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Via Electronic Submission

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Re: Planning Commission Agenda Item PH-A: Fontana Square Project (Master Case No. 20-083); Initial Study/Mitigated Negative Declaration

Dear Chair Fort, Commissioners and Mr. Quinanilla:

We are writing on behalf **Californians Allied for a Responsible Economy (“CARE CA”)** to provide comments to the Planning Commission on agenda item PH-A¹, the Fontana Square Project (“Project”), Master Case No. 20-083; Tentative Parcel Map No. 20464 (TPM No. 20-021); Conditional Use Permit No. 20-025; Conditional Use Permit No. 22-018; Conditional Use Permit No. 22-019; Conditional Use Permit No. 22-028; Design Review Project No. 20-031; Variance No. 22-001; and the Initial Study/Mitigated Negative Declaration (“MND”) prepared by the City of Fontana (“City”) for the Project.² The Project is proposed by Jinder Singh (“Applicant”).

¹ City of Fontana, Planning Commission, Agenda Item PH-A (January 17, 2023) available at <https://fontana.legistar.com/LegislationDetail.aspx?ID=5990628&GUID=0B5964C3-BCB3-4F2D-871B-39296A0756C7&Options=&Search=>

² City of Fontana, Fontana Square Project, Initial Study/Mitigated Negative Declaration (hereinafter “MND”) (December 2022) available at <https://www.fontana.org/DocumentCenter/View/40634/Fontana-Square-Project-Public-Draft-Initial-Study-Mitigated-Negative-Declaration>
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The Project is located at 16014 South Highland Avenue, south of State Route 210 (“SR 210”), north of South Highland Avenue, west of Catawba, and east of Citrus Avenue, in the City of Fontana assessor parcel numbers (“APN”) 0228-301-01 through -08, 0228-310- 20, -21, -22, -23, 0228-310-33 through -49, - 51, and 52.³

The Project proposes the construction of a banquet hall (“Development A”), a Holiday Inn Express Hotel & Suite and a Staybridge Suites (“Development B”), a convenience (“C-Store”)/Restaurant (“Development C”), and an In-N-Out Burger (“Development D”).⁴ The establishments would be generally located closer to the northern property boundary with most of the vehicle parking stalls along S. Highland Avenue, Citrus Avenue.⁵ Parking is also provided throughout the site and between the various establishments.⁶

This hearing is premature and in violation of the California Environmental Quality Act⁷ (“CEQA”) because the public comment period for the MND is still ongoing and the MND fails to meet CEQA’s requirements to disclose and mitigate the Project’s potentially significant impacts. As discussed herein, based upon our preliminary review of the MND and supporting documentation, we conclude that the MND fails to comply with the requirements of CEQA. The MND fails to identify the Project’s potentially significant environmental impacts and fails to propose enforceable measures that can reduce those impacts to a less than significant level, as required by CEQA. Due to the MND’s inadequacies, there is more than a fair argument that the Project will result in potentially significant, unmitigated impacts relating to air quality, public health, GHG, noise, and public safety. The City may not approve the Project until it prepares an environmental impact report (“EIR”) that adequately analyzes the Project’s potentially significant direct, indirect and cumulative impacts, and incorporates all feasible mitigation measures to avoid or minimize these impacts.

As the decision maker for the Project’s entitlements,⁸ the Planning Commission has a duty to consider the Project’s CEQA document, together with any comments received during the public review process, before approving the Project.⁹ The Commission also has a duty to certify a legally adequate CEQA document for

³ MND, p. 4.

⁴ MND, p. 5.

⁵ MND, p. 5.

⁶ MND, p. 5.

⁷ Pub. Resources Code, §§ 21000 et seq.; 14 Cal. Code Regs. (“C.C.R”) §§ 15000 et seq. (“CEQA Guidelines”).

⁸ Fontana Municipal Code (“FMC”) §§ 30-120, 30-150.

⁹ 14 Cal. Code Regs. § 15074(b).

the Project,¹⁰ and may not approve the Project's other entitlements if the Project has significant, unmitigated environmental or public health and safety impacts.¹¹ CARE CA urges the Planning Commission to continue this hearing to a later date to allow the Commission adequate time to consider public comments on the MND, and to prepare a legally adequate EIR for the Project.¹²

We prepared these comments with the assistance of air quality and hazards experts James Clark, Ph.D., of Clark and Associates, and Derek Watry of Wilson-Ihrig. Dr. Clark's technical comments and curricula vitae are attached hereto as **Attachment A**.¹³ Mr. Watry's technical comments and curricula vitae are attached hereto as **Attachment B**.¹⁴

I. STATEMENT OF INTEREST

CARE CA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental impacts of the Project. The coalition includes Fontana residents Juan Devora, Albert Garcia, and Ruben Sanchez, the **District Council of Ironworkers, Southern California Pipe Trades DC 16**, along with their members, their families, and other individuals who live and work in and around the City of Fontana.

CARE CA advocates for protecting the environment and the health of their communities' workforces. CARE CA seeks to ensure a sustainable construction industry over the long-term by supporting projects that offer genuine economic and employment benefits, and which minimize adverse environmental and other impacts on local communities. CARE CA members live, work, recreate, and raise their families in the City of Fontana and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

¹⁰ Pub. Resources Code §§ 21002;

¹¹ See e.g. FMC § 30-150(3).

¹² We reserve the right to supplement these comments at later hearings and proceedings on the Project. Gov. Code § 65009(b); Pub. Resources Code § 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.

¹³ **Attachment A**: Letter from James Clark ("Clark Comments").

¹⁴ **Attachment B**: Letter from Derek Watry ("Watry Comments")

In addition, CARE CA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

II. THE PLANNING COMMISSION HEARING IS PREMATURE

This hearing is premature and in violation of CEQA because the public comment period for the MND is still open, and the Planning Commission will not have adequate opportunity to consider all public comments and correct the deficiencies in the City's CEQA document before being asked to approve the Project.

