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January 10, 2024

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**Re: Agenda Item ID 24-12: 740 West Nielsen Avenue  
Office/Warehouse Project (Development Permit Application  
No. P21-02699 and Tentative Parcel Map No. P21-05930) (SCH  
2022050265)**

Dear President Maxwell, City Council Members, and Mr. Martinez:

We are writing on behalf of **Fresno Residents for Responsible Development** (“Residents”) regarding the City’s response to Resident’s appeal of the 2740 West Nielsen Avenue Office/Warehouse Project (Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21-05930; and certification of the Final Environmental Impact Report (“FEIR”)<sup>1</sup> (SCH 2022050265) (“Project”), proposed by Scannell Properties (“Applicant”).<sup>2</sup>

<sup>1</sup> City of Fresno, Final Environmental Impact Report, 2740 West Nielsen Avenue Office/Warehouse Project (Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21-05930) (hereinafter “FEIR”) available at <https://ceqanet.opr.ca.gov/Project/2022050265>

<sup>2</sup> City of Fresno, City Council Agenda (January 11, 2024) available at <https://fresno.legistar.com/MeetingDetail.aspx?ID=1061555&GUID=1379E5D0-3003-4B9D-A485-66D1D154E0B9&Search=6179-024j>

The staff report for the January 11, 2024 City Council hearing contains a new memo from the City’s environmental consultant which purports to respond to the appeal letters submitted by Residents, Councilmember Miguel Arias, and Golden State Environmental Justice Alliance (“Appeal Response”).<sup>3</sup> The Appeal Response repeats many of the same factual errors and misstatements of law contained in the FEIR without disclosing or reducing any outstanding impacts to less than significant levels. Upon review of the Appeal Response, Residents and their experts find that the City continues to fail to address the significant air quality, transportation, GHG emissions, and noise impacts that will result from construction and operation of the Project.<sup>4</sup> Additionally, as detailed in our December 27, 2023 letter to this Council, the Project fails to comply with key General Plan Economic Development objectives and policies, rendering the Project inconsistent with the General Plan and preventing the Council from approving the Project. This issue is not addressed in the staff report.

The following comments address the inadequacy of the Appeal Responses and reiterate the need for the City Council to uphold Resident’s appeal of the Planning Commission’s approval of the Project.

**A. The FEIR Still Fails to Analyze Reasonably Foreseeable Transportation Impacts and Resulting GHG Impacts**

According to the DEIR, the Project’s future tenants have not been identified, therefore, the number of vehicle trips generated by future Project operation cannot be determined with specificity.<sup>5</sup> Under CEQA, a lead agency may choose the methodology used to analyze the significance of a project’s environmental impacts.<sup>6</sup> In all cases, the chosen methodology must be supported by substantial evidence.<sup>7</sup>

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<sup>3</sup> City of Fresno, LSA Response to Appeal Letters (December 13, 2023) (hereinafter “Appeal Response”) available at <https://fresno.legistar.com/View.ashx?M=F&ID=12556319&GUID=3800EBBF-A6A4-4992-BA25-51248B9EBA50>

<sup>4</sup> See **Attachment A**: Comments of James Clark Ph. D.; **Attachment B**: Comments of Norman Marshall; **Attachment C**: Comments of Derek Watry.

<sup>5</sup> DEIR, 3-13.

<sup>6</sup> *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 228.

<sup>7</sup> *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal* (1988) 47 Cal. 3d 376; *N. Coast Rivers Alliance v. Marin Mun. Water Dist.* (2013) 216 Cal.App.4th 614, 642-643.

