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June 23, 2026

Via Email and Overnight Delivery

Town of Apple Valley

Attn: David Contreras, Director of Planning

Attn: Richard Hirsch, Contract Planner

Community Development Department

14955 Dale Evans Parkway

Apple Valley, CA 92307

Emails: planning@applevalley.org

rhirsch@interwestgrp.com

Re: Comments on Final Initial Study/Mitigated Negative Declaration Green Trucking Solutions Cold Storage Project (SCH No. 2023080221; SPR 2022-002; CUP 2023-005)

Dear Mr. Contreras, Mr. Hirsch:

On behalf of **Californians Allied for a Responsible Economy ("CARE CA")**, we submit these comments on the Final Initial Study / Mitigated Negative Declaration ("Final MND") prepared by the Town of Apple Valley ("Town") for the Green Trucking Solutions ("GTS") Cold Storage Project (SPR 2022-002, CUP 2023-005, SCH No. 2023080221) ("Project")¹, proposed by Green Trucking Solutions, LLC ("Applicant"). The Project proposes construction of a 354,260-square-foot cold storage warehouse building, including two 2-story office areas, an electrical and fire pump building, and 371 parking spaces for automobiles and trucks to be located on an 18.78-acre site on the northwest corner of Navajo Road and Lafayette Street, in Apple Valley California.² Project construction is expected to last approximately 16 months.³

¹ Town of Apple Valley, Final Initial Study/Mitigated Negative Declaration, GTS Cold Storage Project ("FMND" or "Responses to Comments") (May, 2026), available at: <https://applevalley.org/wp-content/uploads/2026/02/green-trucking-solutions-cold-storage-center-site-plan-review-2022-002-final-initial-study-and-mitigated-negative-declaration.pdf>; Town of Apple Valley, Recirculated Subsequent Initial Study/Mitigated Negative Declaration, GTS Cold Storage Project ("RMND") (January 6, 2026), available at: <https://ceqanet.lci.ca.gov/2023080221/2/Attachment/hiCzLD>.

² RMND, p. 8.

³ *Id.* at 36.

CARE CA submitted comments on the original MND in 2023, and on the Recirculated Initial Study / Mitigated Negative Declaration (“RMND”) in March 2026, both times asking the Town to prepare an environmental impact report (“EIR”) to comply with the California Environmental Quality Act (“CEQA”).⁴ In May 2026, the Town instead released the Final MND, which includes responses to comments (“Responses”) submitted by CARE CA, its experts, and other members of the public. CARE CA’s review of the Final MND confirms that the Town still has not complied with CEQA or applicable land use laws.

The comments of CARE CA and other members of the public identified major errors and omissions in the Town’s analysis of the Project’s environmental and public health impacts. The majority of these errors have not been corrected. CARE CA’s experts presented the Town with substantial evidence supporting a fair argument that the Project’s operation will result in significant, unmitigated air quality, greenhouse gases (“GHG”), public health, transportation, and land use impacts. Under CEQA’s fair argument standard, the Town was required to prepare an EIR where, as here, substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment.⁵ The Town failed to prepare an EIR. The Town also continues to rely on a hidden health risk analysis which it promised to provide for public review, but continues to withhold despite multiple requests. CEQA prohibits such reliance on hidden studies to support the lead agency’s analysis.⁶

On June 3, 2026, the Town issued a Notice of Pending Land Use Decision. The Notice states that, following the 20-day notice period, the Planning Director will approve, deny, request modifications to the Project or refer the Project to the Town Planning Commission for further consideration.⁷ As discussed herein, the Town lacks substantial evidence to support the findings required to approve the Project, and has not complied with CEQA. The Town may not approve the Project

⁴ Pub. Resources Code (hereinafter “PRC”) §§ 21000 et seq.; 14 Cal. Code Regs (hereinafter “CCR” or “CEQA Guidelines”) §§ 15000 et seq.

⁵ *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.

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.”); *Cal. Clean Energy Comty. v. City of Woodland* (2014) 225 Cal. App. 4th 173, 194 (CEQA does not allow delegation of responsibility to assess environmental impacts to another party subject to approval of staff without the underlying information).

⁷ Town of Apple Valley, Notice of Pending Land Use Decision, Director Decision - Site Plan Review (SPR) 2022-002, Green Trucking Solutions Cold Storage Project (June 3, 2026), <https://applevalley.org/wp-content/uploads/2026/06/green-trucking-solutions-cold-storage-project-site-plan-review-2022-002-notice-of-pending-land-use-decision.pdf>.

June 23, 2026

Page 3

until the Town prepares an EIR that accurately discloses and mitigates the Project's significant environmental and public health impacts.

Additionally, the Project's proposed entitlements include a Conditional Use Permit, which requires Planning Commission approval, rather than Director approval.

CARE CA respectfully requests that the Planning Director remand the Project to Staff to prepare an EIR and refer the Project to the Planning Commission for a public hearing once environmental review is complete.

CARE CA reviewed the Responses with the assistance of environmental health, air quality, and GHG expert Dr. James Clark, Ph.D., and transportation expert Norman Marshall of Smart Mobility. Comments of Dr. Clark are attached to this letter as Exhibit A.⁸ Mr. Marshall's comments are included as Exhibit B.⁹ CARE CA reserves the right to provide supplemental comments at any and all later proceedings related to this Project.¹⁰

I. SUMMARY OF COMMENTS

CEQA requires the lead agency to prepare an EIR "whenever substantial evidence supports a fair argument that a proposed project may have a significant effect on the environment."¹¹ CARE CA's experts provided substantial evidence supporting a fair argument that the Project results in significant, unmitigated air quality, public health, hazards, GHG emissions, transportation, and land use impacts which required the Town to prepare an EIR for the Project pursuant to CEQA.¹² Rather than comply with CEQA and prepare an EIR, the Town released the Final MND, which contains Staff's responses to public comments. The Responses lack supporting evidence, disagree with CARE CA's experts, deny obvious informational defects, and still fail to mitigate significant impacts. The

⁸ **Exhibit A:** Dr. James Clark, Rebuttal to the Town of Apple Valley's Responses to Comments on the Final Initial Study/Mitigated Negative Declaration (FIS/MND) for the GTS Cold Storage Project (SPR2022-002) (June 3, 2026) ("Clark Comments").

⁹ **Exhibit B:** Norman Marshall, GTS Cold Storage Project (June 11, 2026) ("Marshall Comments").

¹⁰ Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

¹¹ *Laurel Heights Improvement Assn. v. Regents of University of California*, 6 Cal.4th at 1123; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.

¹² PRC §§ 21000 et seq.; 14 CCR §§ 15000 et seq. *Laurel Heights Improvement Assn. v. Regents of University of California*, 6 Cal.4th at 1123.

Responses do not resolve the issues raised by CARE CA and its experts. This is precisely the situation in which CEQA requires an EIR to be prepared.

First, there is substantial evidence supporting a fair argument that the Project will result in significant air quality, GHG, and health risk impacts from trucking. The Final MND's reliance on a 40-mile truck trip remains unsupported because the most common sources of warehoused goods in the region, including major freight transfer points, food producing areas, food-processing facilities, and population centers, range from 90-500 miles from the Project site, with distances of 115 miles (ports) and 150 miles (agricultural centers) being likely high-volume trip distances, according to Mr. Marshall.¹³ Mr. Marshall's comments demonstrate that the Town's assumption of a 40-mile truck trip average in this location is unsupported by any evidence in the record.

