CCR §§ 15088(a), 15132.

<sup>11</sup> *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.4th 889, 904.

<sup>12</sup> PRC § 21091(d); 14 CCR §§ 15088(c), 15132(d), 15204(a).

<sup>13</sup> 14 CCR § 15088(c); see *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1124 (“*Laurel II*”); *The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal. App. 4th 603, 615.

response to comments are made by agencies or experts.<sup>14</sup> Failure of a lead agency to respond to comments raising significant environmental issues before approving a project frustrates CEQA's informational purpose and may render the EIR legally insufficient.<sup>15</sup> As the court explained in *City of Long Beach*:

The requirement of a detailed written response to comments helps to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and that public participation in the environmental review process is meaningful.<sup>16</sup>

The Responses fails to fulfill the County's legal duty to provide reasoned responses to comments in several ways. First, the County failed to consider the detailed technical comments of Dr. Clark regarding the Project's significant health risks and greenhouse gas ("GHG") emissions impacts. Additionally, the Responses fail to meaningfully respond to the detailed technical comments of Mr. Smith, and instead merely respond to brief summaries of Mr. Smith's comments contained in the legal comments of San Joaquin Residents' counsel. This approach missed the main technical points of Mr. Smith's comments. The lack of a detailed response to Mr. Smith's comments fails to comply with CEQA.<sup>17</sup>

#### **B. The FEIR Fails to Analyze Potentially Significant Health Risk Impacts**

Like the DEIR, the FEIR fails to analyze the substantial health risks posed by diesel particulate matter ("DPM") and other toxic air contaminant ("TAC") emissions from the Project. This is a clear violation of CEQA, as the DPM concentrations modeled from offsite movement of trucks along West Schulte Road, Hansen Road, and Mountain House Parkway far exceed San Joaquin Valley Air Pollution Control District's ("SJVAPCD") significance threshold for TACs.

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<sup>14</sup> *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1367, 1371; *People v. County of Kern* (1976) 62 Cal.App.3d 761, 772).

<sup>15</sup> *Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615; *Rural Landowners Association v. City Council* (1983) 143 Cal.App.3d 1013, 1020.

<sup>16</sup> 176 Cal. App. 4th at 904.

<sup>17</sup> 14 CCR § 15088(c); *People v County of Kern* (1976) 62 CA3d 761. 5199-009j

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The Responses also fail to respond over 500 pages of Dr. Clark's AERMOD modeling, in which he calculated the Project's health risks from TAC emissions in detail, disclosing that the Project has significant, unmitigated air quality impacts. The Responses inexplicably state that the County was not provided with "any calculations or supporting files for the analysis", and that, as a result, Dr. Clark's conclusions could not be verified.<sup>18</sup> In fact, the AERMOD output sheets were provided to the City on July 1, 2021, as an attachment to San Joaquin Residents' DEIR Comments.

The output from the AERMOD analysis indicates that the DPM concentrations along the transportation corridors would exceed a concentration of 1 ug/m<sup>3</sup>.<sup>19</sup> Additionally, the HARP2 analysis shows that the DPM concentrations on site result in a 100 in 1,000,000 cancer risk for workers (a concentration of 1.6159 ug/m<sup>3</sup>) and the concentration of DPM at the closest residence to the northeast of the Project site is 0.167 ug/m<sup>3</sup> equal to a cancer risk of 148 in 1,000,000 for a resident.<sup>20</sup> We have attached Dr. Clark's HARP2 analysis for the County's review.<sup>21</sup> Dr. Clark has provided the output files from the HARP2 analysis so that the County can verify that the health risk from the project exceeds the SJVAPCD 10 in 1,000,000 threshold.

The City's assertion that it was "unable to review" Dr. Clark's calculations or respond to them is entirely unsupported, and demonstrates the County's failure to meaningfully review Residents' DEIR comments. The County's failure to respond to this significant comment is fatal.<sup>22</sup>

The County's failure to respond to San Joaquin Residents' expert comments is comparable to the errors made by the City of Carmel in *Flanders Foundation*.<sup>23</sup> In that case, a city prepared an FEIR for a project involving the sale of a city-owned historic property surrounded by city-owned parkland. Its DEIR had proposed a conservation easement to mitigate for the loss of city parkland. Comments

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<sup>18</sup> FEIR, p. 2-483, RTC 5-22.