CEQA also requires that the lead agency analyze the impacts of all reasonably foreseeable future uses of the project site,<sup>8</sup> and clarifies “an EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences.”<sup>9</sup>

Residents’ appeal explained that the FEIR’s transportation analysis failed to meet these standards by calculating VMT and truck trips based on unsupported assumptions that Project operation would involve low-intensity warehouse use and by failing to consider all reasonably foreseeable uses of the Project. The FEIR acknowledges that future tenants of the Project site are not known. Nevertheless, the City chose to rely on truck trip levels from lower-intensity warehouse uses described in the Western Riverside Council of Governments (“WRCOG”) Transportation Uniform Mitigation Fee (“TUMF”) High-Cube Warehouse Trip Generation Study to calculate the number of truck and vehicle trips that the Project is expected to produce. Based on the WRCOG study, the FEIR found that the Project would result in just 1,920 daily trips, of which 342 would be truck trips, generating approximately 2.1 vehicle trips per 1,000 square feet of total building area.<sup>10</sup>

Residents’ expert Mr. Marshall found that the data in the WRCOG Study are much more variable than the average rates cited in the FEIR. Using the same study, Mr. Marshall identified substantially trip rates than disclosed in the FEIR, including trip generation rates as high as 4.5 daily trips per 1,000 square feet for more intensive fulfillment center uses, and trip generation rates at parcel hubs (high-intensity warehouse uses) of approximately 14 trips per day per 1,000 square feet.<sup>11</sup> Mr. Marshall explained that the Project’s site plan, zoning, location, and comparable warehouse uses in the region demonstrated that a higher intensity use was reasonably foreseeable at the Project site, and concluded that the FEIR’s transportation analysis substantially undercounted truck and vehicle trips from such uses. The Project’s underestimated trip generation rates also factored into the FEIR’s analysis of the Project’s vehicle miles traveled impacts, GHG emissions impacts, air quality impacts, noise impacts, and energy impacts, resulting in underestimated impacts in each of these areas.

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<sup>8</sup> *Laurel Heights*, 47 Cal. 3d at 396-99; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 660.

<sup>9</sup> CEQA Guidelines, § 15151.

<sup>10</sup> DEIR, p. 4.10-10.

<sup>11</sup> Marshall Comments, p. 2.

The Appeal Response does nothing to resolve these deficiencies. Rather, the Appeal Response simply reiterates the City's responses to comments on the FEIR and dismisses Mr. Marshall's well-supported analysis by arguing that the Project site will not have high-intensity warehouse users simply because "the project applicant has confirmed an Amazon facility is not under consideration to be a possible tenant; therefore, using Amazon trip generation rates would not be accurate or applicable to the proposed project."<sup>12</sup> Amazon is not the only high-intensity warehouse tenant in California. Rather, it remains reasonably foreseeable that another parcel-hub or a business distribution warehouse tenant may occupy the Project buildings, causing increased Project vehicle trips and the correlated VMT, GHG emissions, air quality, and noise impacts; which the FEIR fails to disclose and analyze. By failing to calculate truck and vehicle trips based on these reasonably foreseeable trip generation rates of the Project, the FEIR failed to disclose reasonably foreseeable direct and indirect impacts, in violation of CEQA's requirements and precluding informed decision making and informed public participation.<sup>13</sup>

Further undermining the FEIR's trip generation assertions is the fact that there are no restrictions on high-intensity warehouse use at the Project site. Neither the MMRP nor the Project's Conditions of Approval include a requirement that the future tenants of the Project limit the Project's operational trips to the levels analyzed in the FEIR. Without restrictive conditions, there is nothing preventing Project future warehouse operators from expanding industrial uses in the near future, thereby increasing the pollution burden on the community beyond the levels analyzed in the FEIR. The FEIR failed to analyze or mitigate these increased impacts, and the City lacks substantial evidence to conclude that the Project will not generate heavy truck and vehicle trips consistent with the reasonably foreseeable high intensity uses allowed at the Project site. The FEIR therefore remains inadequate and in violation of CEQA.