When accounting for reasonably foreseeable truck trip distances, incorporating port-bound traffic, Dr. Clark estimated that the Project's air pollutant emissions would nearly triple for daily diesel particulate matter and oxides of nitrogen emissions compared to the RMND's estimates. The Project's air quality, GHG, health risk, and transportation impacts were substantially underestimated in the RMND, and the Responses to nothing to correct these errors.

Second, Dr. Clark's comments on the RMND provided substantial evidence supporting a fair argument that the Project's health risk from exposure to construction and operational air emissions is significant and unmitigated. Dr. Clark performed an independent health risk analysis, using the same emission inputs used in the RMND, and calculated a lifetime cancer risk of approximately 116 in one million at the nearest sensitive receptor. This is more than eleven times the MDAQMD significance threshold of 10 in one million, resulting in significant impact which the mitigation measures in the RMND do not adequately mitigate.

In response, the Final MND states that the Town performed its own health risk analysis which reached a different conclusion than Dr. Clark. However, the Final MND does not include the health risk analysis or the supporting data that the Town purportedly prepared to reach this conclusion. The Responses state: "The Town will supplement the RMND with an attachment documenting the screening HRA calculations, including emission rates, screening dispersion factors, exposure assumptions (including age sensitivity factors and fraction of time at home values), and the resulting ground-level concentrations and cancer risk values."¹⁴ But this data has not been provided for public review, as required by law. CARE CA

¹³ Marshall Comments, p. 4.

¹⁴ FMND, p. 324.

submitted separate record requests seeking access to the Town's health risk analysis and supporting data. The Town failed to provide access to any of these documents in response to CARE CA's requests. The Final MND therefore relies on a hidden study that has not been provided to the public to support the Final MND's conclusion that the Project would not result in significant, unmitigated public health and air quality impacts. The Final MND's conclusions remain unsupported by evidence in the record, as required by CEQA.

Third, the Final MND still fails to adequately mitigate public health impacts from potential Valley Fever exposure during Project construction. The Responses recognize that instances of Valley Fever have increased in recent years, from 1.18 per 100,000 in 2016 to 10.5 per 100,000 as of May 2025.¹⁵ But, as Dr. Clark's comments demonstrate, the Final MND fails to incorporate all feasible mitigation to reduce impacts from Valley Fever to nearby sensitive receptors, leaving this significant impact inadequately mitigated.

Fourth, the RMND failed to analyze the reasonably foreseeable battery energy storage ("BESS") and backup generator systems which will be necessary for Project operation, and the Responses fail to correct this omission. The Project is required to have a photovoltaic ("PV") system pursuant to the Energy Code Section 701.3.1.¹⁶ "All buildings that are required by Section 701.3.1 to have a PV system shall also have a BESS."¹⁷ The Project is required by state law to include a BESS, but the Final MND fails to analyze the Project's BESS. Dr. Clark's comments demonstrated that generators will be necessary during PSPS events to prevent spoilage of millions of dollars of temperature sensitive inventory. Therefore, generators are a reasonably foreseeable Project component which must be analyzed in accordance with CEQA. Dr. Clark's comments demonstrated that these BESS and generators would result in significant air pollutant emissions, GHG emissions, and public health impacts which neither the RMND nor the Final MND disclose or mitigate.

Fourth, the RMND failed to analyze significant transportation impacts associated with inbound Port truck trips and significantly underestimates the truck trips distance associated with Project operation. The Town's failure to accurately estimate Project truck trip lengths resulted in the RMND significantly underestimating the Project's generated vehicle miles travelled ("VMT"). Using accurate inputs, Mr. Marshall calculated that Project VMT impacts are nearly three

¹⁵ Responses to Comments, p. 103.

¹⁶ Cal. Energy Code § 701.3.1.

¹⁷ Cal. Energy Code § 701.3.2.

times the Town's threshold. The Project's significant VMT impacts must be analyzed in an EIR in accordance with CEQA.

Fifth, the Project requires approval of Conditional Use Permit CUP 2023-005 by the Planning Commission. Conditional Use Permits must be reviewed by the Planning Commission concurrently with environmental review and all necessary permits for Project approval in a noticed public hearing. The Planning Director's approval of Site Plan Review SPR 2022-002 without concurrent review of the Project's Conditional Use Permit CUP 2023-005 would violate the Municipal Code.

For all these reasons, the Final MND is wholly inadequate under CEQA. The Town must remand the Project to Staff to prepare a legally adequate EIR, and require the Planning Commission to hold a public hearing when the Project is ultimately considered for approval.

II. THE TOWN HAS NOT COMPLIED WITH CEQA

A. The Town is Withholding RMND Reference Documents, in Violation of CEQA and the Public Records Act

The Final MND bases its conclusion regarding the Project's health risk from exposure to air emissions on a Health Risk Assessment ("HRA"), which has not been provided to the public and which the Town confirmed via email is in the CEQA consultant's possession. The Final MND promised that "[i]f those calculations demonstrate that any threshold may be approached, a refined HRA will be prepared."¹⁸ The Town has not produced the HRA or its underlying calculations to confirm or deny whether the Town's assessment of the need for further health risk analysis is based on substantial evidence. The Final MND therefore currently relies on a hidden study that has not been provided to the public to support the Final MND's conclusion that the Project would not result in significant, unmitigated public health and air quality impacts.

CARE CA previously submitted requests for access to RMND reference documents as well as Public Records Act ("CPRA") requests, followed by email correspondence with Town staff specifically requesting access to the health risk analysis referenced in the RMND and Final MND. The Town is in violation of CEQA and the CPRA for failing to provide access to this study.

CEQA requires that "all documents referenced" – and the CEQA Guidelines require that "all documents incorporated by reference" – in a mitigated negative

¹⁸ Final MND, p. 325.

declaration shall be “readily accessible to the public during the lead agency’s normal working hours” during the entire public comment period.¹⁹ Further, a CEQA document may not rely on hidden studies or documents that are not provided to the public.²⁰ The Town is in violation of these requirements because the Town has failed to provide Residents with access to all RMND reference documents despite timely requests for access made in February 2026,²¹ March 2026^{22,23}, and subsequent June 2026 requests.²⁴

On February 4, 2026, CARE CA submitted a request for immediate access to all documents referenced or relied upon in the RMND²⁵, as well as a request for immediate access to all public records related to the Project.²⁶ The first request was made pursuant to the Public Resources Code § 21092(b)(1), which requires that all documents *referenced* in an environmental review document be made available to the public for the entirety of the public review period. The second request was made pursuant to Government Code § 7922.525, which requires public records to be “open to inspection at all times during the office hours of the state or local agency” and provides that “every person has a right to inspect any public record.”²⁷

On March 24, 2026, CARE CA submitted a request for request a copy of any and all records related to the Project.²⁸ This request included, but was not limited to, any and all file materials, correspondence, resolutions, memos, notes, analysis, email messages, files, maps, charts and any other documents related to the

¹⁹ Pub. Resources Code § 21092(b)(1); 14 C.C.R. § 15072(g)(4); see *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

²⁰ *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.”).

²¹ **Exhibit C** – Letter from ABJC to Town of Apple Valley Re: Request for Immediate Access to Documents Referenced in the Recirculated Subsequent Initial Study/Mitigated Negative Declaration - Green Trucking Solutions Cold Storage Project (SCH No. 2023080221; Site Plan Review No. SPR2022-002) (Feb. 4, 2026):

²² **Exhibit D** – Letter from ABJC to Town of Apple Valley Re: Request for Immediate Access to Public Records – Green Trucking Solutions Cold Storage Project (SCH No. 2023080221; Site Plan Review No. SPR2022-002) (Feb. 4, 2026).