CEQA requires the lead agency to receive and consider all public comments received on the MND.¹⁵ The purpose of the public comment period is to foster public participation.¹⁶ CEQA Guidelines § 15074(b) states:

Prior to approving a project, the decision-making body of the lead agency shall consider the proposed negative declaration or mitigated negative declaration ***together with any comments received during the public review process.*** The decision-making body shall adopt the proposed negative declaration or mitigated negative declaration ***only if it finds on the basis of the whole record before it (including the initial study and any comments received)***, that there is no substantial evidence that the project will have a significant effect on the environment and that the negative declaration or mitigated negative declaration reflects the lead agency's independent judgment and analysis.¹⁷

The Planning Commission is the decision maker for the Project's entitlements, and is therefore the decision making body charged with considering public comments on the CEQA document before approving the Project.¹⁸ Holding a Planning Commission meeting to consider and approve the Project before the City has reviewed and responded to these comments on the MND would be a violation of

¹⁵ 14 Cal. Code Regs. § 15074(b).

¹⁶ 14 Cal. Code Regs § 15201.

¹⁷ 14 Cal. Code Regs. § 15074(b) (emphasis added).

¹⁸ *Id.*; FMC §§ 30-120, 30-150.

CEQA. The Notice of Intent to adopt the MND does not set a cutoff time for submission of public comments on January 17, indicating that comments may be submitted anytime of the day or evening. The Planning Commission hearing is scheduled for 6:00 p.m. during the last day of the public comment period. The hearing therefore occurs before the close of the MND public comment period and may preclude the Planning Commission from considering all comments received on the MND and from exercising independent judgement and analysis in approving the Project, as required by CEQA.

The City must continue the Planning Commission hearing to a later date after the City has had an opportunity to evaluate these, and any other comments from the public on the MND. This would allow for meaningful participation by the public and the detailed consideration of the Project's environmental impacts that CEQA requires.

III. THE CITY FAILED PROVIDE TIMELY ACCESS TO DOCUMENTS INCORPORATED BY REFERENCE IN THE MND

The City violated CEQA and improperly truncated the MND public comment period by failing to make all documents referenced or relied on in the MND available for public review during the public comment period. As a result, CARE CA was unable to complete its review and analysis of the MND and its supporting evidence during the current public comment period. Our request for a further extension was not acknowledged by the City and therefore effectively denied.

CEQA requires that “all documents referenced in the... negative declaration are available for review” and readily accessible during the entire comment period. The courts have held that the failure to provide even a few pages of a CEQA document for a portion of the CEQA public review period invalidates the entire CEQA process, and that such a failure must be remedied by permitting additional public comment.

On January 4, 2023, CARE CA submitted a letter to the City, pursuant to CEQA Section 21092(b)(1), requesting “***immediate access to any and all documents referenced or relied upon***” in the MND (emphasis added) (“CEQA Request”).¹⁹ Subsequently, on January 12, 2023 we submitted a request to extend the public review and comment period for the MND and identified specific MND

¹⁹ Letter from Adams, Broadwell, Joseph & Cardozo (“ABJC”) re Request for Immediate Access to Documents Referenced in the Mitigated Negative Declaration for the Fontana Square Project (January 4, 2023).
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reference documents and records that were not released by the City with the MND, were not available online, and were not made available to CARE CA upon request.²⁰ To date, the City has not responded to our request.

The courts have held that the failure to provide even a few pages of a CEQA documents for a portion of the CEQA review period invalidates the entire CEQA process, and that such a failure must be remedied by permitting additional public comment.²¹ It is also well settled that an MND may not rely on hidden studies or documents that are not provided to the public.²² By failing to make all documents referenced in the MND “readily available” during the current comment period, the City has violated the clear procedural mandates of CEQA, to the detriment of CARE CA and other members of the public who wish to meaningfully review and comment on the MND.

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

IV. AN EIR IS REQUIRED

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR. “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR protects not only the environment, but also informed self-government.” The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”

CEQA’s purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances. CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the “fair argument” standard. Under that standard, a lead agency “shall” prepare

²⁰ Letter from ABJC re Request to Extend the Public Review and Comment Period for the Mitigated Negative Declaration and Continue the Planning Commission Hearing – Fontana Square Project (Master Case No. 20-083) (January 12, 2023).

²¹ *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

²² *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 (“Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.”).

an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.

In contrast, a mitigated negative declaration may be prepared only when, after preparing an initial study, a lead agency determines that a project may have a significant effect on the environment, but: (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

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

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

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

Furthermore, CEQA documents, including EIRs and MNDs, must mitigate significant impacts through measures that are “fully enforceable through permit conditions, agreements, or other legally binding instruments.” Deferring formulation of mitigation measures to post-approval studies is generally impermissible. Mitigation measures adopted after Project approval deny the public

the opportunity to comment on the Project as modified to mitigate impacts. If identification of specific mitigation measures is impractical until a later stage in the Project, specific performance criteria must be articulated and further approvals must be made contingent upon meeting these performance criteria. Courts have held that simply requiring a project applicant to obtain a future report and then comply with the report's recommendations is insufficient to meet the standard for properly deferred mitigation.

With respect to this Project, the MND fails to satisfy the basic purposes of CEQA. The City failed to adequately investigate, analyze, and disclose the Project's potentially significant air quality, health risk, health hazards and noise impacts. Therefore, the City's conclusions that the Project will have less than significant air quality, public health and noise impacts are unsupported. Whereas the City lacks substantial evidence to support its conclusions, Dr. Clark and Mr. Watry provide substantial evidence that the Project may result in potentially significant public health, air quality and noise impacts from construction and operation. Therefore, there is a fair argument the Project may cause significant impacts requiring the preparation of an EIR.