**B. The FEIR Still Fails to Disclose and Analyze the Project's Significant Health Risk Impacts from Valley Fever**

The FEIR failed to disclose or mitigate the potentially significant health risk impacts from Coccidioidomycosis, which is commonly referred to as "Valley Fever". The Appeal Response doubles down on the errors and omissions in the FEIR with three legally and factually unsupported arguments: (1) that Valley Fever health

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<sup>12</sup> Appeal Response, p. 11.

<sup>13</sup> CEQA Guidelines § 15151; *Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs* (2001) 91 Cal.App.4th 1344, 1355  
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risk cannot be assess because there is no established threshold of significance; (2) that Valley Fever spores would travel less than 110 feet from the Project site; and (3) that existing dust control mitigation measures and OSHA regulations for construction workers will protect sensitive receptors from any all risks of Valley Fever exposure.

All three assertions are demonstrably false. As explained in Dr. Clark's previous and attached comments, there is substantial evidence demonstrating that Valley Fever spores may be released during ground-disturbing Project construction activities, that human exposure to even a small amount of Valley Fever spores may result in an infection, that these spores may travel long distances to expose human receptors on and off the Project site, and that standard dust and worker mitigation measures are inadequate to reduce the risk of Valley Fever exposure.

## 1. Health Risk

The Appeal Response asserts that the City was unable to analyze the health risk from Valley Fever because "Neither the GAMAQI [San Joaquin Valley Air Pollution Control District guidance] nor the State CEQA Guidelines include requirements or thresholds of significance for addressing Valley Fever."<sup>14</sup> This statement is contrary to law and demonstrates an abdication of the City's duty to determine the severity of public health impacts caused by the Project.<sup>15</sup>

The absence of an established threshold by SJVAPCD does not absolve the City of the responsibility to analyze the potentially significant health risk impacts from Valley Fever *cocci* exposure. Pursuant to CEQA, each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects, and may develop such thresholds on a case-by-case basis if necessary.<sup>16</sup> Thresholds of significance may, but are not required, to assist lead agencies in determining whether a project may cause a significant impact.<sup>17</sup> As the Supreme Court has explained, "[t]hresholds [] only define the level at which an environmental effect 'normally' is

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<sup>14</sup> Appeal Response, p. 10.

<sup>15</sup> see CEQA Appendix G, Section III(C) (Would the project exposure sensitive receptors to substantial pollutant concentrations?); *Sierra Club v County of Fresno* (2018) 6 Cal.5th 502, 518–522 (CEQA requires an analysis of human health impacts).

<sup>16</sup> CEQA Guidelines, § 15064.7(b)

<sup>17</sup> 14 CCR § 15064(b)(2).

considered significant; they do not relieve the lead agency of its duty to determine the significance of an impact independently."<sup>18</sup> The City's claim that it was unable to analyze the severity of Valley Fever exposure caused by Project construction is specious and contrary to law.

The City's conclusion that Valley Fever health impacts would be less than significant is also unsupported by facts. The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data.<sup>19</sup> The lead agency's determination regarding the validity or appropriateness of the threshold of significance must be supported by substantial evidence.<sup>20</sup> The City failed to establish a threshold of significance regarding health risk impacts from Valley Fever *cocci* exposure, failed to assess the severity of the impact, and in concluding that the Project would not cause significant health risk impacts did not employ careful judgement based on scientific and factual data, in violation of CEQA.

Dr. Clark's comments provided substantial evidence demonstrating that Valley Fever exposure is a potentially significant health risk and that there is no safe level of exposure.

As Dr. Clark explains, Valley Fever is a disease that can spread when persons are exposed to *Coccidioides immitis* ("Cocci") fungus spores. The *cocci* spores are released from soils during ground disturbance such as grading and site preparation during construction.<sup>21</sup> Valley Fever rates in Fresno County have seen a significant increase over the last decade, increasing from 161 in 2014 to as high as 828 in 2017.<sup>22</sup> In 2022, 403 cases were recorded in Fresno County and 443 cases have been reported thus far for 2023.<sup>23</sup>

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<sup>18</sup> *Newhall Ranch*, 62 Cal.4th at 230-31 (quoting CEQA Guidelines, 14 CCR § 15064.7(a)).