²³ **Exhibit E** – Letter from ABJC to Town of Apple Valley Re: Public Records Act Request – Green Trucking Solutions Cold Storage Project (SCH No. 2023080221; Site Plan Review No. SPR2022-002) (March 24, 2026).

²⁴ **Exhibit F** – ABJC emails with Town regarding HRA calculations (June 2026).

²⁵ Exhibit C.

²⁶ Exhibit D.

²⁷ Government Code § 7922.525.

²⁸ Exhibit E.

Project.²⁹ This request also included, but was not limited to, all comments received on the Recirculated Subsequent Initial Study/Mitigated Negative Declaration.³⁰

On May 28, 2026, the Town released the Final MND, which states:

[T]o provide additional transparency, the Town will supplement the RMND with an attachment documenting the screening HRA calculations, including emission rates, screening dispersion factors, and resulting ground-level concentrations.³¹

This documentation was not attached to the Final MND.

On June 12, 2026, CARE CA submitted a request via email to the Town again requesting a copy of the “attachment documenting the screening HRA calculations, including emission rates, screening dispersion factors, exposure assumptions (including age sensitivity factors and fraction of time at home values), and the resulting ground-level concentrations and cancer risk values” referenced in the Final MND.³²

The Town replied to CARE CA’s request for the HRA calculations on June 15, 2026. Consulting Planner for the Town stated by email that the HRA was with the environmental consultant’s team: “I am contacting the applicant team regarding your request and we will send the requested items once they are available.”³³ On June 16, 2026, CARE CA requested clarification regarding whether the Town could “please advise when the document we’ve requested will be provided.”³⁴ On June 16, 2026, Town staff stated that “The applicant team is currently working on it. I do not have a date for you”³⁵ indicating that the HRA may not have even been prepared yet.

To date, the Town has not released the HRA or supporting calculations for public review. The Final MND therefore relies on evidence that is not available for public review, in violation of CEQA.

²⁹ Exhibit E.

³⁰ Exhibit E.

³¹ Final MND, p. 11.

³² Exhibit F, p. 3.

³³ Exhibit F, p. 2.

³⁴ Exhibit F, p. 1.

³⁵ *Id.*

i. CEQA Requires Disclosure of the HRA

The Town is in ongoing violation of CEQA's requirement to provide access to documents referenced and relied upon in the Final MND. CEQA requires that "all documents referenced" – and the CEQA Guidelines require that "all documents incorporated by reference" – in a mitigated negative declaration shall be "readily accessible to the public during the lead agency's normal working hours" during the entire public comment period.³⁶ CEQA further requires the environmental document to reflect the independent judgment of the lead agency, and prohibits delegation of responsibility to assess environmental impacts to another party subject to approval of staff without the underlying information.³⁷

The Town's assertion that it cannot provide access to the HRA or supporting calculations because they are in the possession of the CEQA consultant is contrary to law. Under CEQA, "an agency has constructive possession of records if it has the right to control the records, either directly or through another person," which includes records held by the lead agency's environmental consultant that are referenced in the environmental review document.³⁸ Records under the direct or constructive possession of the lead agency are part of the CEQA administrative record.³⁹ The California Supreme Court in *City of San Jose v. Superior Court* similarly held that "records related to public business are subject to disclosure if they are in an agency's actual or constructive possession."⁴⁰

CEQA also prohibits the lead agency from relying on hidden studies to support its significance conclusions. A CEQA document may not rely on hidden studies or documents that are not provided to the public.⁴¹ Here, the Final MND relies on the HRA calculations to support the Town's air quality and health risk analysis, and to support the Final MND's conclusions that air quality, hazards and public health impacts would be less than significant. The Director and the Planning Commission cannot make a decision on the Project absent a complete picture of the Project's health risk impacts.

³⁶ Pub. Resources Code § 21092(b)(1); 14 C.C.R. § 15072(g)(4); see *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

³⁷ Cal. Clean Energy Comty., 225 Cal. App. 4th at 194.

³⁸ *Consolidated Irrigation District v. Superior Court* (2012), 205 Cal.App.4th 697, 710, as modified on denial of reh'g (May 23, 2012).

³⁹ *Id.*; Pub. Resources Code § 21092(b)(1).

⁴⁰ *City of San Jose v. Superior Court* (2017) 2 Cal. 5th 608, 622-623.

⁴¹ *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.").

The Town's failure to disclose its HRA and supporting calculations renders the Final MND's analysis and impact conclusions unsupported by substantial evidence. The Town must correct these violations by immediately providing public access to the HRA calculations, including emission rates, screening dispersion factors, exposure assumptions (including age sensitivity factors and fraction of time at home values), and the resulting ground-level concentrations and cancer risk values, and preparing, in order to demonstrate that results are below all applicable MDAQMD thresholds.

ii. The Public Records Act Requires Disclosure of the HRA and Supporting Data

The Town is in violation of CPRA disclosure requirements, and has not provided any legal basis to exempt the Town from disclosure of the HRA or supporting data. Under the CPRA, upon request, any public agency must make publicly available for inspection and copying any record that it prepared, owns, uses, or retains that is not subject to the CPRA's statutory exemptions to disclosure.⁴²

Before withholding any record responsive to a valid request under the CPRA, the agency must "demonstrat[e] that the record in question is exempt under express provisions ... or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."⁴³ The Town has not presented any evidence that the HRA and supporting calculations are exempt from disclosure, nor could it, because they form the basis of the Town's health risk analysis in the Final MND and the Town promised the public that the HRA would be disclosed with the Final MND, which it was not.

Dr. Clark's independent health risk analysis calculated that the Project results in significant unmitigated health risk impacts, and a cancer risk which exceeds MDAQMD significance thresholds. **Dr. Clark calculated a lifetime cancer risk of approximately 116 in one million at the nearest sensitive receptor to the Project site.⁴⁴ This cancer risk is more than eleven times the MDAQMD significance threshold of 10 in one million.⁴⁵** The Project results in a significant cancer and health risk which the RMND failed to analyze or mitigate. As substantial evidence demonstrates that health risk impacts are

⁴² Gov. Code, § 6253.

⁴³ Gov. Code, § 6255.

⁴⁴ Clark Comments, p. 6.

⁴⁵ Clark Comments, p. 6.

significant, the Town must circulate a legally compliant EIR which analyzes and mitigates the Project's significant health risk and cancer impacts.

III. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT WILL HAVE SIGNIFICANT, UNMITIGATED AIR QUALITY IMPACTS

Substantial evidence in CARE CA's comments and those of its expert consultant supports a fair argument that the Project would result in significant, unmitigated air quality impacts requiring preparation of an EIR. Under the fair argument standard, if there is *any* substantial evidence the project *may* have a significant impact – and regardless of the existence of other substantial evidence to the contrary – an MND is improper and an EIR *must* be prepared.⁴⁶

A. The Final MND Fails to Address the Project's Significant Operational Air Impacts

The RMND relied on an unsupported 40-mile truck trip assumption for analyzing air quality, health risk, GHG, and transportation impacts. But, as both Mr. Marshall and Dr. Clark commented, reasonably foreseeable warehouse truck trips are likely to involve trips to and from the ports, including the Ports of Long Beach and Port of Los Angeles, each approximately 115 miles from the Project site. These experts concluded that RMND's reliance on the 40-mile average trip length significantly underestimated actual trips to and from the Project site, resulting in underestimated air quality and transportation impacts. According to Dr. Clark, replacing the 40-mile assumption with the well-supported average of port-linked facilities, approximately 80 to 115 miles, would double or nearly triple modeled daily diesel particulate matter ("DPM") and oxides of nitrogen ("NOx") emissions compared to the RMND's estimates.⁴⁷ CARE CA's experts concluded that truck trips to and from the ports would result in a significant impact under CEQA which the RMND failed to analyze.