V. THE MND FAILS TO INCLUDE A COMPLETE PROJECT DESCRIPTION

The MND does not meet CEQA's requirements because it fails to include a complete project description, rendering the entire analysis inadequate. Without a complete project description, the environmental analysis under CEQA will be impermissibly narrow, thus minimizing the Project's impacts and undercutting public review.²³

CEQA places the burden of environmental investigation on the lead agency rather than the public. Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.²⁴ CEQA Guidelines Section 15071 requires that an MND accurately describe the project and its location and boundaries.²⁵ California courts have repeatedly held that "an accurate, stable and finite project description is the sine qua non of an informative and legally sufficient [CEQA document]."²⁶ In contrast, an inaccurate or incomplete project description renders the analysis of environmental impacts inherently unreliable. Without a

²³ See, e.g., *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376.

²⁴ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

²⁵ 14 Cal. Code Regs. § 15071(a), (b) (hereafter "CEQA Guidelines").

²⁶ *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 193.

complete project description, the environmental analysis under CEQA will be impermissibly narrow, thus minimizing the project's impacts and undercutting public review.²⁷

A. The MND Fails to Identify All Nearby Sensitive Receptors

The MND states that the nearest sensitive receptors to the Project site are the single-family residences located 105 feet (32 meters) to the south of the Project on the opposite side of South Highland Avenue.²⁸ This is incorrect. The MND fails to identify a residence located immediately adjacent to the Project site above the Sunrise Market located at 15911 Highland Avenue. A listing for sale on Loopnet.com states that the property at 15911 Highland Avenue includes a three-bedroom apartment above the convenience store.²⁹ The City's failure to identify sensitive receptors residing at this location results in a failure to identify noise and air quality impacts on the closest residents to the Project site. The City must prepare an EIR that identifies all nearby sensitive receptors and properly analyzes the Project's potential impacts.

VI. THE MND LACKS SUBSTANTIAL EVIDENCE TO CONCLUDE THAT THE PROJECT'S HEALTH RISK IMPACTS WOULD BE LESS THAN SIGNIFICANT AND SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT IMPACTS ARE SIGNIFICANT AND UNMITIGATED

The MND's conclusion that the Project's construction and operational public health impacts from toxic air contaminant ("TAC") emissions are less than significant with mitigation is not based on substantial evidence, as required by CEQA.³⁰

First, the MND fails to quantify the Project's construction health risk, as required by CEQA, and relies on irrelevant significance thresholds. As a result, the MND lacks supporting evidence for its conclusion that the health risk posed to nearby sensitive receptors from exposure to TAC's released during Project construction would be less than significant.

²⁷ See, e.g., *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376.

²⁸ MND, p. 73.

²⁹ <https://www.loopnet.com/Listing/15911-Highland-Ave-Fontana-CA/17451352/>

³⁰ CEQA Guidelines § 15384(a).
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Second, there is substantial evidence supporting a fair argument that the Project's operational health risk is significant and unmitigated. Dr. Clark reviewed the MND and found that the MND underestimates the Project's emissions of TACs, including hazardous air pollutants ("HAPs").³¹ Dr. Clark's corrected analysis of the Project's operational air emissions demonstrates that the Project may result in significant undisclosed health risk impacts. The City must prepare an EIR to analyze and mitigate these potentially significant impacts, as required by law.

A. The MND Fails to Disclose and Analyze Potentially Significant Construction Air Quality Health Risks

The MND fails to provide support for the finding that the Project's potential construction health risks are less than significant because the MND fails to quantify the health risk posed by the Project's construction-related TAC emissions on nearby sensitive receptors. The MND also relies on an irrelevant significant threshold which addresses criteria pollutant emissions and lacks a threshold for assessing cancer risk posed by TAC exposure.

The MND states that "the maximum daily emissions of pollutants during each phase of construction would not result in significant concentrations of pollutants at nearby sensitive receptors. Significant impacts would not occur concerning LSTs [localized significance thresholds] during construction."³² Dr. Clark explains that LSTs are appropriate when determining whether a Project will generate criteria air pollutants in excess of established thresholds.³³ However, LSTs are not appropriate to determine the Project's TAC emissions.³⁴ As he explains, there are no LSTs for TACs, instead, the determination of risk from TACs must be based on a quantitative risk analysis of the Project's emissions.³⁵ The MND therefore fails to provide any analysis or substantial evidence justifying the finding of no construction health risk impact from TACs.³⁶

Dr. Clark explains that TACs, including diesel particulate matter ("DPM") which is a common construction-related air pollutant, contribute to a host of respiratory impacts and may lead to the development of various cancers and that

³¹ See Cal. Health & Safety Code §§ 39655, 39657(b) (substances which have been listed as federal hazardous air pollutants pursuant to section 7412 of Title 42 of the United States Code are TACs under California's air toxics program).

³² MND, p. 75.

³³ Clark Comments, p. 7.

³⁴ Clark Comments, p. 7.

³⁵ Clark Comments, p. 7.

³⁶ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 732. 6452-010j

brief exposures to the TACs could lead to the development of adverse health impacts over the life of an individual.³⁷ Because DPM is a TAC, it is a different air pollutant than criteria particulate matter emissions evaluated in the LSTs, such as PM10, PM2.5, and fugitive dust.³⁸

A lead agency's significance determination must be supported by accurate scientific and factual data.³⁹ An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.⁴⁰

These standards apply to an agency's analysis of public health impacts of a project under CEQA. In *Sierra Club v. County of Fresno*, the California Supreme Court affirmed CEQA's mandate to protect public health and safety by holding that an EIR fails as an informational document when it fails to disclose the public health impacts from air pollutants that would be generated by a development project.⁴¹ In *Sierra Club*, the Supreme Court held that the EIR for the Friant Ranch Project—a 942-acre master-planned, mixed-use development with 2,500 senior residential units, 250,000 square feet of commercial space, and open space on former agricultural land in north central Fresno County—was deficient as a matter of law in its informational discussion of air quality impacts as they connect to adverse human health effects.⁴² As the Court explained, “a sufficient discussion of significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact.”⁴³ The Court concluded that the County's EIR was inadequate for failing to disclose the nature and extent of public health impacts caused by the project's air pollution.

³⁷ Clark Comments, p. 7.

³⁸ Clark Comments, p. 7.

³⁹ 14 C.C.R. § 15064(b).