<sup>19</sup> CEQA Guidelines, § 15064 (b); see also *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068.

<sup>20</sup> *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1072.

<sup>21</sup> Clark Comments, p. 2.

<sup>22</sup> California Department of Public Health ("CDPH"), Epidemiologic Summary of Valley Fever (Coccidiomycosis) In California, 2019 (2019) available at <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CocciEpiSummary2019.pdf>

<sup>23</sup> CDPH, Coccidiomycosis In California, Provisional Monthly Report, January – November 2023 (November 30, 2023) available at <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CocciinCAProvisionalMonthlyReport.pdf>

The Fresno County Department of Public Health recognizes the risks of Valley Fever infection, and according to the County's Valley Fever Dashboard, "[a]lthough Fresno County has seen a decrease in reported Coccidioidomycosis cases in recent years, it remains a hot spot for infections, ranking in the top 5 California counties for disease incidence."<sup>24</sup> Additionally, the California Department of Public Health has found that high rainfall over the winter months is linked to increased Valley Fever cases across California, increasing the risk of Valley Fever exposure after heavy rainfall seasons such as those predicted by the National Oceanic and Atmospheric Administration for 2023-2024.<sup>25</sup>

Dr. Clark further explains that there is "no acceptable exposure level for *Coccidioides immitis* in air."<sup>26</sup> This means that any amount of exposure has the potential to create a health risk. There are also studies documenting that just a few spores—less than 10—can cause the disease.<sup>27</sup> Thus, ***a reasonable significance threshold for Valley Fever exposure is exposure to nine or fewer cocci spores.***

The Project will disturb up to 180 acres of soil during construction<sup>28</sup> which may lead to the release of *cocci* spores resulting in impacts to Project workers and nearby sensitive receptors. The City has not shown that no Valley Fever spores will be released from the Project site. Therefore, the potential health risks from exposure to Valley Fever *cocci* from Project construction constitute a significant health risk impact under CEQA and must be disclosed, analyzed, and mitigated by the City.

## **2. Valley Fever Spores Travel Longer Distances than Particular Matter Due to Small Size**

The closest sensitive receptors to the Project site include single-family residences located approximately 110 feet south of the project site across West Nielsen Avenue. In response to the substantial evidence presented by Residents'

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<sup>24</sup> Fresno County, Valley Fever Dashboard (accessed January 9, 2024) available at <https://lookerstudio.google.com/reporting/be75f92d-748c-448f-ac2b-7cea2fe8b0b0/page/QuhYD>

<sup>25</sup> California Department of Public Health, Potential Increased Risk for Valley Fever Expected (August 1, 2023) available at <https://www.cdph.ca.gov/Programs/OPA/Pages/NR23-023.aspx>; see also National Oceanic and Atmospheric Administration, U.S. Winter Outlook: Wetter South, warmer North (October 19, 2023) available at <https://www.noaa.gov/news-release/us-winter-outlook-wetter-south-warmer-north>

<sup>26</sup> Clark Comments, p. 3.

<sup>27</sup> *Id.*, Wilken 2018, pdf 15.

<sup>28</sup> DEIR, Appendix C, CalEEMod Output Sheets, pp. 8 and 9 of 34.  
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expert regarding the potential health risk impacts from *cocci* spores to sensitive receptors 110 feet from the Project site, the Appeal Response states:

Except under high wind conditions, this distance [110 feet] is sufficient that particulate matter will settle prior to reaching the nearest sensitive receptor.

The Appeal Response<sup>29</sup> further states that crosswinds influenced by adjacent traffic intersections would help dissipate any particulate matter associated with the construction phase of the project such that no significant impacts would occur.