<sup>19</sup> Clark Comments, Exhibit A.

<sup>20</sup> Clark Comments, Exhibit B.

<sup>21</sup> Clark Comments, Exhibit B.

<sup>22</sup> *Environmental Protection Info. Ctr. v Department of Forestry & Fire Protection* (2008) 44 C4th 459, 483, 487 (Failure to provide specific response to a comment not fatal only if the response would be cumulative to other responses); see *Twain Harte Homeowners Ass'n v County of Tuolumne* (1982) 138 CA3d 664.

<sup>23</sup> *Flanders Foundation*, 202 Cal.App.4th at 609. 5199-009j

submitted on the *Flanders* DEIR recommended an alternative of selling the residence with a smaller lot in order to mitigate the potentially significant impacts from the loss of city park space. However, the FEIR failed to provide a substantive response to this comment, and instead merely reiterated the city's reliance on the same conservation easement that had been originally proposed in the DEIR as "sufficient mitigation."<sup>24</sup> Both the trial court and the Court of Appeal held that Carmel's response was legally inadequate because it had ignored the commenter's observation that a reduction in the size of the parcel would mitigate an environmental impact of the project.<sup>25</sup>

Similarly here, the Responses fail entirely to respond to Dr. Clark's comments documenting significant air quality impacts, and fail to respond to Mr. Smith's comments and explain whether or not the County actually considered the traffic mitigation proposed by Mr. Smith. These are patently inadequate responses which fail to meet the clear legal standard articulated in the CEQA Guidelines. As the *Flanders Foundation* court explained:

Since the proposed project would have an unmitigated significant environmental impact by eliminating parkland, the comment's suggestion reasonably questioned whether that impact could be reduced by reducing the size of the parcel. The City's obligation under CEQA was to explain in the FEIR "*in detail giving reasons why*" the City was not considering the sale of the residence with a reduced parcel. The City made no effort to satisfy its obligation....The City's failure to respond to this significant comment violated its duty under CEQA, and the trial court correctly found that the City's certification of the FEIR was therefore invalid.<sup>26</sup>

The Responses fail to respond to Residents' comments on the Project's significant air quality impacts documented in our comments on the DEIR. Dr. Clark concludes that the Project, as approved, ensures that construction workers could be exposed to highly significant concentrations of toxic contaminants, workers at the Logistics Center would be exposed to high levels of air toxins, and community members would be exposed to unacceptable risks from emissions associated with the project. This is a violation of CEQA, and demonstrates that the County's approval findings are not supported by the record.

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<sup>24</sup> *Flanders Foundation*, 202 Cal.App.4th at 609.

<sup>25</sup> *Id.* at 615-616.

<sup>26</sup> *Id.* at 616-17.

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The County must approve this appeal and remand the Project to staff to revise and recirculate the DEIR to correct these errors and ensure that these significant impacts are properly addressed.

**C. The FEIR Fails to Adequately Mitigate Significant Greenhouse Gas Emissions**

The County's analysis of the GHG impacts in the DEIR concluded that the Project will result in a significant and unavoidable impact from operational GHG emissions. As explained in our DEIR Comments, this conclusion is not supported by the evidence and the County is unable to adopt a statement of overriding considerations because the County failed to include all feasible mitigation to reduce GHG impacts to the greatest extent feasible.<sup>27</sup>

In response, the County states:

CEQA does not require adoption of every imaginable feasible mitigation measure. CEQA's requirement applies only to feasible mitigation that will "substantially lessen" a project's significant effects. (Public Resources Code, § 21002.) As explained by one court: A lead agency's "duty to condition project approval on incorporation of feasible mitigation measures only exists when such measures would [avoid or] 'substantially lessen' a significant environmental effect." (San Franciscans for Reasonable Growth v. City and County of San Francisco (1989) 209 Cal.App.3d 1502, 1519.) "Thus, the agency need not, under CEQA, adopt every nickel and dime mitigation scheme brought to its attention or proposed in the project EIR." (Ibid.) Rather, an EIR should focus on mitigation measures that are feasible, practical, and effective. (Napa Citizens for Honest Government v. Napa County Board of Supervisors (2001) 91 Cal.App.4th 342, 365.).<sup>28</sup>

This response is contrary to the Court of Appeal's holding in *Covington v Great Basin Air Pollution Control District*, which held that, before an impact can be declared significant and unavoidable, the lead agency must first adopt all feasible

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<sup>27</sup> 14 CCR § 15091.