⁴⁰ *Kings County Farm Bureau*, 221 Cal.App.3d at 732.

⁴¹ *Sierra Club*, 6 Cal.5th at 518–522.

⁴² *Id.* at 507–508, 518–522.

⁴³ *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

As the Court explained, the EIR failed to comply with CEQA because after reading the EIR, “the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin.”⁴⁴ CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.⁴⁵

Furthermore, in *Berkeley Jets*, the Court of Appeal held that a CEQA document must analyze the impacts from human exposure to toxic substances.⁴⁶ In that case, the Port of Oakland approved a development plan for the Oakland International Airport.⁴⁷ The EIR admitted that the Project would result in an increase in the release of toxic air contaminants (“TACs”) and adopted mitigation measures to reduce TAC emissions, but failed to quantify the severity of the Project’s impacts on human health.⁴⁸ The Court held that mitigation alone was insufficient, and that the Port had a duty to analyze the health risks associated with exposure to TACs.⁴⁹ As the CEQA Guidelines explain, “[t]he EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected.”⁵⁰

Just as the Port of Oakland in *Berkeley Jets* could not get away with its failure to quantify the severity of the impacts of TACs on human health, the City here cannot neglect to fully and accurately analyze the impacts of this Project’s emissions on the health of nearby receptors.⁵¹ The City here did not even acknowledge the significance of these emissions or attempt to mitigate them, meaning that the City here has committed an even more egregious violation of CEQA.⁵²

⁴⁴ *Id.* at 518. CEQA’s statutory scheme and legislative intent also include an express mandate that agencies analyze human health impacts and determine whether the “***environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.***” (Public Resources Code § 21083(b)(3) (emphasis added).) Moreover, CEQA directs agencies to “take immediate steps to identify any critical thresholds for the ***health and safety of the people*** of the state and take all coordinated actions necessary to prevent such thresholds being reached.” (Public Resources Code § 21000(d) (emphasis added).)

⁴⁵ *Sierra Club*, 6 Cal.5th at 518–522.

⁴⁶ *Berkeley Jets*, 91 Cal.App.4th at 1369–1371.

⁴⁷ *Id.* at 1349–1350.

⁴⁸ *Id.* at 1364–1371.

⁴⁹ *Id.*

⁵⁰ 14 C.C.R. § 15003(b).

⁵¹ *Berkeley Jets*, 91 Cal.App.4th at 1364–1371.

⁵² *Id.*

The Office of Environmental Health Hazard Assessment's ("OEHHA") risk assessment guidelines are also instructive because they recommend a formal health risk assessment (quantitative health risk analysis) for short-term construction exposures lasting longer than two months, and recommend that exposures from projects lasting more than six months should be evaluated for the duration of the project.⁵³ Health risk assessments are commonly conducted to determine if a Project's construction HAP emissions would cause a significant health impact.⁵⁴ The health risk assessment quantifies pollutants other than conventional air quality pollutants, that is, other than ROG, NO_x, PM₁₀, PM_{2.5}, CO, and SO₂.⁵⁵ Construction equipment emits DPM, which is a TAC/HAP and potent carcinogen.⁵⁶

According to the MND, construction of the Project will last for up to 18 months.⁵⁷ Human exposure to construction TACs during that time period may result in a significant, increased cancer risk which the MND fails to assess.⁵⁸ This time period also exceeds OEHHA's health-based recommended two-month threshold to prepare a health risk assessment for the construction phase of the Project.

The City must prepare a detailed health risk analysis ("HRA") for Project construction and present the results of its analysis in an EIR. If the resulting cancer risk exceeds applicable thresholds of significance, additional mitigation must be required.

⁵³ Office of Environmental Health Hazard Assessment ("OEHHA"), Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments, February 2015 ("OEHHA 2015"), Section 8.2.10: Cancer Risk Evaluation of Short Term Projects, pp. 8-17/18, available at <https://oehha.ca.gov/air/crnrr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0>.

⁵⁴ Office of Environmental Health Hazard Assessment (OEHHA), Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessment, February 2015; <https://oehha.ca.gov/media/downloads/crnrr/2015guidancemanual.pdf>.

⁵⁵ Clark Comments, p. 7.

⁵⁶ Cal/EPA OEHHA and American Lung Association of California, Health Effects of Diesel Exhaust; <https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf>. See also OEHHA, Appendix A: Hot Spots Unit Risk and Cancer Potency Values, p. 1 (DPM unit risk = 3 E-4); <https://oehha.ca.gov/media/CPFs042909.pdf> and OEHHA, Diesel Exhaust Particulate; [https://oehha.ca.gov/chemicals/diesel-exhaust-particulate#:~:text=Cancer%20Potency%20Information&text=Listed%20as%20Particulate%20Emissions%20from,\(ug%2Fm3\)%20D1](https://oehha.ca.gov/chemicals/diesel-exhaust-particulate#:~:text=Cancer%20Potency%20Information&text=Listed%20as%20Particulate%20Emissions%20from,(ug%2Fm3)%20D1).

⁵⁷ MND, p. 70.

⁵⁸ Clark Comments, p. 6.
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B. The Project's Operational Cancer Risk from Vehicle Exhaust is Significant

The MND lacks an operational HRA for the Project, thereby depriving decisionmakers from determining whether the Project will result in a significant health risk to nearby sensitive receptors. Dr. Clark prepared a screening level analysis of the Project's operational cancer risk and determined that the Project will exceed the SCAQMD threshold of significance for cancer risk, which finds a significant impact for an incremental increase in cancer risk greater than 10 in one million at any off-site receptor.⁵⁹ Dr. Clark's analysis provides substantial evidence supporting a fair argument that the Project has a significant, unmitigated operational health risk.

Dr. Clark modeled the Project's emissions using OEHHA's HARP 2 Standalone Risk software and found that the cumulative risk for exposure of residents during the 30 years of operation assuming the averaged DPM concentration of 0.039 ug/m³ is 33.8 in 1,000,000.⁶⁰ Dr. Clark's findings show that the operational cancer risk stemming from the Project will exceed the 10 in one million threshold at several homes in the neighborhoods to the south of the Project site, resulting in a significant impact.⁶¹ When an impact exceeds an established significance threshold, the agency must disclose in the CEQA document that the impact is significant.⁶² The MND fails to disclose this significant health impact, in violation of CEQA.