These statements are non-responsive to the issue of dispersion of *Coccidioides Immitis* spores because they are significantly smaller than particulate matter and can travel longer distances when airborne, and therefore not based on any scientific data. The City confuses “particulate matter” with cocci spores, two very different types of particles. The City’s conclusions are also refuted by evidence provided by Dr. Clark that due to their size, 2 microns to 5 microns in diameter, *cocci* can remain suspended in the air for several hours following the disturbance of impacted soils allowing them to travel much further than larger dust particles.<sup>30</sup> Based on the particle size and settling rate, Dr. Clark concludes that “**Valley Fever spores present in soils are capable of travel many miles following the disturbance of impacted soils.**”<sup>31</sup>

The City’s conclusion that Valley Fever spores would not reach sensitive receptors by the Project site is incorrect and unsupported by evidence.

### **3. Standard Dust Control and OSHA Mitigation Are Inadequate to Control Valley Fever Exposure**

Regarding the potential health risk to construction workers from the exposure to *cocci* spores, the Appeal Response states:

[D]uring project construction, it is possible that workers could be exposed to Valley Fever through fugitive dust. Dust control measures, consistent with SJVAPCD Regulation VIII (as required by Mitigation Measure AIR-1), would reduce the exposure of the workers.

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<sup>29</sup> LSA. 2023. Memorandum: 2740 West Nielsen Avenue Office/Warehouse Project – Response to Appeal Letters. Dated December 13, 2023. Exhibit U to FEIR.

<sup>30</sup> Clark Comments, p. 3.

<sup>31</sup> Clark Comments, p. 6.



As above, the City does not provide any scientific data or factual basis to support this claim. On the other hand, Dr. Clark provides substantial evidence that conventional dust control methods, such as those required by Mitigation Measure AIR-1 are ineffective in preventing the spread of *cocci* spores, and that additional, health-specific mitigation measures are required.<sup>32</sup>

The Appeal Response also asserts that construction workers are not subject to any potential health risk from Valley Fever exposure based on construction-site OSHA requirements, stating that:

[A]ny exposure to workers would be subject to the Occupational Safety and Health (OSH) Act of 1970, 29 United States Code (USC) 654(a)(1), and other applicable Occupational Safety and Health Administration requirements, including Respiratory Protection (29 CFR 1910.134).

However, pursuant to the language in 29 CFR 1910.134, employers are only required to provide respirators to employees “when such equipment is necessary to protect the health of such employees”<sup>33</sup>; a determination that has not been made by the City due to the lack of disclosure and analysis provided in the FEIR. Thus, there is no certainty that Project construction workers would be provided with health-protective equipment necessary to guard against the risk of Valley Fever exposure. The City’s assertion is also contradicted by overwhelming evidence of construction workers contracting Valley Fever from work on various project sites in California notwithstanding on-site OSHA regulations.<sup>34</sup>

Based on the City’s failure to establish an applicable threshold of significance for *cocci* exposure; and the related failure to disclose and analyze the health risk impacts associated with such exposure; the FEIR fails to incorporate feasible mitigation measures that would reduce the health risks from Valley Fever *cocci* exposure. In his comments, Dr. Clark provides a comprehensive list of feasible and

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<sup>32</sup> Clark Comments, p. 5.

<sup>33</sup> 29 CFR 1910.134(a)(2).

<sup>34</sup> Armstrong & Associates, California Workers in Danger of Valley Fever, October 16, 2018; available at <https://armstrongprofessional.com/valley-fever-strikes-again/>; Sondermeyer Cooksey et al., Update on Coccidioidomycosis in California, pp. 20, in: Medical Board of California Newsletter, v. 141, Winter 2017; available at [http://www.mbc.ca.gov/Publications/Newsletters/newsletter\\_2017\\_01.pdf](http://www.mbc.ca.gov/Publications/Newsletters/newsletter_2017_01.pdf); California Department of Industrial Relations, News Release, Cal/OSHA Cites Six Employers Over \$240,000 for Exposing Workers to Valley Fever, November 20, 2017; available at <https://www.prnewswire.com/news-releases/calosha-cites-six-employers-over-240000-for-exposing-workers-to-valley-fever-300559637.html>;

effective mitigation measures that would reduce the risks to construction workers and nearby sensitive receptors and should be included in the MMRP for the Project to reduce the Project's health risk impacts.