Rather than updating its truck trip analysis based on CARE CA's comments, the Responses double down on the RMND's original conclusion that "The weighted average of all truck trips — including local, regional, and port-bound trips — is reflected in the 40-mile assumption."⁴⁸ This conclusion is not supported by substantial evidence in the record, and was rebutted by substantial evidence from Dr. Clark and Mr. Marshall which demonstrated that the Ports of Long Beach and

⁴⁶ *Upland Community First v. City of Upland* (2024) 105 Cal.App.5th 1, 15.

⁴⁷ Clark Comments, p. 4.

⁴⁸ Responses to Comments, p. 9.

Los Angeles are reasonably foreseeable refrigerated truck trip origins for the Project. This disagreement requires preparation of an EIR under the fair argument standards.

The Town's assertion that "[a] weighted average of 40 miles is reasonable and conservative"⁴⁹ is unsupported. This conclusion does not comport with the NCST study cited by Dr. Clark which found that 56% of Southern California Association of Government ("SCAG") region facilities receive goods from the Ports. The Responses do not rebut the NCST that 56% of SCAG region facilities receive goods from the Ports, and 44% do not.⁵⁰ The Responses state that "approximately 50% deliver to Southern California warehouses, retail stores, or manufacturing plants, many of which are located much closer than the ports."⁵¹ The Responses do not document that the distances of these assumed local trips would average out to 40 miles when combined with other warehouse trip origin and destination trips. Moreover, the locations of these local delivery sites would have to be extremely close to the Project site to support reliance on a 40-mile average given the substantially longer distances of the non-local trips to ports and other warehouse suppliers.⁵² Therefore the 40-mile average is not supported by substantial evidence.

Mr. Marshall's comments provide substantial evidence that "there are few significant freight origins and destinations (freight transfer points, food-processing facilities, and/or population centers) within 40 miles of the proposed warehouse."⁵³ Furthermore, Mr. Marshall's comments provide that "A longer average truck trip length should be developed based on likely origins and destinations."⁵⁴ Mr. Marshall states that the truck trip average "should include the ports (approximately 115 miles distant), Central Valley agricultural areas (150-500 miles distant), major population centers (e.g. Los Angeles 90 miles distant), and Class 1 railyards (closest ones 30-60 miles distant)."⁵⁵

According to Mr. Marshall, in order to justify a 40-mile average truck trip distance, it must be demonstrated that the excess mileage from longer trips will be offset by shorter trips.⁵⁶ For example, a single 150-mile truck trip from the Bakersfield area would need to be offset by three implausibly short 3-mile truck

⁴⁹ Responses to Comments, p. 105.

⁵⁰ Responses to Comments, p. 105.

⁵¹ Responses to Comments, p. 105.

⁵² Marshall Comments, p. 4.

⁵³ Marshall Comments, p. 2.

⁵⁴ Marshall Comments, p. 4.

⁵⁵ Marshall Comments, p. 4.

⁵⁶ Marshall Comments, p. 4.

trips to justify a 40-mile average truck trip.⁵⁷ Regional maps also confirm that there are no grocery stores within three miles of the Project site.⁵⁸ The Final MND lacks supporting evidence for its trip assumptions.

Mr. Marshall's comments provide substantial evidence that **“[a] 40-mile average truck trip distance appears to be impossible for this project in this location,** and certainly should not be asserted without a plausible explanation.”⁵⁹ As the Final MND fails to include a plausible explanation accounting for the 40-mile average, the Project's analysis of truck trips is unsupported by substantial evidence. This renders the RMND's entire air quality, health risk, GHG, and transportation analysis unsupported by substantial evidence.

Comments from the South Coast Air Quality Management District (“SCAQMD”) on this precise issue for other regional warehouse projects demonstrates that the Project's distance to the Ports should be accounted for in analyzing air quality impacts. The following three case studies from other warehouse projects in the same region demonstrate that SCAQMD recommends reliance on an average distance to the Port, or 70 miles average, where it is reasonably foreseeable that Projects' trips will be Port-bound.

In a similar project, the Hemlock Warehouse Development Project, SCAQMD recommended that, given's 70-mile distance to the Ports of Los Angeles and Long Beach, the Draft EIR risked “underestimating truck emissions due to the shorter distance...analyzed in the Draft SEIR.”⁶⁰ SCAQMD recommended that the Lead Agency revise the truck emissions analysis using the more conservative trip length between 40 to 70 miles, of which 40 miles could be used for local and 70 miles for Port trips.⁶¹

In the Rider and Patterson Business Center Project, SCAQMD also commented that the DEIR's reliance on a 40-mile truck trip was unsupported.⁶² The Proposed Project site, however, is located approximately 70 miles from the

⁵⁷ Marshall Comments, p. 4.

⁵⁸ Google Maps, 2026.

⁵⁹ Marshall Comments, p. 4.

⁶⁰ South Coast Air Quality Management District, Draft Subsequent Environmental Impact Report for the Hemlock Warehouse Development Project (Proposed Project) (SCH No.: 2009091089) (Nov. 22, 2023), <https://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2023/november-2023/SBC231011-05.pdf>.

⁶¹ *Id.*

⁶² Letter from SCAQMD to Riverside County Planning Department, Draft Environmental Impact Report (EIR) for the Rider and Patterson Business Center Project (Feb. 9, 2024), <https://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2024/february/RVC240104-02.pdf>.

Ports of Long Beach and Los Angeles, such that the air quality analysis underestimated emissions from trucks traveling from the Ports to the Proposed Project site. For this reason, Staff recommended the Lead Agency apply more conservative trip lengths such as 40 miles for local trips and 70 miles for Port-related trips.

Finally, SCAQMD commented in the First Industrial Logistics at Harley Knox and Indian Project, that the DEIR underestimated emissions due to a reliance on a 40-mile truck trip distance.⁶³ The DEIR's air quality impact analysis was based on the assumption that the average truck trip length is 40 miles.⁶⁴ However, the project site is located 75 to 80 miles away from the Ports of Long Beach and Los Angeles which means that the air quality analysis underestimated the emissions from trucks traveling from the Ports to the project site.⁶⁵ For this reason, SCAQMD recommended that the City revise the calculations in the Final EIR by taking a project-specific approach to the vehicle trip length and trip rates by applying more conservative trip lengths such as designating 40 miles for local trips and 80 miles for Port-related trips.⁶⁶ "Tailoring these parameters and assumptions to be based on project-specific data will ensure a more accurate assessment of emissions, accounting for the unique circumstances and logistical realities of the Proposed Project."⁶⁷

Based on the above, the Final MND's conclusion that "[t]he weighted average of all truck trips – including local, regional, and port-bound trips – is reflected in the 40-mile assumption" is not supported by substantial evidence.⁶⁸ Furthermore, Dr. Clark's comments provide additional substantial evidence that refrigerated warehouse generate higher frequency, higher turnover freight activity and result in "port-supplied, temperature sensitive commodity flows rather than slow-turnover local distribution."⁶⁹ Dr. Clark cites to numerous studies which demonstrate that this Project is likely to receive "imported, port-origin commodities rather than purely "local" agricultural or grocery sources."⁷⁰ For example, imported frozen and

⁶³ Letter from South Coast Air quality Management District to City of Perris, Draft Environmental Impact Report (DEIR) for the First Industrial Logistics at Harley Knox and Indian (Proposed Project) (SCH No: 2025051368) (Jan. 23, 2026), <https://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2026/january-2026/rvc251211-04-deir-first-industrial-logistics-at-harley-knox-and-indian-project.pdf>.