Dr. Clark explains that the increased cancer risk from Project operation mainly comes from exhaust emissions from vehicles moving through the Project site which the MND's air quality analysis failed to analyze in an HRA.⁶³ Dr. Clark used meteorological data from SCAQMD for the Fontana monitoring station and modeled the concentrations of Project generated exhaust at the homes south of the Project Site. Figure 1 below shows the resulting concentration of exhaust emissions from the Project.

⁵⁹ SCAQMD Thresholds of Significance Table; <http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf>

⁶⁰ Clark Comments, p. 12.

⁶¹ Clark Comments, p. 12.

⁶² *CBE v. CRA*, 103 Cal.App.4th at 110-111; *Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 960; *CBE v. SCAQMD*, 48 Cal.4th at 327 (impact is significant because exceeds "established significance threshold for NOx ... constitute[ing] substantial evidence supporting a fair argument for a significant adverse impact").

⁶³ Clark Comments, p. 12.

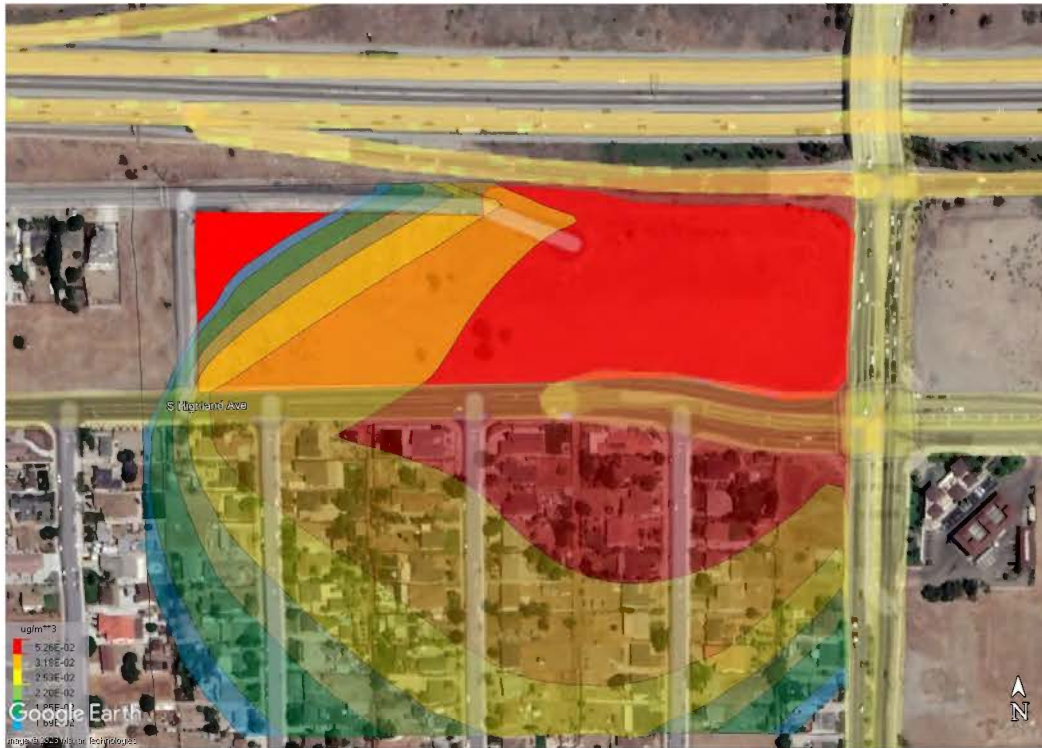


Figure 1: Annual Project Exhaust Concentration

The City must perform an HRA for Project construction and operation, disclose health risk impacts which exceed applicable thresholds, and mitigate the Project's significant health risk impacts in an EIR.

VII. THE MND LACKS SUBSTANTIAL EVIDENCE TO CONCLUDE THAT THE PROJECT WOULD HAVE LESS THAN SIGNIFICANT HAZARDOUS MATERIALS AND PUBLIC HEALTH IMPACTS FROM DISTURBANCE OF CONTAMINATED SOIL

A. The MND Fails to Analyze the Impacts from Disturbance of Potential Contamination from the Kaiser Steel Mill

The MND states that the Project will not create a significant hazard to the public or the environment through the reasonably foreseeable upset and accident conditions involving the release of hazardous materials.⁶⁴ However, the MND fails to disclose the extent of existing soil contamination at the Project site, and fails to analyze the impacts of disturbing contamination during Project construction.

⁶⁴ MND, pp. 131-132.
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The Project site is located approximately 3.4 miles to the northeast of the original Kaiser Steel Mill (“KSM”), located on approximately 1,200 acres in Fontana.⁶⁵ The KSM was an integrated steel production plant that the Kaiser Steel Corporation owned and operated from approximately 1942 to 1983.⁶⁶ Studies of the steel mill found that it emitted large quantities of carcinogenic compounds that will persist in the environment and that the emission controls on the plant were deficient.⁶⁷ Dr. Clark states that emissions of arsenic, cadmium, and polycyclic organic matter, which are not subject to degradation in the environment, would have covered the area of the Project site and present a recognized environmental concern (“REC”) for the Project site.

In *Cal. Building Industry Ass’n v. Bay Area Air Quality Mgmt. Dist.*,⁶⁸ the California Supreme Court held that the disturbance of contaminated soil is a potentially significant impact which requires disclosure and analysis of health and safety impacts in an EIR.⁶⁹ The Court explained that “when a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users.”⁷⁰

Dr. Clark’s comments provide substantial evidence that carcinogenic compounds including polycyclic aromatic hydrocarbons, arsenic, cadmium, and benzene may be found on the Project site.⁷¹ The MND failed to include a Phase I or Phase II environmental site assessment (“ESA”) and failed to analyze the potential for soil contamination onsite. Soil will be disturbed during the Project’s excavation and construction phases. Disturbance of any residual, unmitigated contamination in the soil may present a significant public health risk to construction workers working on the Project, and the public nearby.⁷² The City lacks substantial evidence to support the MND’s conclusion that soil disturbance would result in a less than significant impact under CEQA.⁷³

The City must fully analyze and mitigate the potential health and safety risks arising from disturbing contaminants in the soil on the Project site. Dr. Clark

⁶⁵ Clark Comments, p. 13.