<sup>28</sup> FEIR, p. 2-491, RTC 5-43.  
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mitigation to reduce the impact to the greatest extent feasible, **and** must consider feasible mitigation recommended by commenters, when, as here, such measures would substantially lessen a significant environmental effect.<sup>29</sup>

The FEIR also contradicts itself in a following Response stating: “[d]ue to the lack of Project-specific information, ***the effectiveness from measures AQ-1 and AQ-2 could not be quantified***”<sup>30</sup> and concludes that “the Draft EIR’s analysis is adequate as presented.”<sup>31</sup> This response admits that the County has not evaluated the effectiveness of the Project’s existing mitigation measures which means that the County cannot conclude that the measures would “substantially lessen the significant GHG emissions impacts from the Project. The County’s failure to evaluate effective mitigation violates CEQA.

In his comments, Dr. Clark proposes a list of feasible mitigation measures the County could implement to reduce the Project’s impact from GHGs, including:

1. Include contractual language in tenant lease agreements that requires tenants to use the cleanest technologies available, and to provide the necessary infrastructure to support zero-emission vehicles and equipment that will be operating on site.
2. Include contractual language in tenant lease agreements that requires all TRUs entering the project site be plug-in capable.
3. Include contractual language in tenant lease agreements that requires future tenants to exclusively use zero-emission light and medium-duty delivery trucks and vans.
4. Include contractual language in tenant lease agreements requiring all TRUs, trucks, and cars entering the Project site be zero-emission.
5. Include contractual language in tenant lease agreements that requires all heavy-duty trucks entering or on the project site to be model year 2019 or later, expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2030.
6. Include contractual language in tenant lease agreements that requires the tenant be in, and monitor compliance with, all current air quality regulations for on-road trucks including CARB’s Heavy-Duty (Tractor-Trailer)

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<sup>29</sup> *Covington v GBUAPCD* (2019) 43 Cal.App.5th 867, 879-883.

<sup>30</sup> FEIR, p. 2-491, RTC 5-47. (emphasis added)

<sup>31</sup> *Ibid.*

Greenhouse Gas Regulation,<sup>32</sup> Periodic Smoke Inspection Program (PSIP),<sup>33</sup> and the Statewide Truck and Bus Regulation.<sup>34</sup>

7. Include contractual language in tenant lease agreements restricting trucks and support equipment from idling longer than five minutes while on site.
8. Include rooftop solar panels for each proposed warehouse to the extent feasible, with a capacity that matches the maximum allowed for distributed solar connections to the grid.
9. Have truck routes clearly marked with trailblazer signs, so that trucks will not enter residential areas.
10. Limit the daily number of trucks allowed at the Proposed Project to levels analyzed in the CEQA document. If higher daily truck volumes are anticipated to visit the site, the Port as the Lead Agency should commit to re-evaluating the Proposed Project through CEQA prior to allowing this land use or higher activity level.
11. Ensure that any check-in point for trucks is well inside the Proposed Project site to ensure that there are no trucks queuing outside of the facility.
12. Establish overnight parking within the industrial building where trucks can rest overnight.
13. Establish area(s) within the Proposed Project site for repair needs.<sup>35</sup>

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<sup>32</sup> In December 2008, CARB adopted a regulation to reduce greenhouse gas emissions by improving the fuel efficiency of heavy-duty tractors that pull 53-foot or longer box-type trailers. The regulation applies primarily to owners of 53-foot or longer box-type trailers, including both dry-van and refrigerated-van trailers, and owners of the heavy-duty tractors that pull them on California highways. CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation is available at: <https://www.arb.ca.gov/cc/hdghg/hdghg.htm>.