⁶⁴ *Id.* at 2.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 3.

⁶⁸ Responses to Comments, p. 9.

⁶⁹ Clark Comments, p. 6.

⁷⁰ Clark Comments, p. 6.

chilled seafood requires cold chain handling from the point of port entry through inland cold storage and ultimately to retail and foodservice distribution, according to Dr. Clark.⁷¹ Dr. Clark's comments provide substantial evidence demonstrating that "San Bernardino County accounts for nearly a third of regional freight network mileage [which] is a reasonably foreseeable node in this port-to-inland cold chain, not merely a terminus for locally grown produce or grocery chain redistribution."⁷² Based on this, heavy duty truck trips from the Ports of Los Angeles and Long Beach are reasonably foreseeable trip origins for trucks bound for the Project site.

Further, Dr. Clark comments that, even without port origins, "California's major fresh produce growing regions — the Central Valley, Salinas Valley, and Imperial Valley — are themselves located well beyond a 40-mile radius of the Apple Valley site, and distribution to and from those growing regions would also generate refrigerated truck trip lengths inconsistent with the Town's assumed average."⁷³ Dr. Clark writes that "[t]he Town has not provided substantial evidence, such as an origin-destination survey of comparable cold storage tenants in the High Desert subregion, to support its qualitative assertion that the trip-length mix favors local and regional movements over port-linked or extended agricultural-region movements."⁷⁴

Therefore, the Final MND's analysis with respect to truck trips remains unsupported by substantial evidence. The air quality analysis should be based on the reasonably foreseeable trips to the Ports, accounting for the approximately 115-mile trip from the Ports, averaged with the delivery lengths of the actual Project.

As detailed herein and in Dr. Clark's expert consultant report, replacing the 40-mile assumption with the evidentiary supported average of port-linked facilities, approximately 80 to 115 miles, would double or nearly triple modeled daily DPM and NOx emissions compared to the RMND's estimates.⁷⁵ Truck trips from the Port result in a significant impact under CEQA which the RMND failed to analyze or mitigate. This analysis must be incorporated into an EIR circulated for public review and scrutiny.

⁷¹ Clark Comments, p. 6.

⁷² Clark Comments, p. 7.

⁷³ Clark Comments, p. 7.

⁷⁴ Clark Comments, p. 8.

⁷⁵ Clark Comments, p. 4.

B. Substantial Evidence Supports a Fair Argument that the Project Results in Significant, Unmitigated Health Risk Impacts

The Responses fail to resolve the RMND's failure to adequately analyze the Project's significant health risk impacts from exposure to construction and operational air emissions. The Responses promised that "The Town will supplement the RMND with an attachment documenting the screening HRA calculations, including emission rates, screening dispersion factors, exposure assumptions (including age sensitivity factors and fraction of time at home values), and the resulting ground-level concentrations and cancer risk values."⁷⁶ The Responses assert that "[t]his will confirm the methodology is consistent with OEHHA guidance and demonstrate that results are below all applicable MDAQMD thresholds."⁷⁷ But, the Town has not provided the HRA or its attachments for public review to determine whether the RMND relied on health risk modeling which complies with OEHHA guidance and demonstrates that the Project's health risk are less than MDAQMD thresholds. This violates CEQA.

The Final MND bases its conclusion regarding the Project's health risk from exposure to air emissions on this nonexistent HRA. The Final MND also promises that "[i]f those calculations demonstrate that any threshold may be approached, a refined HRA will be prepared."⁷⁸ The Town has not produced the assessment or its underlying calculations to confirm or deny whether the Town's assessment of the need for further health risk analysis is based on substantial evidence. The Final MND therefore currently relies on a hidden study that has not been provided to the public to support the Final MND's conclusion that the Project would not result in significant, unmitigated public health and air quality impacts.

Absent this evidence, the Town's conclusions regarding the Project's health risk impacts are unsupported. Dr. Clark's comments demonstrate that the Final MND contains no documented application of any of these models, no model output, no meteorological data inputs, and no receptor grid. The Responses state that "screening dispersion factors" derived from OEHHA guidance were applied, but this documentation was not included in the circulated RMND, and the public and decision-makers were therefore unable to evaluate the methodology.⁷⁹

In fact, Dr. Clark's independent HRA calculated that the Project results in significant unmitigated health risk impacts, and a cancer risk which exceeds

⁷⁶ FMND, p. 324.

⁷⁷ Responses to Comments, p. 11, 106, 323,

⁷⁸ Final MND, p. 325.

⁷⁹ Responses to Comments, p. 11; Clark Comments, p. 7.

MDAQMD significance thresholds. Dr. Clark calculated a lifetime cancer risk of approximately 116 in one million at the nearest sensitive receptor to the Project site.⁸⁰ This cancer risk is more than eleven times the MDAQMD significance threshold of 10 in one million.⁸¹ The Project therefore results in a significant cancer and health risk which the RMND failed to analyze or mitigate.

The Responses do not dispute Dr. Clark's substantive findings, but rather attributes the difference in health risk calculation to methodological choices.⁸² But, Dr. Clark's methodological modeling choices are supported by substantial evidence, whereas the Town's are not.

The Responses state that "Dr. Clark's analysis models the entire project site as a single area source emitting continuously over 30 years, which substantially overpredicts actual exposure."⁸³ But, OEHHA explicitly instructs that a conservative screening approach should treat the site as a single area source to identify whether refined modeling is warranted.⁸⁴ Dr. Clark's approach is therefore supported by substantial evidence. Rather, it is the Town that failed to produce any health risk modeling, and therefore lacks any evidence to support the Final MND's conclusions. The Town must remand the Project to Staff and provide the public with the HRA calculations for public review and scrutiny.

C. Substantial Evidence Supports a Fair Argument that the Project Results in Significant, Unmitigated Impacts from Battery Storage

The Responses states that a BESS is not a reasonably foreseeable Project component because the 2022 California Energy Code does not require battery storage for nonresidential PV systems and the Project does not propose a BESS.⁸⁵ But pursuant to Section 701.3.2 of the Energy Code, "All buildings that are required by Section 701.3.1 to have a PV system shall also have a BESS."⁸⁶ As the Project is required to have a PV system pursuant to the Energy Code Section 701.3.1, **the Project is required to include a BESS.**

⁸⁰ Clark Comments, p. 6.

⁸¹ *Id.*

⁸² *Id.* at 9.

⁸³ Responses to Comments, p. 11.

⁸⁴ Office of Environmental Health Hazard Assessment (OEHHA). (2015). *Air Toxics Hot Spots Program Risk Assessment Guidelines: Technical Support for Exposure Assessment, Part IV*. California EPA, Sacramento. Sections 4.2–4.9, 4.34–4.38.

⁸⁵ Responses to Comments, p. 99.

⁸⁶ Cal. Energy Code Section 701.3.1 ["All newly constructed building types specified in Table 701.3-A... [including warehouse] where at least 80 percent of the floor area of the building serves one or more of these building types shall have a newly installed photovoltaic (PV) system."]