⁶⁶ Clark Comments, p. 13.

⁶⁷ Clark Comments, pp. 13-14.

⁶⁸ (2015) 62 Cal.4th 369.

⁶⁹ *Cal. Building Industry Ass’n v. Bay Area Air Quality Mgmt. Dist.* (“*CBIA v. BAAQMD*”) (2015) 196 Cal.Rptr.3d 94 at 105-106; 14 CCR § 15126.2(a).

⁷⁰ *Id.* at 377.

⁷¹ Clark Comments, p. 14.

⁷² Clark Comments, p. 15.

⁷³ *CBIA v. BAAQMD*, 196 Cal.Rptr.3d 94 at 105-106; 14 CCR § 15126.2(a).

recommends that the City prepare a Phase II subsurface investigation to analyze potential soil contamination at the Project site.⁷⁴ The City must also calculate the potential health risks associated with the exposure of nearby residents to disturbed soil and provide adequate mitigation for such exposure. The City must present the results of these studies in an EIR.

VIII. THE MND LACKS SUBSTANTIAL EVIDENCE TO CONCLUDE THAT THE PROJECT'S GHG IMPACTS ARE LESS THAN SIGNIFICANT

A. The MND's Mitigation of GHG Impacts is Nonbinding and Improperly Deferred

The MND concludes that the Project's GHG impacts will be significant without mitigation.⁷⁵ To reduce Project GHG emissions, the MND relies in part on reductions in mobile source emissions through implementation of a transportation demand management ("TDM") program that would be implemented as part of the occupancy permits for future tenants, as noted in MM GHG-3.⁷⁶ MM GHG-3 provides:

Prior to issuance of occupancy permits, the Project operator shall prepare and submit a Transportation Demand Management (TDM) program detailing strategies that would reduce the use of single occupant vehicles by employees by increasing the number of trips by walking, bicycle, carpool, vanpool, and transit. The TDM shall include, but is not limited to the following:

- Carpooling encouragement
- Ride-matching assistance
- Preferential carpool parking
- Flexible work schedules for carpools
- Half time transportation coordinator
- Vanpool assistance
- Promote bicycling and walking through design features such as secure bicycle storage, showers for employees, lockers, etc. around the project site.

MM GHG-3 is nonbinding and improperly deferred.

⁷⁴ Clark Comments, p. 15.

⁷⁵ MND, p. 122.

⁷⁶ MND, p. 122.

In *City of Hayward v. Board of Trustees of the California State University*,⁷⁷ the court considered whether a project's TDM program constituted improperly deferred mitigation. The project was a master plan to guide development of a college campus for the next 20–30 years. The master plan anticipated a significant increase in traffic and parking demand. Because the master plan covered a long-range development program and was based on projections of growth that may or may not occur, the lead agency fashioned mitigation that would allow it to retain the flexibility to select specific mitigation measures in the future. The EIR consequently designated, as mitigation measure "TRANS 1a," the requirement that the lead agency "prepare a comprehensive TDM Implementation Plan that includes steps necessary to plan for, fund, implement, and monitor the effectiveness of the measures outlined in the Master Plan TDM section."⁷⁸ The TDM incorporated in the EIR detailed a range of sustainable transit policies that can be utilized to reduce single-occupancy. The TDM set minimum performance goals of reducing the percentage of single driver vehicle trips onto campus from the existing 79 percent to 64 percent, and increasing present transit use by 50 percent. The TDM also included a detailed monitoring program. The EIR concluded that while implementation of these mitigation measures will reduce the level of significance, the traffic and parking impacts will remain significant and unavoidable.

The court held that the TDM program was not improperly deferred, because the lead agency committed to perform the feasible mitigation measures included in the TDM:

While the Trustees have not committed to implementation of any particular measure that is specified in the TDM plan, the TDM is not illusory. The plan enumerates specific measures to be evaluated, it incorporates quantitative criteria and it sets specific deadlines for completion of the parking and traffic study and timelines for reporting to the city on the implementation and effectiveness of the measures that will be studied. The monitoring program which is an integral part of the plan ensures that the public will have access to the information necessary to evaluate compliance with the Trustees' obligations.

Although *City of Hayward* addressed the efficacy of a TDM program to mitigate traffic impacts, rather than GHG impacts, the court's analysis of what do, and do not, constitute adequate performance standards for a TDM program is instructive on the MND's failure to include adequate performance standards in MM

⁷⁷ (2012) 143 Cal.Rptr.3d 265.

⁷⁸ 143 Cal.Rptr.3d 265, 282
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GHG-3 to ensure that the Project's mobile source GHG emissions would be reduced to the extent claimed in the MND. While this Project is similar to the project in *Hayward* in that (1) it is a long-term development, (2) the mitigation measure allows for flexibility in selecting TDM measures due to the uncertainty of future development, MM GHG-3 lacks the quantitative criteria and monitoring program of the project in *Hayward*. For example, the project in *Hayward* required a monitoring program to conduct periodic traffic counts at the primary gateways ... to monitor the effectiveness of new TDM programs as they are implemented.⁷⁹ Without performance standards to measure the effectiveness of the TDM program for this Project the mitigation is nonbinding, results in improperly deferred GHG mitigation, and as such, does not support the MND's GHG reduction calculations.