<sup>33</sup> The PSIP program requires that diesel and bus fleet owners conduct annual smoke opacity inspections of their vehicles and repair those with excessive smoke emissions to ensure compliance. CARB's PSIP program is available at: <https://www.arb.ca.gov/enf/hdvp/hdvp.htm>.

<sup>34</sup> The regulation requires that newer heavier trucks and buses must meet particulate matter filter requirements beginning January 1, 2012. Lighter and older heavier trucks must be replaced starting January 1, 2015. By January 1, 2023, nearly all trucks and buses will need to have 2010 model year engines or equivalent. CARB's Statewide Truck and Bus Regulation is available at: <https://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm>

<sup>35</sup> Clark Comments, pp. 4-5.  
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Finally, Dr. Clark states that the County should consider entering into a Voluntary Emissions Reduction Agreement (“VERA”) with the SJVAPCD.<sup>36</sup> VERAs have been used in other large projects in the SJVAPCD as a mitigation measure to reduce NOx.<sup>37</sup> Since the primary source of NOx emissions from the Project are associated with heavy and medium-duty trucks utilizing the Project site, the County should enter into a VERA to fund grants to businesses to purchase new cleaner emitting trucks.<sup>38</sup> Dr. Clark cautions that as a condition of the VERA grant, the County must include contractual language that the trucks purchased would be primarily used at the Project site, otherwise purchases of vehicles without the restriction to the Project site would do little to ensure that emissions from the Project Site are offset by the VERA grant.<sup>39</sup>

The County failed to consider feasible mitigation measures that would substantially lessen the Project’s significant effects. Furthermore, as discussed above, the County admits that the mitigation measures proposed cannot be evaluated for their effectiveness but concludes nevertheless that they will be effective. The County’s logic is fatally flawed and cannot be used as justification for the County’s conclusion that the FEIR adequately addressed the Project’s significant GHG emissions impacts.

**D. The FEIR Fails to Analyze Potentially Significant Transportation Impacts**

The FEIR largely failed to consider and respond to Mr. Smith’s comments on the DEIR. Mr. Smith’s detailed comments on the DEIR are responded to in Responses 5-119 through 5-135.<sup>40</sup> As Mr. Smith notes in his comments on the FEIR, the County’s principal tactic in the Responses is to respond to the summarization of his comments by Residents’ attorneys and then to reply to his actual detailed comment by reference to the response to the summarization of them or by reference to Responses to other commenters. The County’s tactics allow the FEIR to evade responding to the reasoning and evidence supporting Mr. Smith’s comments.

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<sup>36</sup> Clark Comments, p. 3.

<sup>37</sup> Clark Comments, p. 3.

<sup>38</sup> Clark Comments, p. 3.

<sup>39</sup> Clark Comments, p. 3.

<sup>40</sup> FEIR, pp. 2-509 – 2-512.

Mr. Smith's comments on the DEIR provided sound reasoning that the Project is suited for high cube warehouse operations which have several times the daily and peak hour trip generation than that of general high cube transfer warehouse uses and the general warehouse trip rates that were analyzed in the DEIR. Those much more traffic-intense uses include high cube parcel hub warehouse and high cube e-commerce fulfillment center.<sup>41</sup> The County's response to Mr. Smith's comments is done by way of reference to a response to Residents' comment letter – Responses 5-63, 5-64 and 5-65 – which do not adequately address Mr. Smith's comments. The County's evasion results in a failure to consider the full range of transportation impacts, and by extension, the full range of air quality and GHG emissions impacts.<sup>42</sup>

Response 5-63 cites a statement from the DEIR Project Description section: "Although the future occupants of the Project are unknown at this time, the buildings would be used for light warehousing and distribution uses as defined by the County of San Joaquin Ordinance Code (Section 9-115.585), which is most commonly warehouse and distribution operations."<sup>43</sup> The Response continues reciting some of the uses that are permissible under the Ordinance.<sup>44</sup> However, the FEIR provides no evidence that the much more traffic intense high cube parcel hub and high cube e-commerce fulfillment center warehouse uses are not permissible under the ordinance.

