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October 27, 2023

Via Email and Overnight Mail

Town of Apple Valley
Attn: Daniel Alcayaga, AICP, Planning Manager
Development Services Department, Planning Division
14955 Dale Evans Parkway
Apple Valley, CA 92307

Email: dalcayaga@applevalley.org; planning@applevalley.org

Re: **Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report - 1M Warehouse Project (SCH No. 2023020285)**

Dear Mr. Alcayaga:

On behalf of **Californians Allied for a Responsible Economy (“CARE CA”)** we respectfully request that the Town of Apple Valley (“Town”) **extend the public review and comment period** for the Draft Environmental Impact Report (“DEIR”) for the 1M Warehouse Project (SCH No. 2023020285)¹ (“Project”) proposed by Uncommon Developers (“Applicant”) **by at least 45 days due to the Town’s failure to provide timely access to the supporting documents for the DEIR.** This request is made pursuant to the California Environmental Quality Act, Pub. Resources Code (“PRC”) §§ 21000 et seq. (“CEQA”) Section 21092(b)(1), which requires that “all documents referenced [or relied upon] in the draft environmental impact report or negative declaration” be available for review and “readily accessible” during the entire comment period.²

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¹ Town of Apple Valley, Draft Environmental Impact Report, 1M Warehouse Project (SCH No. 2023020285) (hereinafter “DEIR”) (September 15, 2023) available at <https://ceqanet.opr.ca.gov/2023020285/2>.

² PRC §§ 21092(b)(1) (emphasis added); 14 Cal. Code Regs. (“CCR”) § 15087(c)(5). 6756-005j

On October 13, 2023, we submitted a letter to the Town pursuant to CEQA Section 21092(b)(1) requesting “**immediate access to any and all documents referenced or relied upon**” in the DEIR (“DEIR Reference Request”) (emphasis added).³ Additionally, on October 13, 2023, we submitted a letter to the Town pursuant to California Public Records Act, Government Code §§ 6250, et seq. and Article I, section 3(b) of the California Constitution, requesting “**immediate access to any and all documents related**” to the Project (“PRA Request”) (emphasis added).⁴ The DEIR Request and the PRA Request were sent separately to avoid confusion as to what documents and records were sought.

To date the Town has not acknowledged receipt of the DEIR Request or the PRA Request, nor has CARE CA been provided with access to the requested documents.

In our review of the DEIR and its appendices we have identified numerous reference documents and files which are not available online and were not made available with the DEIR for review, including the following:

- Electronic copies of the live modeling files used to quantify the Project’s air quality impacts from construction and operation, and live modeling files used to quantify the health risk impacts of the proposed Project including the following:
 - Live EMFAC output files;
 - Spreadsheets used to convert EMFAC output from g/VMT to g/s, calculate the Project's emissions sources such as trucks and TRUs, and emission spreadsheet calculations used to calculate weighted emission factors;
 - AERMOD Input and Output files;
 - Any other files related to post-processing using EMFAC emission rates done outside of AERMOD to calculate pollutant-specific concentrations;
 - Live cancer risk calculation spreadsheets;
 - HARP Input and Output files; and
 - CalEEMod Output Files.

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³ **Exhibit A** Letter from Adams, Broadwell, Joseph & Cardozo (“ABJC”), re Request for Immediate Access to Documents Referenced in the Draft Environmental Impact Report – 1M Warehouse Project (SCH No. 2023020285) (October 13, 2023).

⁴ **Exhibit B** Letter from ABJC, re Request for Immediate Access to Public Records – 1M Warehouse Project (SCH No. 2023020285) (October 13, 2023).

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- CDFW. 2012. *Staff Report on Burrowing Owl Mitigation, State of California Natural Resource Agency, Department of Fish and Game, May 7, 2012.*
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- Zeiner, D.C., W.F. Laudenslayer, Jr., K.E. Mayer, and M. White, eds. 1990. *California's Wildlife*. Vol. 2, *Birds*. Sacramento, California: California Department of Fish and Game.
- MDAQMD (Mojave Desert Air Quality Management District). 2016. "MDAQMD California Environmental Quality Act (CEQA) and Federal Conformity Guidelines." MDAQMD, Planning, Rule Making and Grants Section, Air Monitoring Section. August 2016.
- SCAQMD. 2008. *Draft Guidance Document – Interim CEQA Greenhouse Gas (GHG) Significance Threshold*. October 2008.
- DWR (Department of Water Resources). 2004. Upper Mojave River Valley Groundwater Basin (6-042). February 27, 2004.
- Mojave Water Agency. 2015. Mojave Salt and Nutrient Management Plan, December 2015.
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- Caltrans (California Department of Transportation). 2013. Technical Noise Supplement to the Caltrans Traffic Noise Analysis Protocol. Division of Environmental Analysis, Environmental Engineering, Hazardous Waste, Air, Noise, Paleontology Office. September 2013.
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These missing documents are critical to understanding and commenting on the DEIR's analysis of the Project's impacts to several critical resource areas, including, in particular, the DEIR's air quality, transportation, biological impacts, greenhouse gas, and hazardous materials analyses. We are unable to meaningfully review and comment on the DEIR without these documents.

Without access to these critical DEIR reference documents during the public comment period on the DEIR, CARE CA and other members of the public are precluded from having the meaningful opportunity to comment on the DEIR that is required by CEQA. The Town's failure to make the underlying DEIR documents available during the entire comment period makes public review particularly burdensome in this case because of the DEIR's reliance on missing documents for significance determinations and mitigation measures to address the Project's air quality, health risk, biological resources, greenhouse gas, and hazardous materials impacts. Without having access to these documents, CARE CA and other members of the public are unable to evaluate the accuracy of the Town's air quality, health risk, and hazardous materials impact analysis, or the efficacy of the Town's proposed mitigation measures. Additionally, the size of the DEIR and the Project's complexity make it difficult to effectively comment on the DEIR without the referenced documents by the current comment deadline of October 30, 2023.

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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.⁵ It is also well settled that an EIR may not rely on hidden studies or documents that are not provided to the public.⁶ By failing to make all documents referenced in the DEIR "readily available" during the current comment period, the

⁵ *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

⁶ *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.")

Town is violating 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 DEIR.

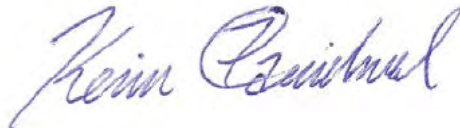
Accordingly, we request that:

- 1) The Town immediately provide us with access to the missing documents requested in our October 13, 2023 DEIR Reference Request.
- 2) the Town extend the public review and comment period on the DEIR for at least 45 days from the date on which the Town releases these documents for public review.⁷ If the missing documents are provided today, we request an extension to December 11, 2023.

Given the short time before the current comment deadline, please contact me today with your response to this request.

Please feel free to call or email with any questions: Tel: (650) 589-1660, Email: kcarmichael@adamsbroadwell.com. Thank you for your prompt attention and response to this matter.

Sincerely,



Kevin Carmichael

KTC:ljl

⁷ This Project has a 45-day public comment period, pursuant to 14 CCR § 15105 (projects submitted to the State Clearinghouse).
6756-005j

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