Despite the illusory nature of MM GHG-3, the MND concludes that with implementation of the mitigation measure, Project GHG emissions from mobile sources will be reduced from 2,273.79 MTCO₂E per year to 1,883.31 MTCO₂E, bringing the Project's total GHG emissions to 2,885.60 MTCO₂E per year, just under SCAQMD's screening threshold of 3,000 MTCO₂E per year for non-industrial projects.⁸⁰ The MND's GHG appendix does not provide support for the claim that MM GHG-3 will actually reduce the Project's GHG emissions under SCAQMD threshold, instead, the reductions in mobile source emissions are based on the TDM program that is yet to be created without explanation of how the results were calculated.

The City must prepare an EIR that includes additional enforceable mitigation measures to reduce the Project's GHG emissions from mobile sources.

B. The MND Improperly Relies on MM GHG-2 to Reduce the Project's GHG Impacts

The MND states that, with mitigation, the Project will have negative GHG emissions from on-site generation of renewable energy.⁸¹ Specifically, the MND states that through the implementation of MM GHG-2, the Project will emit -669.87 MTCO₂E per year. However, MM GHG-2 does not require the installation of solar panels or other renewable energy generation at the Project site. Therefore, the MND's analysis of the Project's mitigated emissions takes credit for renewable energy generation that is not required under the MND. MM GHG-2 states:

⁷⁹ 143 Cal.Rptr.3d 265, 282

⁸⁰ MND, Appendix D, p. 22.

⁸¹ MND, p. 121.

The project shall install solar photovoltaic (PV) panels or other source of renewable energy generation on-site, ***or otherwise acquire energy from the local utility that has been generated by renewable sources*** (for example, Southern California Edison Green Rate), that would provide 100 percent of the expected building load. The building shall include an electrical system and other infrastructure sufficiently sized to accommodate the PV arrays. The electrical system and infrastructure must be clearly labeled with noticeable and permanent signage.⁸²

MM GHG-2 allows the Project to acquire energy from a local utility that has been generated by renewable sources in lieu of installing solar PV arrays. As a result, the MND cannot take on-site energy generation into account to reduce the Project's expected GHG emissions. Like the reductions taken under MM GHG-3 noted above, the MND improperly relies on MM GHG-2 to reduce the Project's GHG emissions to 2,885.60 MTCO₂E per year, such that the Project falls under SCAQMD's screening threshold of 3,000 MTCO₂E per year. The Project will result in a significant GHG impact if solar panels are not used at the Project. Because there are no binding mitigation measures requiring solar panels at the Project, the Project will result in a significant GHG emissions impact.

The City must prepare an EIR that accurately analyzes the Project's GHG emissions and implement enforceable mitigation measures to reduce the Project's significant GHG emissions.

IX. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN POTENTIALLY SIGNIFICANT NOISE IMPACTS

A. The Project May Result in Significant, Unmitigated Construction Noise Impacts

The MND states that Project construction will not result in significant noise impacts to sensitive receptors. However, as explained above, the MND fails to identify a residential apartment located at 15911 Highland Avenue. According to Mr. Watry, when this additional sensitive receptor is considered, Project construction will result in a significant noise impact.

⁸² MND, p. 122 (emphasis added).
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Mr. Watry calculated the noise that will be generated by construction of Development B which will occur 39 feet from the apartment and found that noise will exceed the FTA's threshold of 80 dBA during the demolition, site preparation, grading and building construction phases of the Project without mitigation.⁸³ This is the same threshold used in the MND to determine whether the Project will result in a significant impact.⁸⁴ Therefore, Project construction will result in a significant noise impact on nearby sensitive receptors.

The City must reanalyze the Project's construction noise impacts in relation to the residence at 15911 Highland Avenue and propose additional mitigation to reduce the Project's potentially significant noise impacts.

X. THE MND LACKS SUBSTANTIAL EVIDENCE TO CONCLUDE THAT THE PROJECT'S PUBLIC SERVICES IMPACTS WOULD BE LESS THAN SIGNIFICANT

A. The Project May Require New or Physically Altered Police Protection Facilities

The Project proposes to construct a banquet hall, a dual branded hotel (Holiday Inn Express / a Staybridge Suites), a Restaurant, and an In-N-Out Burger which will bring hundreds of commercial users to the site on a daily basis.

The MND states that the additional police services are not necessary and potential impacts on police protection due to implementation of the Project would be less than significant.⁸⁵ The rationale for this conclusion is based on the fact that the Fontana Police Department maintains an approximate ratio of 1 officer to 1,000 City residents, that the Project will be designed with Crime Prevention through Environmental Design ("CPTED") principles, and that development impact fees from the Project will fund continued FPD operations.

However, while the MND admits that "Project buildout would consequently increase the demand for police protection services in the city" it fails to quantify the amount of additional police protection needed for the Project, and fails to substantiate its claim that the Project's design and development impact fees will not require additional police resources.⁸⁶ The MND's metric of one police officer per

⁸³ Watry Comments, p. 5.

⁸⁴ MND, p. 156.

⁸⁵ MND, p. 168.

⁸⁶ MND, p. 168.

1000 residents does not address how police services are distributed to commercial uses like the project, nor does the MND provide any discussion of how many officers currently use the existing police facilities in the City or if the additional police services needed by the Project will necessitate construction of facilities to maintain the level of service necessary. The MND therefore lacks any evidence to support its erroneous conclusion that the Project will not require an increase in police protection facilities within the City.

Furthermore, there is substantial evidence demonstrating that In-N-Out restaurants experience serious crime that requires police intervention, including violent crimes, murder, robberies, and armed police standoffs requiring multiple-officer responses and specially trained crime dogs.⁸⁷ The City must revise the public services impacts analysis in an EIR and provide analysis of the impacts resulting from development of the Project.

XI. THE CITY LACKS SUBSTANTIAL EVIDENCE TO APPROVE THE PROJECT'S LAND USE ENTITLEMENTS

The Project requires several discretionary entitlements and related approvals under local City plans and codes, including:

- Tentative Parcel Map No. 20464 (TPM No. 20-021) - to consolidate 31 parcels (APNs: 0228-301-01 through -08, 0228-310-20, -21, -22, -23, 0228-310-33 through -49, -51, and 52) and vacate a portion of Highland Avenue into four parcels totaling 8.9 adjusted gross acres for the development of a commercial retail center.
- Variance No. 22-001 - to reduce the rear yard landscape setback abutting a freeway from 25 feet to a minimum of two (2) feet in certain locations at the rear of the project site.
- Conditional Use Permit No. 20-025 - to establish a dual branded hotel consisting of a 5-story, 75 room hotel (Holiday Inn Express) and a 5-story, 109 room hotel (Staybridge Suites Hotel) with various amenities.
- Conditional Use Permit No. 22-019 - to operate a State of California Alcohol Beverage Control (ABC) license type 47 (On-Sale General - Eating Place) for the place of assembly (banquet hall).

⁸⁷ See Attachment C, 2017-2019 news articles re crime at California In-N-Out restaurants. 6452-010j

- Conditional Use Permit No. 22-028 - to operate a place of assembly (banquet hall) within the Fontana Square commercial retail center.
- Design Review No. 20-031 - for the site and architectural review for the development of commercial retail center including a banquet hall, two hotels, a sit down restaurant/retail, and an In-N-Out drive-through restaurant on an approximately 8.9 adjusted gross acre site located within General Commercial (C-2) Zoning District.⁸⁸

Each permit requires the City to make findings regarding land use consistencies and/or environmental factors. As discussed herein, there is substantial evidence supporting a fair argument that the Project has potentially significant, unmitigated impacts on air quality, GHG, noise and public services, that the MND fails to accurately disclose and fails to mitigate to less than significant levels. These unmitigated impacts create inconsistencies with several of the permits required for the Project.

Where a local or regional policy of general applicability, such as an ordinance, is adopted in order to avoid or mitigate environmental effects, a conflict with that policy constitutes a significant land use impact and, in itself, indicates a potentially significant impact on the environment.⁸⁹ Any inconsistencies between a proposed project and applicable plans must be discussed in an EIR.⁹⁰ A project's inconsistencies with local plans and policies also constitute significant impacts under CEQA.⁹¹ The City must circulate an EIR to adequately disclose and mitigate the significant land use impacts discussed below.

Pursuant to the City of FMC § 30-150, the City Planning Commission must make the following findings for approval of the Project's conditional use permit applications:

⁸⁸ Planning Commission Agenda Item PH-A, Attachment No. 6 - Planning Commission Resolution, Findings, and Conditions of Approval (January 17, 2023) available at <https://fontana.legistar.com/View.ashx?M=F&ID=11564406&GUID=FF156A23-37E6-4700-A9E5-D8232364216A>

⁸⁹ *See, Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903.

⁹⁰ 14 CCR § 15125(d); *City of Long Beach v. Los Angeles Unif. School Dist.* (2009) 176 Cal. App. 4th 889, 918; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, 874 (EIR inadequate when Lead Agency failed to identify relationship of project to relevant local plans).

⁹¹ *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4, 32 Cal.Rptr.3d 177; *see also, County of El Dorado v. Dept. of Transp.* (2005) 133 Cal.App.4th 1376. 6452-010j

- (1) The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of the Zoning and Development Code, Municipal Code, general plan, any applicable specific plan or area plan, and City regulations/standards.
- (2) The site is physically suited for the type, density, and intensity of the proposed use including access, utilities, and the absence of physical constraints and can be conditioned to meet all related performance criteria and development standards.
- (3) Granting the permit would not be detrimental to the public interest, health, safety, convenience, welfare, or materially injurious to persons, property, or improvements in the vicinity in which the project is located.

Here, there is substantial evidence that the Project will conflict with finding number three. Specifically, the Project will result in significant air quality impacts during operations that would be detrimental to the health and safety of nearby residents. Additionally, the Project's construction noise impacts on previously undisclosed nearby sensitive receptors will result in significant impacts precluding the Planning Commission from making the findings required under the Code.

Finally, the MND's analysis of air quality ignores substantial evidence that the Census Tract 6071002301, which contains the Project site, is a designated disadvantaged community under Senate Bill 535.⁹²

Census tract 6071002301 is in the top 12th percentile of communities impacted by diesel particulate matter and the top 2nd percentile of communities impacted by ozone in the State of California.⁹³ The City must reanalyze the air quality and health risk impacts of the Project and consider the public well-being of this already burdened community in an EIR. Given the Project's location in a region with one of the nation's worst records for air quality, in a disadvantaged community already overly burdened by exposure to harmful air contaminants, it is impossible to find that the Project is consistent with the findings required to approve the Project's conditional use permits. The Project cannot be found to not be detrimental to the public interest, health, safety, convenience, welfare, or materially injurious to persons, property, or improvements in the vicinity in which the project is located.

⁹² California Office of Environmental Health Hazard Assessment, SB 535 Disadvantaged Communities (2022) available at <https://oehha.ca.gov/calenviroscreen/sb535>

⁹³ Clark Comments, p. 6.
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The City must prepare an EIR that includes a statement of overriding considerations to justify the use of the Project site.

XII. CONCLUSION

CEQA requires that an EIR be prepared if there is substantial evidence demonstrating that any aspect of a project, either individually or cumulatively, may cause a significant effect on the environment.⁹⁴ As discussed herein, there is substantial evidence supporting a fair argument that the Project would result in significant adverse impacts that were not identified in the MND, and that are not adequately analyzed or mitigated. The MND also fails to contain the basic information and analysis required by CEQA, deficiencies which “cannot be dismissed as harmless or insignificant defects.”⁹⁵ The City’s findings regarding Project impacts either do not comply with the law or are not supported by substantial evidence. Finally, the City cannot make the required findings to approve the entitlements sought by the Applicant.

The Planning Commission cannot approve the Project until it revises the Project’s land use analysis and prepares an EIR that resolves these issues and complies with CEQA’s requirements.

Sincerely,



Kevin Carmichael

KTC:ljl

⁹⁴ Pub. Resources Code § 21151; 14 CCR §15063(b)(1).

⁹⁵ *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1220. 6452-010j