Response 5-64 states that it would be "it would be speculative to evaluate all of the other types of more-intense uses that could occupy the space".<sup>45</sup> Additionally, the FEIR attempts to rationalize this statement by stating that because the information on these high traffic intensity warehouses is based on small numbers of studies, it cannot be trusted.<sup>46</sup> The statement that it is too speculative to presume the project would be occupied by the high traffic intensity warehouse uses cuts both ways. As Mr. Smith explains in his comments, it is equally speculative for the

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<sup>41</sup> Smith Comments, p. 2.

<sup>42</sup> FEIR, p. 2-509, RTC 5-120.

<sup>43</sup> FEIR, p. 2-496, RTC 5-63.

<sup>44</sup> *Ibid.*

<sup>45</sup> FEIR, p. 2-497, RTC 5-64.

<sup>46</sup> *Ibid.*

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County to presume the project would be occupied by low traffic intensity warehouse uses.<sup>47</sup> Furthermore, Mr. Smith states that there is a strong possibility that the Project could be occupied by actual uses that have radically different traffic intensities.<sup>48</sup>

The second portion of the County's response states that the *Trip Generation* reference source cited by Mr. Smith relies on a relatively small data sample size in an attempt to mislead the reader. As Mr. Smith explains in his comments, subsequent to the publication of the *Trip Generation Manual* there has been an enormous proliferation of high cube parcel hub and high cube e-commerce fulfillment center warehouse development.<sup>49</sup> Case studies of these newer facilities do not contradict the findings of enormous disparity of the traffic intensity of these high cube warehouse types and that of conventional warehouse uses.<sup>50</sup>

Finally, Response 5-65 only references Responses 5-63 and 5-64, therefore it offers no additional justification for the County's position.

The County's Responses fail to respond to Residents' and Mr. Smith's comments on reasonably foreseeable uses of the Project that would result in significantly higher traffic from the Project, the DEIR thus fails to "reflect a good faith effort at full disclosure" as is required by CEQA.<sup>51</sup>

#### **E. The FEIR Fails to Adequately Mitigate Significant Transportation Impacts**

Residents and Mr. Smith also provided comments on the DEIR's reliance on the *draft* of San Joaquin County's Vehicle Miles Travelled ("VMT") Thresholds Study ("Daft Study") to show that the Project is in a low VMT area and therefore does not require further VMT analysis.<sup>52</sup> In response, the FEIR confirms that the VMT significance thresholds relied upon in the DEIR remain unadopted and fails to respond to the fact that the Draft Study includes a disclaimer stating that the data contained in the Draft Study is not to be relied on to make decisions by any

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<sup>47</sup> Smith Comments, p. 3.

<sup>48</sup> Smith Comments, p. 3.

<sup>49</sup> Smith Comments, p. 3.

<sup>50</sup> Smith Comments, p. 3.

<sup>51</sup> CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

<sup>52</sup> Smith Comments, p. 3.

agency.<sup>53</sup> While CEQA provides the County with discretion to select a significance threshold, any threshold relied upon must be supported by substantial evidence.<sup>54</sup> The County's Draft VMT thresholds are still being developed, and clearly state that they are not ready to be relied upon for significance determinations. The thresholds may be changed prior to adoption based on substantial evidence considered during the adoption process. The County therefore lacks substantial evidence to support its reliance on the Draft Study, rendering its VMT significance conclusions equally unsupported.

Additionally, the County fails to respond to our comment that the VMT predicted in the San Draft Model for the Project's Traffic Analysis Zone ("TAZ") as reported in the DEIR is much lower than the average for the zones in the immediate area and appears to be an anomaly in the model.<sup>55</sup> The County's response fails to justify the "extreme deviation" from the average for the general area.<sup>56</sup>

Finally, in response to Mr. Smith's comment that the DEIR's VMT analysis is inaccurate and unsupported, the County falls back on the County's Draft Study to justify the counterintuitive results in the DEIR. The County's lack of a coherent response and reliance on the Draft Study without justification fails to address Residents' and Mr. Smith's substantive comments on the DEIR.

The FEIR also fails to respond to comments that Project operation would cause significant impacts relative to certain pollutants and that the transportation-related mitigation measures it proposes for those impacts are unrealistic considering the location and nature of the Project and its site.