### **C. The FEIR Still Fails to Disclose Potentially Significant Noise Impacts**

The FEIR failed to disclose the Project's operational noise impacts which may reach undesirable noise levels for local residents and violate the 65 dBA absolute noise threshold in General Plan Policy NS-1-a. The Appeal Response cites to a different General Plan Policy, Policy NS-1-j, used in the FEIR, which considers a 3 dBA increase to be a significant increase in ambient noise. The City concludes that, because Project-related traffic noise would increase noise levels by 2.1 dBA (less than 3 dBA), the Project would not exceed the City's noise threshold and would not result in any significant noise impacts.<sup>35</sup>

While the City is correct that Project related noise increases would not violate General Plan Policy NS-1-j (3 dBA increase), the Appeal Response ignores the fact that the Project will nevertheless result in a significant impact due to the incremental increase in noise at nearby residences which will exceed desirable and generally acceptable exterior noise levels for residential and noise sensitive uses of 65 dBA under General Plan Policy NS-1-a.<sup>36</sup> The courts have held that compliance with general plan noise thresholds does not foreclose the possibility of significant noise impacts.<sup>37</sup>

Based on the City's own data in the DEIR, Residents' noise expert found that the Project will result in ambient noise to increase from the existing 64 dBA CNEL to 66.1 dBA CNEL along the roadway segment of Nielsen Avenue between Marks Avenue and Hughs Avenue.<sup>38</sup> Mr. Watry found that this increase will cause exterior areas of residential and noise sensitive uses south of the Project site to exceed the desirable and generally acceptable exterior noise level established under Policy NS-1-a, resulting in a potentially significant noise impact to sensitive receptors.<sup>39</sup>

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<sup>35</sup> Appeal Response, p. 13.

<sup>36</sup> City of Fresno, General Plan, Chapter 9: Noise and Safety (December 2014) p. 19 available at <https://www.fresno.gov/wp-content/uploads/2023/03/9-Noise-and-Safety-02-03-21.pdf>

<sup>37</sup> *Keep our Mountains Quiet v. Santa Clara* (2015) 236 Cal.App.4th 714, 732-33; *Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1338 (relying on general plan noise standard).

<sup>38</sup> DEIR, p. 4.9-19.


<sup>39</sup> Watry Comments, p. 2.

A determination that an environmental impact complies with a threshold of significance does not relieve a lead agency of its obligation to consider evidence that indicates the impact by be significant despite compliance with the threshold.<sup>40</sup> In the context of this Project, the City's General Plan Policy NS-1-j does not excuse consideration of evidence of other noise impacts. If, as here, evidence is submitted tending to show that the environmental impact might be significant despite the significance standard used in the EIR, the agency must address that evidence.<sup>41</sup> To date, the City has not addressed the evidence presented by Resident's and its experts demonstrating that the Project will result in ambient noise increases in violation General Plan Policy NS-1-a.

## I. CONCLUSION

The Appeal Response fails to resolve the deficiencies and errors identified in Residents' appeal. We urge the City Council to uphold this appeal, vacate the Planning Commission approvals, and remand the Project to City Staff to prepare a legally adequate revised EIR for the Project.<sup>42</sup>

Sincerely,



Kevin Carmichael

KTC:ljl

ATTACHMENTS

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<sup>40</sup> CEQA Guidelines § 15064(b)(2)

<sup>41</sup> *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111.

<sup>42</sup> We reserve the right to supplement our comments at a later date, and at any later proceedings related to this Project. 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.