Even absent the Energy Code requirement, Dr. Clark demonstrates that BESS will be required by the Project to “bridge periods of low solar production” and to ensure maintenance of “continuous cold storage logistics.”⁸⁷ Further, Dr. Clark cites to the California Energy Commission (“CEC”) projections as substantial evidence that cold storage facilities like this Project require “BESS integration to maintain required temperature chains, avoid product loss during PSPS events, and comply with California's evolving Time-of-Use electricity pricing structures.”⁸⁸ BESS is therefore a reasonably foreseeable component of the Project, which must be analyzed.

Dr. Clark’s comments provide substantial evidence supporting a fair argument that the Project’s BESS would result in significant environmental impacts which “must be quantified and assessed against health significance thresholds.”⁸⁹ Further, Dr. Clark’s comments reiterate that the Final MND fails to analyze the potentially significant impacts from BESS fires, toxic gas release, and thermal runaway events.⁹⁰

The Responses state that the Town was not required to include battery storage in the RMND or analyze the risks of battery storage. But, as BESS are a reasonably foreseeable Project component to support Project operation, the air quality, public health and safety impacts of reasonably foreseeable BESS components must be analyzed in an EIR circulated for public review and scrutiny, in accordance with CEQA.

D. Substantial Evidence Supports a Fair Argument that the Project Results in Significant, Unmitigated Impacts from the Generators

The Responses state that the Project does not propose backup generators for warehouse refrigeration operations and that the only diesel standby equipment is the 324-hp fire pump included in the CalEEMod analysis.⁹¹ This response fails to address the reasonably foreseeable operational requirements of the Project. The Responses states that “Any future generator installation by a tenant would require MDAQMD permitting and CARB ATCM compliance.”⁹² If the Responses contemplate “future generator installation by a tenant,” such generators and their resultant environmental impacts must be analyzed in an EIR. CEQA requires that

⁸⁷ Clark Comments, p. 12.

⁸⁸ *Id.*

⁸⁹ Clark Comments, p. 12.

⁹⁰ Clark Comments, p. 13.

⁹¹ Responses to Comments, p. 98.

⁹² Responses to Comments, p. 107.

a “Lead Agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect changes in the environment which may be caused by the project.”⁹³

The Responses further state that “[t]he Project’s refrigeration system is powered by grid electricity supplemented by an on-site photovoltaic system.”⁹⁴ But, Dr. Clark’s comments demonstrate that grid electricity and the on-site photovoltaic system will not be sufficient in the event of a Public Safety Power Shutoff (“PSPS”) event. Dr. Clark’s comments demonstrate that generators will be necessary during PSPS events to prevent spoilage of millions of dollars of temperature sensitive inventory.⁹⁵ Therefore, generators are a reasonably foreseeable Project component which must be analyzed in accordance with CEQA.

Dr. Clark’s comments demonstrate that the generators will result in significant air quality, health risk, and GHG impacts which must be analyzed in an EIR. Dr. Clark’s comments state that “a backup generator adequate to serve the Project’s refrigeration load would produce meaningful quantities of DPM at the Project site - quantities that must be quantified and assessed against health significance thresholds.”⁹⁶ This analysis must be incorporated into an EIR circulated for public review and scrutiny.

E. Substantial Evidence Supports a Fair Argument that the Project Results in Significant, Unmitigated Impacts from Valley Fever

The Responses recognize that instances of Valley Fever have increased in recent years, from 1.18 per 100,000 in 2016 to 10.5 per 100,000 as of May 2025.⁹⁷ But, as Dr. Clark’s comments demonstrate, the Final MND still fails to incorporate all feasible mitigation to reduce impacts from Valley Fever to nearby sensitive receptors. The Final MND does not consider all feasible alternatives and mitigation measures, such as requiring the Applicant to offer to provide MERV-16 filtration to reduce Valley Fever impacts on the Victor Valley Community College Public Safety Training Facility.⁹⁸

Dr. Clark’s comments demonstrate that, absent this measure, Valley Fever impacts are likely to remain significant to offsite receptors.⁹⁹ The Responses

⁹³ 14 CCR § 15064 (d).

⁹⁴ Responses to Comments, p. 98.

⁹⁵ Clark Comments, p. 14.

⁹⁶ *Id.*

⁹⁷ Responses to Comments, p. 103.

⁹⁸ Clark Comments, p. 14.

⁹⁹ *Id.*

reassert that “requiring comprehensive dust control and worker protection measures during construction, including equipment cleaning, phased grading, enhanced watering, HEPA-filtered closed-cab equipment, worker training, and Valley Fever informational handouts” would substantially reduce Valley Fever exposure.¹⁰⁰ But, Dr. Clark’s comments explain that these measures are inadequate to reduce significant Valley Fever infections to **offsite** receptors, including individuals at the Victor Valley Community College Public Safety Training Facility located only 200 feet from the Project site.¹⁰¹

Further, Dr. Clark’s comments detail that “Upwind/downwind particulate monitoring at the project boundary, while a useful improvement, does not reduce exposure in real time [because] by the time monitoring detects elevated levels and triggers a halt to grading, occupants at the College will already have been exposed.”¹⁰² Absent incorporating a measure to require the Applicant to offer to provide MERV-16 filtration to Victor Valley Community College Public Safety Training Facility, Valley Fever impacts from Project construction remain significant and unmitigated.¹⁰³ The Town must circulate an EIR which adequately analyzes and mitigates the Project’s significant air quality and public health impacts from Valley Fever before the Project can lawfully proceed. If the Town believes proposing installation of MERV filtration at adjacent sites is infeasible, then the Town must identify alternative feasible mitigation to reduce the health effects of Valley Fever exposure on offsite receptors.

IV. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT WILL HAVE SIGNIFICANT UNMITIGATED TRANSPORTATION IMPACTS

The Responses fail to resolve the issues raised in CARE CA’s comments and those of its expert consultants. The Responses disregard the substantial evidence provided by CARE CA’s experts by continuing to conclude that “[a]s the distance the haul trucks will travel is unknown, it was conservatively assumed the average truck trip length would be 40 miles each way and the delivery trucks would average the CalEEMod default 7.3 miles each way.”¹⁰⁴ Based on reliance on this unsupported average, the RMND underestimated the Project’s Project truck trip lengths and severely underestimated the Project’s significant transportation impacts.

¹⁰⁰ Responses to Comments, p. 103.

¹⁰¹ Clark Comments, p. 14 - 15.

¹⁰² Clark Comments, p. 15.

¹⁰³ Clark Comments, p. 14.

¹⁰⁴ RMND, Appendix A, p. 3.

Substantial evidence in Mr. Marshall's comments demonstrate that the RMND's assumption grossly underestimated reasonably foreseeable Project truck trip lengths.¹⁰⁵ Mr. Marshall's comments explain that "[t]he assumed average truck trip length of 40 miles is too low given that the proposed site's location is distant from important truck origins and destinations, including major freight transfer points, food producing areas, food-processing facilities, and population centers."¹⁰⁶

Mr. Marshall recommends that a longer average truck trip length should be developed based on likely origins and destinations: "These should include the ports (approximately 115 miles distant), Central Valley agricultural areas (150-500 miles distant), major population centers (e.g. Los Angeles 90 miles distant), and Class 1 railyards (closest ones 30-60 miles distant)."¹⁰⁷

Mr. Marshall concludes that "[i]n order to justify a 40-mile average truck trip distance, it must be demonstrated that the excess mileage from longer trips will be offset by shorter trips. For example, **a single 150-mile truck trip from the Bakersfield area would need to be offset by three implausibly short 3-mile truck trips.**"¹⁰⁸ As detailed above, there are no grocery stores or foreseeable destinations within 3 miles of the Project site.¹⁰⁹

Mr. Marshall's comments provide substantial evidence that "**A 40-mile average truck trip distance appears to be impossible for this project in this location,** and certainly should not be asserted without a plausible explanation."¹¹⁰ The Final MND fails to include a plausible explanation to support reliance on a 40-mile average truck trip distance.

Based on the evidence detailed herein and in CARE CA's expert consultant reports, it is reasonably foreseeable that the Project will transport goods to or from the major intermodal facilities in the Southern California region, including the Ports of Los Angeles and Long Beach which are each approximately 115-miles driving distance from the Project site.¹¹¹ The Town's failure to accurately estimate Project truck trip lengths results in a significant underestimation of Project generated vehicle miles travelled ("VMT").

¹⁰⁵ Marshall Comments, pp. 2-4; Clark Comments, pp. 3-4.

¹⁰⁶ Marshall Comments, p. 2.

¹⁰⁷ Marshall Comments, p. 4.

¹⁰⁸ Marshall Comments, p. 4.

¹⁰⁹ Google Maps, 2026.

¹¹⁰ Marshall Comments, p. 4.

¹¹¹ Marshall Comments, p. 2.

The RMND significantly underestimates reasonably foreseeable truck trip lengths and commute trip lengths.¹¹² Mr. Marshall's calculated that VMT impacts from the Project would exceed the Town's threshold by triple.¹¹³ The model analysis in the RMND is unsupported by substantial evidence because the average trip lengths are unrealistically low.¹¹⁴ With longer average truck trip lengths, the Project's VMT impacts would significantly exceed VMT thresholds.¹¹⁵ Mr. Marshall's comments demonstrate that VMT impacts are significant, unmitigated, and require additional mitigation in an EIR.¹¹⁶

In addition to the RMND's inaccurate calculation of VMT, the RMND underestimates truck trip lengths, truck VMT, truck emissions, commute VMT, and commute emissions.¹¹⁷ The RMND severely underestimated the number of trips associated with Project development, which results in the direct underestimation of calculated emissions.¹¹⁸ Emissions from Project operation will therefore be more severe than analyzed in the RMND. Mr. Marshall's comments provide substantial evidence supporting a fair argument that these impacts are significant and require mitigation in an EIR to be circulated for public review and comment, before the Project can lawfully proceed.¹¹⁹

V. AN EIR IS REQUIRED BECAUSE SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT RESULTS IN SIGNIFICANT, UNMITIGATED GREENHOUSE GAS IMPACTS

Substantial evidence supports a fair argument that the Project will result in significant GHG emissions impacts. The Town must prepare an EIR which incorporates feasible mitigation measures to reduce the Project's GHG emissions impacts.

GHG impacts from Project operation are significant and unmitigated. Dr. Clark's comments on the RMND provided substantial evidence that using the accurate 115-mile daily truck trip average, which accounts for trips to the Port,

¹¹² Marshall Comments, p. 4.

¹¹³ Marshall Comments, p. 4.

¹¹⁴ Marshall Comments, p. 4.

¹¹⁵ Marshall Comments, p. 4.

¹¹⁶ Marshall Comments, p. 4.

¹¹⁷ Marshall Comments, p. 4.

¹¹⁸ Marshall Comments, p. 4.

¹¹⁹ Marshall Comments, p. 4.

would result in triple the air pollutants emissions associated with the Project.¹²⁰ This increase is attributable to accurately modeled emissions of diesel particulate matter, oxides of nitrogen, and GHG from heavy-duty diesel trucks.¹²¹ This significant impact requires additional mitigation in an EIR circulated for public review and scrutiny.

Additional feasible mitigation measures were proposed by CARE CA and other commenters, but were not adopted in the Final MND. CEQA prohibits agencies from approving projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of a project.¹²²

Furthermore, as this Project tiers from the General Plan EIR, the Town must prepare an EIR because new information of substantial importance, which was not known and could not have been known at the time the previous EIR was certified shows that “[m]itigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative.”¹²³

Dr. Clark’s comments demonstrate that the Project’s major source of GHG emissions are from heavy duty trucks, but the Final MND’s mitigation measures do not adequately reduce GHG emissions from heavy duty trucks.¹²⁴ Dr. Clark recommends that all the heavy duty trucks utilized by the Project should be zero-emission, not just the 20 assumed in the air quality modeling.¹²⁵ The Responses states that the Town will formalize the 20 zero-emission truck assumption as a condition of approval, or alternatively, will demonstrate that the Project’s emissions remain below all applicable MDAQMD thresholds even without this assumption.¹²⁶ The Responses also conclude that the “Town will consider whether to formalize the zero-emission truck assumption as a condition of approval to further strengthen enforceability.”¹²⁷

The Conditions of Approval should reflect the requirement for 20 zero-emission trucks, and should incorporate additional zero-emission heavy duty trucks

¹²⁰ Clark Comments, p. 4.

¹²¹ Clark Comments, p. 4.

¹²² PRC § 21002.

¹²³ CEQA Guidelines, § 15162, subd. (a)(1)-(3); see also Pub. Resources Code, § 21166.

¹²⁴ Clark Comments, p. 8.

¹²⁵ RMND, Appendix A, Attachment C, p. 62 of 63.

¹²⁶ Responses to Comments, p. 10.

¹²⁷ Responses to Comments, 322.

to adequately reduce GHG impacts. Additionally, the requirement that all TRU trucks be plug-in capable and zero-emission should be included in an EIR's Mitigation Monitoring Reporting Program.

The Responses states that “the Town will require installation of zero-emission truck charging infrastructure proportional to the number of dock doors as a condition of approval.”¹²⁸ But, Dr. Clark's comments demonstrate that this mitigation measure would only be adequate if it incorporates one Level 3 charger per dock door plus additional zero-emission charging infrastructure proportional in number to the actual number of daily truck visits.¹²⁹

Further, Dr. Clark's comments demonstrate that the Final MND does not adequately mitigate the Project's significant GHG impacts because the anti-idling measures are insufficient. The Responses states that “[s]everal of the commenters' proposed measures are already required by state regulation (e.g., CARB's anti-idling regulation limits idling to 5 minutes; the Advanced Clean Fleets regulation requires fleet electrification on a phased schedule).”¹³⁰ But, Dr. Clark's comments provide substantial evidence that compliance with CARB's anti-idling measures would not sufficiently reduce GHG impacts. The anti-idling measures are inadequate without enforcement, monitoring and reporting requirements incorporated in the mitigation measure, according to Dr. Clark.¹³¹ Dr. Clark's comments state that “voluntary compliance with anti-idling rules at warehouses is low in the absence of on-site enforcement mechanisms.”¹³² Dr. Clark cites to a 2017 study which found that voluntary anti-idling programs at logistics facilities achieved only 30–50% compliance in the absence of enforcement, while facilities with active monitoring and sign posting achieved significantly higher compliance rates.¹³³ Based on this, Dr. Clark concludes that the GHG measures proposed in the MND do not adequately mitigate the Project's significant GHG impacts.

The Town should remand the Project to prepare a legally adequate EIR which incorporates feasible mitigation measures to reduce the Project's significant GHG impacts, before the Project can be approved.

¹²⁸ Responses to Comments, p. 326.

¹²⁹ Clark Comments, p. 11.

¹³⁰ Responses to Comments, p. 14.

¹³¹ Clark Comments, p. 11.

¹³² Clark Comments, p. 11.

¹³³ Clark Comments, p. 11.

VI. THE TOWN CANNOT MAKE THE FINDINGS TO APPROVE THE PROJECT'S LAND USE ENTITLEMENTS

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.¹³⁴ Any inconsistencies between a proposed project and applicable plans must be discussed in the Project's CEQA document.¹³⁵ A project's inconsistencies with local plans and policies also constitute significant impacts under CEQA.¹³⁶

A. The Director Cannot Approve the Conditional Use Permit

The Project requires approval of Conditional Use Permit CUP 2023-005.¹³⁷ On September 20, 2023, prior to the MND's recirculation, the Town scheduled a Planning Commission hearing to "approve, modify, or deny" the MND, Site Plan Review SPR 2022-002 & Conditional Use Permit CUP 2023-005 required for Project approval.¹³⁸ **Now, the Director proposes to approve the Project without a public hearing and without consideration or approval of Conditional Use Permit CUP 2023-00.**¹³⁹ The Final MND does not mention the Conditional Use Permit CUP 2023-005, or provide any indication that this approval is no longer sought.

The Planning Commission is required to hold a hearing for approval of Conditional Use Permits pursuant to Municipal Code Section 9.16.030 and 9.16.080. The Municipal Code requires that "[t]he Commission shall hold a public hearing on each application of a Use Permit it reviews..."¹⁴⁰ The Planning

¹³⁴ See *Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903.

¹³⁵ CEQA Guidelines § 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).

¹³⁶ *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.

¹³⁷ RMND, p. 23.

¹³⁸ Town of Apple Valley, Notice of Intent to Adopt a Mitigated Negative Declaration and Notice of Public Hearing, Planning Commission Hearing on September 23, 2023 at 6:00 P.M. (Sept. 8, 2023), <https://applevalley.org/wp-content/uploads/2025/08/NOI-and-Public-Hearing.pdf>.

¹³⁹ Town of Apple Valley, Notice of Pending Land Use Decision, Director Decision - Site Plan Review (SPR) 2022-002, Green Trucking Solutions Cold Storage Project (June 3, 2026), <https://applevalley.org/wp-content/uploads/2026/06/green-trucking-solutions-cold-storage-project-site-plan-review-2022-002-notice-of-pending-land-use-decision.pdf>.

¹⁴⁰ Town of Apple Valley Municipal Code § 9.16.080.

Commission is authorized to approve, approve with conditions, or deny applications for Conditional Use Permits.¹⁴¹ In approving an application for a Conditional Use Permit, the Commission may impose conditions to ensure compliance with the Code.¹⁴² The Commission, not the Director, is the final decisionmaker for Conditional Use Permits.¹⁴³

Further, **the Municipal Code requires concurrent processing of environmental review with all necessary permits for Project approval.**¹⁴⁴ Municipal Code Section 9.12.100 requires that the “[p]rocessing and the environmental review should be done concurrently and the final decision on the project shall be made by the highest level of review authority.” Here, given the Project’s requirement for a Conditional Use Permit, the Project’s entitlements including the RMND, Site Plan Review SPR 2022-002 & Conditional Use Permit CUP 2023-005 require concurrent review by the Planning Commission in a Public Hearing pursuant to Municipal Code Section 9.11.020.¹⁴⁵

The Notice of Pending Land Use Decision states that “[t]he Planning Director will approve, deny, request modifications to the project or refer the project to the Town Planning Commission for further consideration.”¹⁴⁶ **The Planning Director’s approval of the Project without Planning Commission approval of the Conditional Use Permit would violate the Municipal Code and contravene CEQA.**

CEQA requires that environmental review processes run concurrently, not consecutively, with consideration of project approval.¹⁴⁷ Here, the Town’s own Municipal Code requires concurrent review of environmental impacts and permitting required. The Town is therefore required to review the Project’s entitlements including Conditional Use Permit CUP 2023-005 and Site Plan Review SPR 2022-002 concurrently in a Planning Commission hearing before the Project can lawfully proceed.

¹⁴¹ Town of Apple Valley Municipal Code § 9.16.030(A).

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Town of Apple Valley Municipal Code § 9.12.100.

¹⁴⁵ *Id.*

¹⁴⁶ Town of Apple Valley, Notice of Pending Land Use Decision, Director Decision - Site Plan Review (SPR) 2022-002, Green Trucking Solutions Cold Storage Project (June 3, 2026), <https://applevalley.org/wp-content/uploads/2026/06/green-trucking-solutions-cold-storage-project-site-plan-review-2022-002-notice-of-pending-land-use-decision.pdf>.

¹⁴⁷ 14 CCR § 15004(c).

Moreover, the Town cannot make the necessary findings for a Conditional Use Permit because the Project still results in significant adverse impacts to public health and safety, given the Project's significant air pollution and cancer risk. Pursuant to Municipal Code Section 9.16.090, before approving a Conditional Use Permit, the Commission or Council when appropriate, shall make the following findings:

1. That the proposed location, size, design and operating characteristics of the proposed use is consistent with the General Plan, the purpose of this Code, the purpose of the zoning district in which the site is located, and the development policies and standards of the Town;
2. That the proposed location, size, design and operating characteristics of the proposed use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, nor be materially injurious to properties or improvements in the vicinity, adjacent uses, residents, buildings, structures or natural resources.
3. That there are public facilities, services and utilities available at the appropriate levels or that these will be installed at the appropriate time to serve the project as they are needed.
4. That the generation of traffic will not adversely impact the capacity and physical character of surrounding streets and that the traffic improvements and/or mitigation measures are provided in a manner consistent with the Circulation Element of the General Plan;
5. That there will not be significant harmful effects upon environmental quality and natural resources...¹⁴⁸

As detailed herein and in the expert consultant reports attached hereto, the Project results in significant harmful effects upon environmental quality as a result of the Project's significant air quality, health risk, greenhouse gas emissions, and transportation impacts. These impacts must be analyzed in a legally adequate EIR circulated for public review, before the Project can lawfully be approved.

The Project must be remanded to Staff to prepare a legally adequate EIR before the Project is brought to the Planning Commission for review. The Planning Director cannot make a determination on the RMND, Site Plan Review SPR 2022-002, absent concurrent review of Conditional Use Permit CUP 2023-005, in accordance with the Municipal Code.

¹⁴⁸ Town of Apple Valley Municipal Code § 9.16.090(A).

VII. CONCLUSION

As detailed herein and in the expert consultant reports attached hereto, substantial evidence supports a fair argument that the Project's impacts may be significant and unmitigated.

CEQA requires that an EIR be prepared if there is substantial evidence supporting a fair argument that any aspect of a project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial.¹⁴⁹ As discussed in detail above, there is a fair argument based on substantial evidence that the Project would result in significant adverse impacts to air quality, public health, greenhouse gas emissions, land use, and transportation which are not identified or mitigated in the Final MND. The Director cannot approve the Project's Conditional Use Permit absent a noticed Planning Commission hearing.

We urge the Town to fulfill its responsibilities under CEQA by withdrawing the Final MND and preparing an EIR to address the issues raised in this preliminary comment letter. This is the only way the Town and the public can ensure the Project's significant environmental impacts are mitigated to less than significant.

Sincerely,



Kelilah D. Federman

Attachments
KDF:acp

¹⁴⁹ CEQA Guidelines § 15063(b)(1).