As detailed in his comments, Mr. Smith states that had the DEIR considered the more traffic intense potential Parcel Hub and Fulfillment Center uses of the proposed high cube warehouse building, not only would the significant air quality impacts in regard to certain pollutants that the DEIR does disclose become more severe.<sup>57</sup> Furthermore, Mr. Smith also demonstrated mathematically that impacts to specific pollutants that the DEIR found not significantly impacted in its analysis would become significantly impacted.<sup>58</sup> In response, the FEIR falls back on its

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<sup>53</sup> FEIR, p. 2-497, RTC 5-66.

<sup>54</sup> 14 CCR § 15064.7(c).

<sup>55</sup> FAIR, p. 2-497, RTC 5-67.

<sup>56</sup> Smith Comments, p. 4.

<sup>57</sup> Smith Comments, p. 6.

<sup>58</sup> Smith Comments, p. 6.

previous statement that the impact analysis based on low-intensity warehouse use is appropriate, again failing to account for the fact that higher intensity uses are not precluded by the County Code.<sup>59</sup>

The FEIR fails to respond to comments that the mitigation measures requiring incentives to pedestrian and bicycle travel will be ineffective. Mr. Smith states that because there is a large unpopulated mountainous range to the northwest, west southwest and south that separates the Project site from populous areas farther west – by 11.5 miles directly west, more to the northwest, southwest and south. This fact led Mr. Smith to conclude that any travel between populated areas west of this unpopulated mountain area will be by motor vehicle thereby rendering any bicycle or pedestrian commute incentives useless.<sup>60</sup>

In response, the FEIR points out that the Project would improve Schulte Road along its frontage to County standards with curb, gutter and sidewalk.<sup>61</sup> However, as Mr. Smith observes, improvements to the Project's frontage will not change the fact that people living within reasonable bicycling or walking commute distance from the project site would have to bike or walk along considerable lengths of Schulte Road, Lammers Road, Hansen Road, Western Pacific Way or Valpico Road that have either no bikeable and walkable shoulders or have only marginal shoulders often obstructed by broken pavement, road debris and vegetation.<sup>62</sup>

The FEIR also states, "Additionally, existing Class III Bike Route between Hansen Road and Lammers Road exist."<sup>63</sup> While it is true that there is a maintenance road along the east side of the San Luis Delta-Mendota Waterway between Hansen Road and Lammers Road to which bicyclists and pedestrians have access, the statement is misleading because this facility does not service the Project site, being separated from it by private property and a rail and pipe line.<sup>64</sup> Commuters would still have to use significant sections of Lammers, Hansen and Schulte that have no viable bikeable and walkable shoulders to access the Project site.<sup>65</sup>

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<sup>59</sup> Smith Comments, p. 6.

<sup>60</sup> Smith Comments, p. 7.

<sup>61</sup> FEIR, p. 2-510, RTC, 5-128.

<sup>62</sup> Smith Comments, p. 7.

<sup>63</sup> FEIR, p. 2-510, RTC, 5-128.

<sup>64</sup> Smith Comments, p. 7.

<sup>65</sup> Smith Comments, p. 7.

Mr. Smith's comments provide additional rationale why the provisions of MM-AQ-1 said to reduce emissions by reducing VMT through incentives for commuting by bicycling or on foot will be ineffective, including the following:

- a) severe summer heat in the area and fall/winter/spring rain, cold, dense 'valley fog' and high winds make commuting or walking or bike an irregular event taking place only in the most favorable conditions and only for people with the very shortest commutes,
- b) logistics warehouses normally operate on a 2 shifts or round-the-clock 3-shift basis. Persons whose shifts either begin or end in hours of darkness are highly unlikely to commute by biking or walking, especially since most of the roads connecting residential areas to the Project site have no street lighting,
- c) to the limited extent that commuting by bike or walking is induced, it will only occur among employees making the very shortest trips. Hence, it will not meaningfully reduce the aggregate VMT generated and consequently it will not reduce aggregate pollutant emissions.<sup>66</sup>

The FEIR responds to these comments by stating that "A good faith effort to develop operational mobile source mitigation was provided instead of requiring no mitigation due to infeasibility understanding that mobile source mitigation for warehouse land uses is challenging."<sup>67</sup> Additionally, the FEIR states that "The effectiveness from MM-AQ-1 were not quantified in the mitigated operational emissions."<sup>68</sup> This response admits that the County has not been able to reduce the Project's VMT impacts and are not able to quantify the reductions in VMT that would result from the mitigation measures. The FEIR's response to Mr. Smith's comments exposes the fact that the County has failed to develop effective mitigation for the Project's significant transportation and air quality impacts.

Finally, in response to Residents' and Mr. Smith's comments that the TDM program's ridesharing and ride-matching incentives will not be effective, the FEIR again states that "A good faith effort to develop operational mobile source mitigation was provided instead of requiring no mitigation due to infeasibility understanding that mobile source mitigation for warehouse land uses is

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<sup>66</sup> Smith Comments, p. 7.

<sup>67</sup> FEIR, p. 2-511, RTC 5-133.

<sup>68</sup> FEIR, p. 2-511, RTC 5-133.  
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challenging.”<sup>69</sup> Which, as above, is rightfully interpreted to mean that no meaningful mitigation through TDM is feasible. As Mr. Smith points out, this response is inadequate and an attempt to mislead the public. Mr. Smith and Residents maintain that the only meaningful way to reduce employee VMT for the Project is to reduce the size of the Project and with that reduction, reduce the necessary workforce generated VMT.

**F. The Development Department Abused Its Discretion By Approving the Project’s Site Approval Permit**

As outlined in Residents’ comments on the DEIR, the County’s Site Approval process is set forth in the County Code.<sup>70</sup> The County Code explains that Site Approvals are subject to specific findings prior to approval.<sup>71</sup> In order for the Development Department to approve the Site Approval application the County was required to make the following five findings:

1. **Consistency.** The proposed use is consistent with the goals, policies, standards, and maps of the General Plan, any applicable Master Plan, Specific Plan, and Special Purpose Plan, and any other applicable plan adopted by the County;
2. **Improvements.** Adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, and the proposed improvements are properly related to existing and proposed roadways;
3. **Site Suitability.** The site is physically suitable for the type of development and for the intensity of development;
4. **Issuance Not Detrimental.** Issuance of the permit will not be significantly detrimental to the public health, safety, or welfare, or be injurious to the property or improvements of adjacent properties; an
5. **Compatibility.** The use is compatible with adjoining land uses.<sup>72</sup>

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<sup>69</sup> FEIR, p. 2-511, RTC 5-134.

<sup>70</sup> San Joaquin Code §9-818.

<sup>71</sup> San Joaquin Code §9-818.6.

<sup>72</sup> San Joaquin Code §9-818.6  
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## I. CONCLUSION

For the reasons stated herein, San Joaquin Residents urges the Planning Commission to uphold this appeal of the Project and overturn the approval of the Project. The County must remedy all substantial defects in the FEIR, and in the Project as a whole, before the Project may be presented to the County's decision-making body for approval.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Kevin Carmichael".

Kevin T. Carmichael

KTC:ljl

Exhibits



# APPLICATION – APPEAL OF STAFF ACTION

## SAN JOAQUIN COUNTY COMMUNITY DEVELOPMENT DEPARTMENT

FILE NUMBER: - PA-1900208 (AP, SA)

**TO BE COMPLETED BY THE APPLICANT PRIOR TO FILING THE APPLICATION**

APPLICANT INFORMATION

Name: San Joaquin Residents for Responsible Development c/o Kevin Carmichael, Adams Broadwell Joseph & Cardozo  
 Address: 520 Capitol Mall, Suite 350,  
 Sacramento, CA 95814  
 Phone: 916-444-6201

BASIS FOR APPEAL

Action being appealed: Site Approval No. PA-1900208

Date of Staff action: **February 28, 2022**

State the basis of the appeal. List any findings of fact made by the staff which you feel were wrong and your reasons:

Please see attached letter.

List any condition(s) and or findings being appealed and give reasons why you think it should be modified or removed:

Please see attached letter.

SIGNATURE

Signature: *Kevin Carmichael*

Date: March 10, 2022

STAFF USE ONLY

Remarks:

Date appeal filed:

Fee:

Receipt No:

Appeal Accepted by: