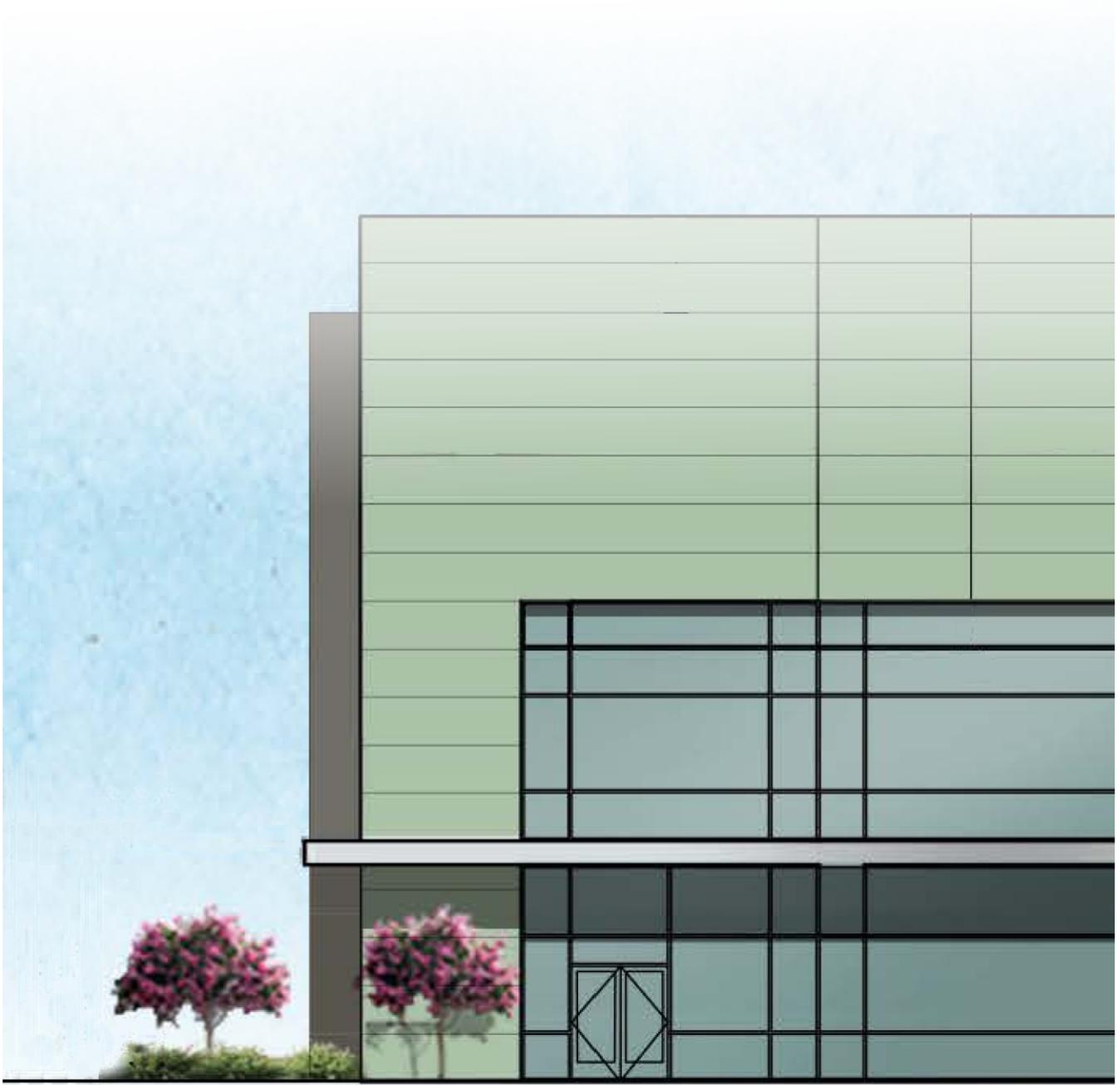




Dara Industrial Project Final Environmental Impact Report

October 2022



FINAL ENVIRONMENTAL IMPACT REPORT

for the

Dara Industrial Project

Prepared for:

City of Hesperia
9700 Seventh Avenue
Hesperia, CA 92345

Prepared by:

Applied Planning, Inc.
11762 De Palma Road, 1-C 310
Corona, CA 92883

October 2022

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A: Draft CDFW 2081 Permit Application

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1.0 INTRODUCTION

1.0 INTRODUCTION

1.1 OVERVIEW

This document, combined with the Draft Environmental Impact Report (DEIR), constitutes the Final EIR for the Dara Industrial Project (Project). The DEIR describes existing environmental conditions relevant to the proposal, evaluates the Project's potential environmental effects, and identifies mitigation measures to reduce or avoid the potentially significant impacts. The DEIR was circulated for a 45-day review period: July 27 through September 12, 2022.

1.2 CONTENT AND FORMAT

Subsequent to this introductory Section 1.0, Section 2.0 of this Final EIR presents revisions and errata corrections to the DEIR text. Responses to comments received on the DEIR are presented in Final EIR Section 3.0. The EIR Mitigation Monitoring Program is presented in Final EIR Section 4.0.

1.3 DRAFT EIR COMMENTERS

1.3.1 Overview

The complete list of Draft EIR commenters, along with copies of comment letters and responses to comments, is presented in Section 3.0 of this Final EIR. The following list identifies the comment letters received in regard to the Draft EIR:

- Governor's Office of Planning and Research, State Clearinghouse
- California Department of Fish and Wildlife
- Lahontan Regional Water Quality Control Board
- San Bernardino County Department of Public Works
- Center for Biological Diversity
- Adams Broadwell Joseph & Cardozo
- Adam Salcido

1.3.2 Presentation of Comments and Responses

All comment letters received in regard to the Draft EIR are included, along with corresponding responses, in their entirety in Final EIR Section 3.0, *Comments and Responses*.

1.4 LEAD AGENCY AND POINT OF CONTACT

The Lead Agency for the Project and EIR is the City of Hesperia. Any questions or comments regarding the preparation of this document, its assumptions, or its conclusions, should be referred to:

City of Hesperia
9700 Seventh Avenue
Hesperia, CA 92345
Contact Person: Edgar Gonzalez, Associate Planner

1.5 PROJECT SUMMARY

The following information is summarized from the Project Description in the Draft EIR. For additional detail in regard to Project characteristics and Project-related improvements, along with analyses of the Project's potential environmental impacts, please refer to Draft EIR Sections 3.0 and 4.0, respectively.

1.5.1 Project Location

The Project is located in the City of Hesperia, within San Bernardino County. The Project site is located at the northwest corner of Highway 395 and Poplar Street.

1.5.2 Project Overview

The Project proposes the development of up to approximately 750,000 square feet of industrial uses configured as a single building within an approximately 43.28-acre site. The Project site plan design also includes two stormwater management basins: an approximately 0.6-acre basin located in the northeast portion of the Project; and an approximately 2.0-acre basin located in the southwest portion of the Project site. The proposed basins would act to treat and control post-development stormwater discharges.

1.5.3 Project Objectives

Project Objectives include the following:

- Implement the City's General Plan through development that is consistent with the site's General Plan land use designation, and applicable General Plan Goals and Implementation Policies;
- Implement the Main Street and Freeway Corridor Specific Plan through development that is consistent with the Specific Plan land uses and development concepts, and in total supports the Specific Plan vision;
- Provide adequate roadway and wet and dry utility infrastructure to serve the Project;
- Provide industrial uses that are compatible with planned adjacent land uses;
- Provide an attractive, efficient and safe environment for industrial uses that is cognizant of natural and man-made conditions;
- Provide industrial uses responsive to current and anticipated market demands; and
- Establish new development providing construction and long-term employment opportunities; and that would further the City's near-term and long-range fiscal goals and objectives.

1.5.4 Discretionary Actions

1.5.4.1 Lead Agency Discretionary Actions and Permits

CEQA Guidelines Section 15124 states in pertinent part that if "a public agency must make more than one decision on a project, all its decisions subject to CEQA should be listed..." Requested decisions, or discretionary actions, necessary to realize the Dara Industrial Project would include:

- Certification of the Dara Industrial Project EIR;
- Approval of Tentative Parcel Map(s);
- Approval(s) of Conditional Use Permit;
- Site Plan Approval;
- Approval of Infrastructure Improvement Plans including, but not limited to: roads, sewer, water, and storm water management systems; and
- Various other City of Hesperia construction, grading, and encroachment permits required to allow implementation of the Project facilities.

1.5.4.2 Other Agency Consultation and Permits

Anticipated consultation(s) and permits from agencies (other than the City) necessary to realize the Project would likely include, but are not limited to, the following:

- Consultation with requesting Tribes as provided for under *AB 52, Gatto. Native Americans: California Environmental Quality Act*; and *SB 18, Burton. Traditional tribal cultural places*;
- Permitting by/through the Mojave Desert Air Quality Management District (MDAQMD) for certain equipment or land uses that may be implemented within the Project area; and
- Various construction, grading, and encroachment permits, allowing implementation of the Project facilities.
- Issuance of a State Incidental Take Permit (ITP) from the CDFW.

2.0 REVISIONS AND ERRATA CORRECTIONS

2.0 REVISIONS AND ERRATA CORRECTIONS

2.1 INTRODUCTION

Based on the comments received on the Draft EIR (which are provided in full in Section 3.0 of this Final EIR), this Section presents revisions to the text of the Draft EIR. For text corrections, additional text is identified by **bold underlined text**, while deletions are indicated by ~~strikeout~~ font. All text revisions affecting mitigation measures have been incorporated into the Mitigation Monitoring Plan presented in Section 4.0 of this Final EIR. Text changes are presented under the chapter or topical section of the Draft EIR where they are located. The revisions and corrections provided here expand and clarify analyses previously provided, and do not constitute substantive new information. Conclusions of the Draft EIR are not affected by these revisions.

2.2 REVISIONS

2.2.1 Revisions to Draft EIR Section 4.4, Greenhouse Gas Emissions

Based on comments received from Center for Biological Diversity, the following text (Draft EIR, pages 4.4-36 – 4.4-37) is amended as follows to correctly reflect information in the Project GHG Analysis:

Project annual GHG emissions are summarized at Table 4.4-5. As indicated, Project GHG emissions would total approximately **7,044.60** ~~6,498.12~~ MTCO₂e per year. The Project GHG emissions estimates presented at Table 4.4-5 reflect contemporary GHG emissions regulatory actions enacted subsequent to adoption of the City's 2010 CAP. These regulatory actions (notably implementation of the 2019 CalGreen building standards for water and energy efficiency) would yield an approximate ~~13~~ **12**% reduction in Project GHG emissions from sources other than vehicles. An additional ~~5~~

4% reduction in GHG emissions (primarily from vehicular/mobile sources) would be achieved through ongoing implementation of the Pavley Fuel Efficiency Standards. These measures, which are not reflected in the CAP, would reduce Project GHG emissions by approximately ~~18~~ 16%. The Project therefore complies with the City CAP GHG emissions reduction target of a 12% without accounting for regulations discussed in the CAP. Based on compliance with the City CAP GHG emissions reduction target, the potential for the Project to generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment is considered less-than-significant.

**Table 4.4-5
Annual Project GHG Emissions**

Emission Source	Emissions (metric tons per year)			
	CO ₂	CH ₄	N ₂ O	Total CO ₂ E
Annual construction-related emissions amortized over 30 years	95.58	0.01	0.01	98.27
Area Source	0.03	7.00E-05	0.00	0.03
Energy Source	<u>1,157.53</u> 1,867.27	<u>0.08</u> 0.07	0.02	<u>1,163.72</u> 1,874.61
Mobile Source	4,768.04	<u>0.18</u> 0.17	<u>0.53</u> 0.52	<u>4,616.94</u> 4,928.42
On-Site Equipment Source	101.54	0.03	0.00	102.36
TRU Source	---	---	---	77.76
Solid Waste Management	142.00	8.39	0.00	351.80
Water Supply, Treatment, and Distribution	452.01	5.64	0.14	<u>633.72</u> 950.36
Total CO₂E (All Sources)	<u>7,044.60</u> 8,383.61			

Source: Hesperia Industrial Center, Greenhouse Gas Analysis, City of Hesperia (Urban Crossroads, Inc.) May 6, 2022.

Note: Totals obtained from CalEEMod™ and may not total 100% due to rounding.

For clarity, the discussion of MDQMD thresholds presented in the EIR at pp 4.4-37, 4.4-48 has been deleted, as presented below. Related discussions such as may appear elsewhere in the EIR and supporting technical analyses are amended accordingly by reference. Findings and conclusions of the EIR are not affected.

MDAQMD GHG Emissions Threshold Compliance

The MDAQMD has established a GHG emissions significance threshold of 100,000 tons (90,718.5 metric tons) per year. Project emissions that do not exceed the MDAQMD GHG Emissions Threshold would not have a significant impact on the environment.

As presented at Table 4.4-5, Project GHG emissions would total 8,383.61 metric tons per year, and would not exceed the MDAQMD GHG emissions significance threshold of 90,718.5 metric tons per year.

Based on compliance with the MDAQMD GHG Emissions Threshold, the potential for the Project to generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment is considered less than significant.

~~Level of Significance: Less Than Significant.~~

2.2.2 Revisions to Biological Resources Mitigation

In response to comments received from the California Department of Fish and Wildlife (CDFW) addressing potential impacts to the western Joshua Tree, Mitigation Measures 4.7.1 and 4.7.5 have been universally revised as follows. Results and conclusions of the EIR are not affected.

~~4.7.1 A State If the Western Joshua Tree (WJT) is formally listed as a Threatened Species under the California Endangered Species Act (CESA), in accordance with Fish and Game Code Section 208, an Incidental Take Permit (ITP) shall be obtained from CDFW prior to any actions comprising "take" of WJT. ground disturbing activities including site clearing, grubbing, grading, etc., that would be expected to impact the western Joshua tree. If any western Joshua tree (WJT) are to be relocated, removed, or otherwise taken (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."), the City shall obtain an~~

~~Incidental Take Permit (ITP) from the California Department of Fish and Wildlife (CDFW) in accordance with Fish and Game Code section 2081 prior to the relocation, removal, or take of WJT, a Threatened CESA-listed species candidate.~~

~~To fully mitigate for Project related impacts, including “take” of a CESA listed species, permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA. CDFW recommends permanent protection through~~ **Pursuant to an ITP (if required) CDFW typically recommends acquisition of conservation credits through an existing Bank or through permanent species protection by** the establishment of a conservation easement, the development of a long-term management plan, and the securement of sufficient funds to implement management plan tasks in perpetuity. ~~These tasks should~~ **If an ITP is required, ITP actions required by CDFW shall** be completed, or financial security ~~must~~ **ensuring completion of CDFW-required actions shall** be provided, prior to initiating Project activities. To execute an ITP, CDFW requires documentation of CEQA compliance. **The City shall require such documentation as part of the ITP process.** CEQA documentation shall include a State Clearing House number and proof of filing fees and document circulation.

With the inclusion of revised Mitigation Measure 4.7.1 above, DEIR Mitigation Measure 4.7.5 is no longer required, and has been deleted (see below).

~~4.7.5 No Joshua Trees shall be removed from the site without first obtaining a State Incidental Take Permit (ITP) from the CDFW. The removal/salvage of any Joshua Trees shall occur in compliance with Hesperia Municipal Code Section 16.24.~~

Additionally, the discussion at Biological Resources Assessment at p. 10 is updated as follows to reflect tentative status listing of WJT. Other potentially affected discussions in the DEIR and supporting technical analyses are amended accordingly by reference. Results and conclusions of the EIR are not affected.

State Incidental Take Permit

~~Due the recent listing of the western Joshua tree and the presence of 65 Joshua trees on the site, a state ITP will be required prior to any ground disturbing activities that would be expected to impact this species.~~

As of the date of the preparation of this study, formal listing of WJT as a threatened species under CESA is tentative. If WJT is indeed listed as a threatened species, the Project proponent would be required to obtain an ITP from CDFW, and would be required to comply with CDFW ITP requirements.

In response to comments received from the California Department of Fish and Wildlife (CDFW), Mitigation Measures 4.7.2 through 4.7.4 have been universally revised as follows. Results and conclusions of the EIR are not affected.

~~4.7.2~~ *If construction occurs between February 1st and August 31st, **Regardless of the time of year**, a pre-construction clearance survey for nesting birds shall be conducted **onsite within 500 feet of the Project site** within three (3) days of the start of any vegetation removal or ground-disturbing activities to ensure that no nesting birds will be disturbed during construction. **Surveys shall include any potential habitat (including trees, shrubs, the ground, or nearby structures) that may be impacted by Project activities.** The biologist conducting the clearance survey shall document a negative survey with a brief letter report indicating that no impacts to active avian nests will occur.*

~~If an active avian nest is discovered during the pre-construction clearance survey, construction activities shall stay outside of a no-disturbance buffer. **The extent of the 'no-disturbance buffer' shall be no less than 300 feet (500 feet for raptors) although a smaller buffer may be determined by a qualified biologist.** The size of the no-disturbance buffer will be determined by the wildlife biologist and will depend on the level of noise and/or surrounding anthropogenic disturbances, line of sight between the nest and the construction activity, type and~~

~~duration of construction activity, ambient noise, species habituation, and topographical barriers. These factors will be evaluated on a case by case basis when developing buffer distances. Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. A biological monitor shall be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. **If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the 'no-disturbance buffer' shall be expanded.** Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur.~~

4.7.3 ~~A pre-construction burrowing owl survey will be conducted within 30 days prior to construction to avoid any potential project-related impacts to this species. **Prior to initiating Project activities, a qualified biologist shall conduct at least one survey covering the entire Project area and surrounding 15-meter buffer to identify the presence of suitable burrows and/or burrow surrogates (>11 cm in diameter [height and width] and >150 cm in depth) for burrowing owl and sign of burrowing owl (e.g., pellets, prey remains, whitewash, or decoration, etc.).** If burrowing owls or suitable burrows and/or sign of burrowing owl are documented on-site, **a breeding season survey for burrowing owl in accordance with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) shall be conducted by a qualified biologist prior to start of Project activities. If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no further action is necessary. If burrowing owl, active burrowing owl burrows, or sign thereof are found the Applicant qualified biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures or passive exclusion, in coordination with to be approved by CDFW prior to commencing Project activities and propose mitigation**~~

for permanent loss of occupied burrow(s) and habitat. Methodology for surveys, impact analysis, and reporting shall follow the recommendations and guidelines provided within the California Department of Fish and Game Staff Report on Burrowing Owl Mitigation (CDFW 2012 Staff Report).

4.7.4 If Oro Grande Wash will be impacted by Project ~~development~~ activities, the Project Applicant shall obtain the following regulatory approvals prior to impacts occurring within the identified jurisdictional area: U.S. Army Corps CWA Section 404 Permit, Regional Board CWA Section 401 Water Quality Certification, and ~~or~~ written correspondence from CDFW stating that notification under Section 1602 of the Fish and Game Code is not required for the Project, or the Project proponent shall obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

In response to comments received from CDFW, and out of an abundance of caution, suggested mitigation addressing concerns regarding the [remote] potential for protected wildlife species to exist within the Project site is incorporated as follows:

4.7.5 A qualified biologist shall conduct pre-construction surveys within the Project area and a 500-foot buffer surrounding these areas 14-21 days prior to initiating Project activities. The surveys shall be conducted to identify and map for avoidance of any special-status species with the potential to occur on the site such as desert tortoise and Mohave ground squirrel. The qualified biologist shall ensure that the methods used to locate, identify, map, avoid, and buffer individuals or habitat are appropriate and effective, including the assurance that the surveyor has attained 100% visual coverage of the entirety of the potential impact areas, and an appropriate buffer surrounding those areas. Appropriate survey methods and timeframes shall be established, to ensure that chances of detecting the target species are maximized. In the event that listed species, such as the desert tortoise or Mohave ground squirrel, are detected and

avoidance is infeasible, proper authorization (i.e., incidental take permitting) from the USFWS and CDFW must be obtained. If nesting birds are detected, avoidance measures shall be implemented to ensure that nests are not disturbed until after young have fledged.

4.7.6 A qualified biologist shall conduct pre-construction sweeps within the Project area (including access routes) and a 500-foot buffer surrounding the Project areas, within 2 hours of initiating Project activities. The pre-construction sweeps shall confirm and mark/map for avoidance the location of any special-status species such as desert tortoise and Mohave ground squirrel and shall verify that no additional special-status species have occupied the Project areas or adjacent habitats. If any additional special-status species (or sign of presence) are identified within or adjacent to the project areas during the pre-construction sweep, the qualified biologist shall determine whether the proposed avoidance measures will be effective in fully avoiding impacts of the project on the identified resource(s) prior to initiating Project activities. If full avoidance cannot be accomplished, Permittee shall postpone the Project, and contact CDFW to discuss an appropriate path forward.

In response to comments received from CDFW, and out of an abundance of caution, suggested mitigation addressing concerns regarding the [remote] potential for protected Special Status Native Plant Populations and Sensitive Natural Communities to exist within the Project site is incorporated as follows:

4.7.7 Prior to the initiation of Project activities, and during the appropriate season, a qualified biologist shall conduct botanical field surveys following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). If any special-status plants are identified, the Project proponent shall avoid the plant(s), with an appropriate buffer (i.e.,

fencing or flagging). If complete avoidance is not feasible, the Project proponent shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank or land acquisition and conservation, at a mitigation ratio determined by CDFW after Project analysis. If the Project has the potential to impact a state listed species, the Project proponent shall apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW.

Revised Mitigation Measures 4.7.1 through 4.7.7 are incorporated at Final EIR Section 4.0, *Mitigation Monitoring Program*. Findings and conclusions of the EIR are not affected.

2.2.3 Revisions to Project Description

In consultation with the City and in conjunction with Caltrans project design review comments, certain revisions to the Project site plan have been made. The site plan, presented at the following Figure 2-1, has been revised to reflected an increased 50' turning radius at Polar Street to accommodate truck movements. These revisions have no effect on the EIR analyses and are presented here for informational purposes only. Findings and conclusions of the EIR are not affected.

3.0 COMMENTS AND RESPONSES

3.0 COMMENTS AND RESPONSES

3.1 INTRODUCTION

The following Section presents written comments received pursuant to public review of the DEIR and provides responses to those comments as required by California Code of Regulations, title 14 (hereinafter, “*CEQA Guidelines*”) Sections 15089, 15132, and 15088. Specifically, *CEQA Guidelines* Section 15088, subd. (a) requires that: “[t]he lead agency. . . evaluate comments on environmental issues received from persons who reviewed the draft EIR and . . . prepare a written response. The lead agency shall respond to comments received during the noticed comment period and any extensions and may respond to late comments.” The DEIR was circulated for a 45-day review period: July 27 through September 12, 2022.

In summary, the City’s written responses describe the disposition of significant environmental issues raised and any revisions to the Draft EIR made as a result of the comments. Additionally, the City’s written responses provide a good faith, reasoned analysis of all environmental issues raised and cite to specific factual and legal support for the Draft EIR’s conclusions.

3.1.1 Comments Received

The following Section presents a list of the comment letters received during the Draft EIR public review period. Comment letters have been generally organized by state agencies; county, city, and local agencies; utilities; and local organizations and individuals. Each letter has been assigned an identifying designation (generally an acronym or name abbreviation), and topical items within each letter have been numbered. Table 3-1 lists all DEIR commenters and the designation assigned to each. Commenter correspondence

and correlating responses are presented subsequently. Comments have been reproduced verbatim and without grammatical or typographical correction.

**Table 3-1
DEIR Commenters**

Commentor	Acronym Assigned	Correspondence Date
State Agencies		
State Clearinghouse	SCH	--
California Department of Fish and Wildlife	CDFW	9/9/22
Lahontan Regional Water Quality Control Board	WQCB	9/12/22
Regional & County Agencies		
San Bernardino County Department of Public Works	DPW	9/7/22
Private Organizations/Individuals		
Center for Biological Diversity	CBD	9/8/22
Adams Broadwell Joseph & Cardozo (3 letters)	ABJC	8/29/22
Adam Salcido	AS	9/13/22

Dara Industrial Project

Summary

SCH Number	2022040060
Lead Agency	City of Hesperia
Document Title	Dara Industrial Project
Document Type	EIR - Draft EIR
Received	7/26/2022
Present Land Use	The Hesperia General Plan designates the Project site as Specific Plan (Main Street and Freeway Corridor Specific Plan). Within the Specific Plan, the site is zoned for Commercial/Industrial Business Park (CIBP) uses.
Document Description	The Project proposes development of a single 750,000-square-foot industrial building. Of this total, 15,000 square feet would be dedicated to office uses associated with the industrial uses. The Project also includes two water retention basins to be located at the site's northeasterly (0.6 acre) and southwesterly (2.0 acres) corners. The basins will reduce post-development stormwater flows to levels similar to existing conditions. The approximately 43.28-acre Project site is located at the northwest corner of Highway 395 and Poplar Street, in the City of Hesperia.

Contact Information

Name	Edgar Gonzalez
Agency Name	City of Hesperia Planning Department
Job Title	Associate Planner
Contact Types	Lead/Public Agency
Address	9700 Seventh Avenue Hesperia , CA 92345
Phone	(760) 947-1330
Email	egonzalez@cityofhesperia.us

Location

Cities	Hesperia
---------------	----------

Counties	San Bernardino
Regions	Citywide
Cross Streets	Highway 395 and Poplar Street
Zip	92345
Total Acres	43.28
Parcel #	3064-551-03, -04, -06, -07, and -08
State Highways	US Hwy 395
Schools	Canyon Ridge High School
Waterways	California Aqueduct
Township	4N
Range	5W
Section	21
Base	SB

Notice of Completion

State Review Period Start	7/27/2022
State Review Period End	9/12/2022
State Reviewing Agencies	California Air Resources Board (ARB), California Department of Conservation (DOC), California Department of Fish and Wildlife, Inland Deserts Region 6 (CDFW), California Department of Forestry and Fire Protection (CAL FIRE), California Department of Parks and Recreation, California Department of Transportation, District 8 (DOT), California Department of Water Resources (DWR), California Highway Patrol (CHP), California Native American Heritage Commission (NAHC), California Natural Resources Agency, California Regional Water Quality Control Board, Lahontan Victorville Region 6 (RWQCB), Department of Toxic Substances Control, Office of Historic Preservation, State Water Resources Control Board, Division of Drinking Water, State Water Resources Control Board, Division of Water Rights
Development Types	Industrial (Sq. Ft. 750000, Acres 43.28, Employees 1)
Local Actions	Use Permit
Project Issues	Aesthetics, Agriculture and Forestry Resources, Air Quality, Biological Resources, Cultural Resources, Cumulative Effects, Drainage/Absorption, Economics/Jobs, Energy, Fiscal Impacts, Flood Plain/Flooding, Geology/Soils, Greenhouse Gas Emissions, Growth Inducement, Hazards & Hazardous Materials, Hydrology/Water Quality, Land Use/Planning, Mandatory Findings of Significance, Mineral Resources, Noise, Population/Housing, Public Services, Recreation, Schools/Universities, Septic System, Sewer Capacity, Solid Waste, Transportation, Tribal Cultural Resources, Utilities/Service Systems, Vegetation, Wetland/Riparian, Wildfire
Local Review Period Start	7/27/2022
Local Review Period End	9/12/2022

Attachments

Draft Environmental Document [Draft IS, NOI_NOA_Public notices, OPR Summary Form, Appx,]

Dara Industrial_DEIR_July2022

PDF

14446 K

NOA

PDF

2584 K

Summary_Form_for_Document_Submittal

PDF

191 K

Notice of Completion [NOC] Transmittal form

NOC

PDF

228 K

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STATE OF CALIFORNIA
GOVERNOR'S OFFICE OF PLANNING AND RESEARCH
STATE CLEARINGHOUSE
SCH No. 2022040060

Response SCH-1

State Clearinghouse receipt of the Dara Industrial Project Draft EIR is acknowledged, as is the distribution of the Draft EIR to the listed State Agencies. The State-assigned Clearinghouse reference number (SCH No. 2022040060) and dates of the public review period for the Draft EIR (July 27 through September 12, 2022) are also acknowledged.



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
 Inland Deserts Region
 3602 Inland Empire Boulevard, Suite C-220
 Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



September 9, 2022
Sent via email

Edgar Gonzalez, Associate Planner
 City of Hesperia
 Planning Department
 9700 Seventh Avenue
 Hesperia, CA 92345

Subject: Draft Environmental Impact Report (DEIR)
 Dara Industrial Project
 State Clearing House No. 2022040060

Dear Mr. Gonzalez:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from the City of Hesperia (City) for the Dara Industrial Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW-1

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW-2

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Edgar Gonzalez, Associate Planner
 City of Hesperia
 September 9, 2022
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of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

CDFW-2
 cont'd.

PROJECT DESCRIPTION SUMMARY

The objective of the Project is to develop a single 750,000-square-foot industrial building within an approximately 43.28-acre site. The Project also includes two stormwater management basins that will be located at the Project site's northeasterly (0.6 acre) and southwesterly (2.0 acres) corners. Project activities include clearing of all surface features through grubbing, rough-grading, and fine-grading in preparation of building construction. Existing grades within the Project site will be modified to establish suitable building pads and to facilitate site drainage. Site preparation activities will result in approximately 200,000 cubic yards of soil export.

Location: The Project site is located in the western part of the City, which is within the Victor Valley region of San Bernardino County. The Project site is located at the northwest corner of Highway 395 and Poplar Street at a previous racetrack. The Project site consists of Assessor's Parcel Numbers 3064-551-03, -04, -06, -07, and -08. Specifically, the Project site is located in Section 21, Township 4 North, Range 5 West, as depicted on the U.S. Geological Survey Baldy Mesa, California 7.5-minute topographic quadrangle map. Regional access to the Project site is provided via Highway 395, bordering the eastern boundary of the Project site. Project coordinates are Latitude 34.417581 and Longitude -117.403536.

CDFW-3

Timeframe: The Project will be completed by 2024.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below, and in Attachment 1 "Mitigation Monitoring and Reporting Program (MMRP)", to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

CDFW-4

Western Joshua Tree (*Yucca brevifolia*)

As a Candidate for Threatened California Endangered Species Act (CESA)-listed species, CDFW is concerned with the Projects potential impacts to the 65 western Joshua tree (WJT) identified by the DEIR. CDFW recommends that the City conduct an impact analysis for WJT. When analyzing impacts to WJT, the entire population on the project site should be considered to properly calculate demographics and estimate the quality of WJT habitat on-site. CDFW recommends the final EIR quantify WJT presence on the entirety of the Project Area through focused surveys. The WJT survey results should be included in the final EIR and should identify and provide: a) the GPS coordinates and accompanying map of each WJT within the Project Area; b) the age class of each WJT; c) the number of clonal WJT associated with each parent plant and the methodology used to make this determination; d) a unique numbering system for

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each WJT, and e) geo-referenced, representative photos of parent trees, clones, and general distribution of WJT across the Project site.

Furthermore, the final EIR should include: 1) an impact analysis assessing potential Project impacts to WJT within a 186-foot buffer zone of WJT (Vander Wall et al. 2006), 2) implementing a 300-foot buffer around WJT not scheduled for removal to avoid impacts to WJT, and 3) a mitigation strategy for Project impacts to WJT individuals, WJT seedbank, and indirect impacts to WJT.

CDFW appreciates the inclusion of MM BIO- 4.7.1 which considers an Incidental Take Permit for take of WJT. CDFW offers the following revisions to MM BIO-4.7.1 (edits are in ~~strikethrough~~ and **bold**)

MM BIO-4.7.1

A State Incidental Take Permit (ITP) shall be obtained prior to any ground-disturbing activities **including site clearing, grubbing, grading, etc.**, that would be expected to impact the western Joshua tree. **If any western Joshua tree (WJT) are to be relocated, removed, or otherwise taken (California Fish and Game Code Section 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”), the City shall obtain an Incidental Take Permit (ITP) from the California Department of Fish and Wildlife (CDFW) in accordance with Fish and Game Code section 2081 prior to the relocation, removal, or take of WJT, a Threatened CESA-listed species candidate.**

To fully mitigate for Project-related impacts, including “take” of a CESA-listed species, permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA. CDFW recommends permanent protection through the establishment of a conservation easement, the development of a long-term management plan, and the securement of sufficient funds to implement management plan tasks in perpetuity. These tasks should be completed, or financial security must be provided prior to initiating Project activities. To execute an ITP, CDFW requires documentation of CEQA compliance. CEQA documentation shall include a State Clearing House number and proof of filing fees and document circulation.

Nesting Birds

During the September 22, 2021, field surveys no active nests or birds displaying nesting behavior were observed, which is unsurprising since the field survey was conducted outside the typical breeding season for most birds. The DEIR recognizes that plant communities and land cover types found on-site, such as rubber rabbitbrush (*Ericameria nauseosa*) scrub and creosote bush (*Larrea tridentata*) scrub have the potential to provide suitable nesting habitat for year-round and seasonal avian residents, as well as migrating songbirds.

The Biological Resources Assessment states that no raptors are expected to nest on-site due to lack of suitable nesting opportunities. Red-tailed hawk (*Buteo jamaicensis*) has a range that overlaps the Project area, and commonly occurs near the Project. Red-

CDFW-5
cont'd.

CDFW-6

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tailed hawk commonly uses Western Joshua tree (*Yucca brevifolia*) for nesting, and there are 65 trees on the Project site. Please note that it is the Project proponent's responsibility to avoid "take" of all nesting birds. California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill". Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. These regulations apply anytime nests or eggs exist on the Project site.

To address the above issues and help the Project applicant avoid unlawful take of nests and eggs, CDFW offers the following revisions to MM BIO-4.7.2 (edits are in ~~strike~~through and **bold**)

MM BIO-4.7.2

~~If construction occurs between February 1st and August 31st,~~ **Regardless of the time of year,** a pre-construction clearance survey for nesting birds should be conducted **onsite within 500 feet of the Project site** within three (3) days of the start of any vegetation removal or ground-disturbing activities to ensure that no nesting birds will be disturbed during construction. **Surveys shall include any potential habitat (including trees, shrubs, the ground, or nearby structures) that may be impacted by Project activities.** The biologist conducting the clearance survey should document a negative survey with a brief letter report indicating that no impacts to active avian nests will occur.

If an active avian nest is discovered during the pre-construction clearance survey, construction activities should stay outside of a no-disturbance buffer. **The extent of the 'no-disturbance buffer' shall be no less than 300 feet (500 feet for raptors) although a smaller buffer may be determined by a qualified biologist.** ~~The size of the no-disturbance buffer will be determined by the wildlife biologist and will depend on the level of noise and/or surrounding anthropogenic disturbances, line of sight between the nest and the construction activity, type and duration of construction activity, ambient noise, species habituation, and topographical barriers. These factors will be evaluated on a case-by-case basis when developing buffer distances.~~ Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. A biological monitor should be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. **If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall**

CDFW-6
 cont'd.

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be stopped in the area of the nest and the 'no-disturbance buffer' shall be expanded. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur.

CDFW-6
 cont'd.

Burrowing Owl (*Athene cunicularia*)

CDFW understands that the Project site is fairly disturbed due to decades of recreational use. Because burrowing owl is commonly found in disturbed habitat and the Project site contains areas with suitable foraging and/or nesting habitat for burrowing owl, CDFW agrees with the DEIR that the Project site has potential to support burrowing owl. CDFW appreciates the inclusion of MM BIO 4.7.3 which considers pre-construction surveys for burrowing owl and offers the following revisions (edits are in ~~strike through~~ and **bold**)

MM BIO-4.7.3

~~A pre-construction burrowing owl survey will be conducted within 30 days prior to construction to avoid any potential project-related impacts to this species.~~ **Prior to initiating Project activities, a qualified biologist shall conduct at least one survey covering the entire Project area and surrounding 15-meter buffer to identify the presence of suitable burrows and/or burrow surrogates (>11 cm in diameter [height and width] and >150 cm in depth) for burrowing owl and sign of burrowing owl (e.g., pellets, prey remains, whitewash, or decoration, etc.).** If burrowing owls or suitable burrows and/or sign of burrowing owl are documented on-site, a breeding season survey for burrowing owl in accordance with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) shall be conducted by a qualified biologist prior to start of Project activities. **If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no further action is necessary. If burrowing owl, active burrowing owl burrows, or sign thereof are found the Applicant qualified biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures or passive exclusion, in coordination with to be approved by CDFW prior to commencing Project activities and propose mitigation for permanent loss of occupied burrow(s) and habitat.** Methodology for surveys, impact analysis, and reporting shall follow the recommendations and guidelines provided within the California Department of Fish and Game Staff Report on Burrowing Owl Mitigation (CDFW 2012 Staff Report).

CDFW-7

Lake and Streambed Alteration

CDFW appreciates that the Project proponent recognizes that notification to CDFW is required, pursuant to section 1602 of the Fish and Game Code. CDFW recommends the City consult with CDFW early regarding notification to comply with the Fish and Game Code section 1602. CDFW offers the following revisions to MM BIO- (edits are in ~~strike through~~ and **bold**)

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MM BIO- 4.7.4

If Oro Grande Wash will be impacted by Project ~~development~~activities, the Project Applicant shall obtain the following regulatory approvals prior to impacts occurring within the identified jurisdictional area: **U.S. Army Corps CWA Section 404 Permit, Regional Board CWA Section 401 Water Quality Certification, and/or written correspondence from CDFW stating that notification under Section 1602 of the Fish and Game Code is not required for the Project, or the Project proponent should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.**

CDFW-8
cont'd.

Desert tortoise (*Gopherus agassizii*) and Mohave ground squirrel (*Xerospermophilus mohavensis*)

The DEIR speculates that due to several decades of heavy recreational use of the site, desert tortoise and Mohave ground squirrel are not expected to occur. However, the Project is within the range and based on aerial imagery contains minimal potential habitat for desert tortoise, a state-threatened, proposed endangered species under CESA and Mohave ground squirrel, a CESA-threatened species on the northwest part of the Project site. Because the Project is within the range of Mohave ground squirrel and desert tortoise, CDFW recommends that prior to start of Project activities, a pre-construction survey and pre-construction sweep be conducted to ensure the absence of these species, thus CDFW recommends the City adopt MM BIO-4.7.5 and MM BIO-4.7.6 below:

MM BIO-4.7.5

A qualified biologist shall conduct pre-construction surveys within the Project area and a 500-foot buffer surrounding these areas 14-21 days prior to initiating Project activities. The surveys shall be conducted to identify and map for avoidance of any special-status species with the potential to occur on the site such as desert tortoise and Mohave ground squirrel. The qualified biologist shall ensure that the methods used to locate, identify, map, avoid, and buffer individuals or habitat are appropriate and effective, including the assurance that the surveyor has attained 100% visual coverage of the entirety of the potential impact areas, and an appropriate buffer surrounding those areas. Appropriate survey methods and timeframes shall be established, to ensure that chances of detecting the target species are maximized. In the event that listed species, such as the desert tortoise or Mohave ground squirrel, are detected and avoidance is infeasible, proper authorization (i.e., incidental take permitting) from the USFWS and CDFW must be obtained. If nesting birds are detected, avoidance measures shall be implemented to ensure that nests are not disturbed until after young have fledged.

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MM BIO-4.7.6

A qualified biologist shall conduct pre-construction sweeps within the Project area (including access routes) and a 500-foot buffer surrounding the Project

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areas, within 2 hours of initiating Project activities. The pre-construction sweeps shall confirm and mark/map for avoidance the location of any special-status species such as desert tortoise and Mohave ground squirrel and shall verify that no additional special-status species have occupied the Project areas or adjacent habitats. If any additional special-status species (or sign of presence) are identified within or adjacent to the project areas during the pre-construction sweep, the qualified biologist shall determine whether the proposed avoidance measures will be effective in fully avoiding impacts of the project on the identified resource(s) prior to initiating Project activities. If full avoidance cannot be accomplished, Permittee shall postpone the Project, and contact CDFW to discuss an appropriate path forward.

CDFW-9
 cont'd.

Special-Status Plants

The DEIR states, "Of the 25 special-status plant species that have been recorded in the Project area, the only special-status plant species observed on-site during the field investigation was the Joshua tree". CDFW is concerned that this conclusion was drawn based on a habitat assessment/field investigation that was conducted on September 22, 2021 considering that according to the Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018): (1) botanical field surveys should be conducted in the field at the times of year when plants will be both evident and identifiable, usually this is during flowering or fruiting and (2) . Botanical field survey visits should be spaced throughout the growing season to accurately determine what plants exist in the project area which usually involves multiple visits to the project area (e.g., in early, mid, and late-season) to capture the floristic diversity at a level necessary to determine if special status plants are present. CDFW is aware of sagebrush loeflingia (*Loeflingia squarrosa* var. *artemisiarum*) occurring near the Project site. Sagebrush loeflingia is classified as State Rank (S) 2 and thus is considered "Imperiled". Sagebrush loeflingia has a blooming period of April through May, consequently the September 22, 2021, habitat assessment precluded detecting sagebrush loeflingia. CDFW recommends that prior to start of Project activities, a botanical field survey according to the Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018) be conducted to adequately identify special-status plant species.

CDFW-10

MM BIO-4.7.7

Prior to the initiation of Project activities, and during the appropriate season, a qualified biologist shall conduct botanical field surveys following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). If any special-status plants are identified, the Project proponent shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the Project proponent shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank or land acquisition and

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conservation, at a mitigation ratio determined by CDFW after Project analysis. If the Project has the potential to impact a state listed species, the Project proponent should apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW.

CDFW-10
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ENVIRONMENTAL DATA

CEQA requires that information developed in Environmental Impact Reports and Negative Declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: [Submitting Data to the CNDDDB \(ca.gov\)](#). The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: [CNDDDB - Plants and Animals \(ca.gov\)](#).

CDFW-11

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CDFW-12

CONCLUSION

CDFW requests that the City include in the final MND the suggested mitigation measures (Attachment 1) offered by CDFW to avoid, minimize, and mitigate Project impacts on California fish and wildlife resources.

CDFW appreciates the opportunity to comment on the Dara Industrial Project (SCH No.2022040060) and hopes our comments will assist the City in identifying, avoiding, minimizing, and mitigating Project impacts on fish and wildlife resources.

CDFW-13

If you should have any questions pertaining to the comments provided in this letter, please contact Julian Potier, Environmental Scientist at julian.potier@wildlife.ca.gov.

ATTACHMENTS

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

CDFW-14

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Sincerely,

DocuSigned by:

84FBB273E4C480
Alisa Ellsworth
Environmental Program Manager

ec: Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov.

REFERENCES

- California Department of Fish and Wildlife. 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. Available for download at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>
- California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: http://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html
- U.S. Fish and Wildlife Service. 2018. Mojave Desert Tortoise Pre-project Survey Protocol.
- Waitman, B. A., S. B. Vander Wall, and T. C. Esque. 2012. Seed dispersal and seed fate in Joshua tree (*Yucca brevifolia*). *Journal of Arid Environments* 81:1–8.

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

Biological (BIO) Mitigation Measure	Implementation Schedule	Responsible Party
<p>Biological Resources Mitigation Measure No. 4.7.1</p> <p>A State Incidental Take Permit (ITP) shall be obtained prior to any ground-disturbing activities including site clearing, grubbing, grading, etc., that would be expected to impact the western Joshua tree. If any western Joshua tree (WJT) are to be relocated, removed, or otherwise taken (California Fish and Game Code Section 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”), the City shall obtain an Incidental Take Permit (ITP) from the California Department of Fish and Wildlife (CDFW) in accordance with Fish and Game Code section 2081 prior to the relocation, removal, or take of WJT, a Threatened CESA-listed species candidate.</p> <p>To fully mitigate for Project-related impacts, including “take” of a CESA-listed species, permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA. CDFW recommends permanent protection through the establishment of a conservation easement, the development of a long-term management plan, and the</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>securement of sufficient funds to implement management plan tasks in perpetuity. These tasks should be completed, or financial security must be provided prior to initiating Project activities. To execute an ITP, CDFW requires documentation of CEQA compliance. CEQA documentation shall include a State Clearing House number and proof of filing fees and document circulation.</p>		
<p>Biological Resources Mitigation Measure No. 4.7.2</p> <p>Regardless of the time of year, a pre-construction clearance survey for nesting birds should be conducted onsite within 500 feet of the Project site within three (3) days of the start of any vegetation removal or ground-disturbing activities to ensure that no nesting birds will be disturbed during construction. Surveys shall include any potential habitat (including trees, shrubs, the ground, or nearby structures) that may be impacted by Project activities. The biologist conducting the clearance survey should document a negative survey with a brief letter report indicating that no impacts to active avian nests will occur.</p> <p>If an active avian nest is discovered during the pre-construction clearance survey, construction activities should stay outside of a no-disturbance buffer. The extent of the 'no-disturbance buffer' shall be no less than 300 feet (500 feet for raptors) although a smaller buffer may be determined by a qualified biologist. Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. A biological monitor should be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the 'no-disturbance buffer' shall be expanded. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>



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<p>Biological Resources Mitigation Measure No. 4.7.3</p> <p>Prior to initiating Project activities, a qualified biologist shall conduct at least one survey covering the entire Project area and surrounding 15-meter buffer to identify the presence of suitable burrows and/or burrow surrogates (>11 cm in diameter [height and width] and >150 cm in depth) for burrowing owl and sign of burrowing owl (e.g., pellets, prey remains, whitewash, or decoration, etc.). If burrowing owls or suitable burrows and/or sign of burrowing owl are documented on-site, a breeding season survey for burrowing owl in accordance with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) shall be conducted by a qualified biologist prior to start of Project activities. If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no further action is necessary. If burrowing owl, active burrowing owl burrows, or sign thereof are found the qualified biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures to be approved by CDFW prior to commencing Project activities and propose mitigation for permanent loss of occupied burrow(s) and habitat. Methodology for surveys, impact analysis, and reporting shall follow the recommendations and guidelines provided within the California Department of Fish and Game Staff Report on Burrowing Owl Mitigation (CDFW 2012 Staff Report).</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>Biological Resources Mitigation Measure No. 4.7.4</p> <p>If Oro Grande Wash will be impacted by Project activities, the Project Applicant shall obtain the following regulatory approvals prior to impacts occurring within the identified jurisdictional area: U.S. Army Corps CWA Section 404 Permit, Regional Board CWA Section 401 Water Quality Certification, and written correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project proponent should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>Biological Resources Mitigation Measure No. 4.7.5</p> <p>A qualified biologist shall conduct pre-construction surveys within the Project area and a 500-foot buffer surrounding these areas 14-21 days prior to initiating Project activities. The surveys shall be conducted to identify and map for avoidance of any special-status species with the potential to occur on the site such as desert tortoise and Mohave ground squirrel. The qualified biologist shall ensure that the methods used to locate, identify, map, avoid, and buffer individuals or habitat are appropriate and effective, including the assurance that the surveyor has attained 100% visual coverage of the entirety of the potential impact areas, and an appropriate buffer surrounding those areas. Appropriate survey methods and timeframes shall be established, to ensure that chances of detecting the target species are maximized. In the event that listed species, such as the desert tortoise or Mohave ground squirrel, are detected and avoidance is infeasible, proper authorization (i.e., incidental take permitting) from the USFWS and CDFW must be obtained. If nesting birds are detected, avoidance measures shall be implemented to ensure that nests are not disturbed until after young have fledged.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>Biological Resources Mitigation Measure No. 4.7.6</p> <p>A qualified biologist shall conduct pre-construction sweeps within the Project area (including access routes) and a 500-foot buffer surrounding the Project areas, within 2 hours of initiating Project activities. The pre-construction sweeps shall confirm and mark/map for avoidance the location of any special-status species such as desert tortoise and Mohave ground squirrel and shall verify that no additional special-status species have occupied the Project areas or adjacent habitats. If any additional special-status species (or sign of presence) are identified within or adjacent to the project areas during the pre-construction sweep, the qualified biologist shall determine whether the proposed avoidance measures will be effective in fully avoiding impacts of the project on the identified resource(s) prior to initiating Project activities. If full avoidance cannot be accomplished, Permittee shall</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>postpone the Project, and contact CDFW to discuss an appropriate path forward.</p>		
<p>Biological Resources Mitigation Measure No. 4.7.7</p> <p>Prior to the initiation of Project activities, and during the appropriate season, a qualified biologist shall conduct botanical field surveys following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). If any special-status plants are identified, the Project proponent shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the Project proponent shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank or land acquisition and conservation, at a mitigation ratio determined by CDFW after Project analysis. If the Project has the potential to impact a state listed species, the Project proponent should apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>



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California Department of Fish and Wildlife
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764

Letter Dated September 9, 2022

Comment CDFW-1

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from the City of Hesperia (City) for the Dara Industrial Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

Response CDFW-1

CDFW receipt and review of the Dara Industrial Project (Project) Draft EIR (DEIR, EIR) is recognized. The City appreciates CDFW participation in the Project development review and DEIR CEQA review processes. Findings and conclusions of the DEIR are not affected.

Comment CDFW-2

CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (Id., § 1802.) Similarly for purposes of CEQA, CDFW is charged by law to provide, as available, biological

expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

Response CDFW-2

CDFW roles and responsibilities as both a Trustee Agency and Responsible Agency are recognized. Findings and conclusions of the DEIR are not affected.

Comment CDFW-3

PROJECT DESCRIPTION SUMMARY

The objective of the Project is to develop a single 750,000-square-foot industrial building within an approximately 43.28-acre site. The Project also includes two stormwater management basins that will be located at the Project site's northeasterly (0.6 acre) and southwesterly (2.0 acres) corners. Project activities include clearing of all surface features through grubbing, rough-grading, and fine-grading in preparation of building construction. Existing grades within the Project site will be modified to establish suitable building pads and to facilitate site drainage. Site preparation activities will result in approximately 200,000 cubic yards of soil export.

Location: *The Project site is located in the western part of the City, which is within the Victor Valley region of San Bernardino County. The Project site is located at the northwest corner of Highway 395 and Poplar Street at a previous racetrack. The Project site consists of Assessor's Parcel Numbers 3064-551-03, -04, -06, -07, and -08. Specifically, the Project site is located in Section 21, Township 4 North, Range 5 West, as depicted on the U.S. Geological Survey Baldy Mesa, California 7.5-minute topographic quadrangle map. Regional access to the Project site is*

provided via Highway 395, bordering the eastern boundary of the Project site. Project coordinates are Latitude 34.417581 and Longitude -117.403536.

Timeframe: *The Project will be completed by 2024.*

Response CDFW-3

The Project Description, Project site location, and assumed Project opening year as summarized by CDFW are materially correct. Please refer also to the detailed Project Description presented at DEIR Section 3, *Project Description*. Findings and conclusions of the DEIR are not affected.

Comment CDFW-4

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below, and in Attachment 1 “Mitigation Monitoring and Reporting Program (MMRP)”, to assist the City in adequately identifying and/or mitigating the Project’s significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

Response CDFW-4

Responses to CDFW comments and recommendations are provided below. Revised mitigation as suggested by CDFW has been incorporated as presented below.

Comment CDFW-5

Western Joshua Tree (*Yucca brevifolia*)

As a Candidate for Threatened California Endangered Species Act (CESA)-listed species, CDFW is concerned with the Projects potential impacts to the 65 western Joshua tree (WJT) identified by the DEIR. CDFW recommends that the City conduct an impact analysis for WJT. When analyzing impacts to WJT, the entire population on the project site should be considered to properly calculate demographics and estimate the quality of WJT habitat on-site. CDFW recommends the final EIR quantify WJT presence on the entirety of the Project Area through focused surveys. The WJT survey results should be included in the final EIR and should identify and provide: a) the GPS coordinates and accompanying map of each WJT within the Project Area; b) the age class of each

WJT; c) the number of clonal WJT associated with each parent plant and the methodology used to make this determination; d) a unique numbering system for each WJT, and e) geo-referenced, representative photos of parent trees, clones, and general distribution of WJT across the Project site.

Furthermore, the final EIR should include: 1) an impact analysis assessing potential Project impacts to WJT within a 186-foot buffer zone of WJT (Vander Wall et al. 2006), 2) implementing a 300-foot buffer around WJT not scheduled for removal to avoid impacts to WJT, and 3) a mitigation strategy for Project impacts to WJT individuals, WJT seedbank, and indirect impacts to WJT.

CDFW appreciates the inclusion of MM BIO-4.7.1 which considers an Incidental Take Permit for take of WJT. CDFW offers the following revisions to MM BIO-4.7.1 (edits are in ~~striketrough~~ and **bold**)

MM BIO-4.7.1

A State Incidental Take Permit (ITP) shall be obtained prior to any ground-disturbing activities including site clearing, grubbing, grading, etc., that would be expected to impact the western Joshua tree. If any western Joshua tree (WJT) are to be relocated, removed, or otherwise taken (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill"), the City shall obtain an Incidental Take Permit (ITP) from the California Department of Fish and Wildlife (CDFW) in accordance with Fish and Game Code section 2081 prior to the relocation, removal, or take of WJT, a Threatened CESA-listed species candidate.

To fully mitigate for Project-related impacts, including "take" of a CESA-listed species, permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA. CDFW recommends permanent protection through the establishment of a conservation easement, the development of a long-term management plan, and the securement of sufficient funds to implement management plan tasks in perpetuity. These tasks shall be completed, or financial security must be provided prior to initiating Project activities. To execute an ITP, CDFW requires documentation of

CEQA compliance. CEQA documentation shall include a State Clearing House number and proof of filing fees and document circulation.

Response CDFW-5

The candidacy status for listing WJT as a threatened species has been extended several times beyond the normal one-year review period. A final decision on WJT listing is tentatively scheduled to be made at the CDFW meeting in October 2022. It is the Lead Agency's understanding that CDFW Staff has recommended against listing WJT as a threatened species due to the lack of sufficient scientific data to support such listing. However, if CDFW votes to formally list WJT as a threatened species, the Project would be required to acquire an ITP processed under Section 2081 of CESA. In this regard, DEIR Mitigation Measure 4.7.1 has been revised, as suggested by CDFW, to include language requiring the acquisition of an ITP, if WJT is formally listed. Before CDFW can issue an ITP, supporting CEQA analysis must be provided. Should CDFW require CEQA analysis beyond that presented in the DEIR, such analysis would be prepared and processed through the City of Hesperia. A draft Section 2081 ITP Application for the Project has been prepared and is presented at FEIR Attachment A. A final ITP Application will be prepared and submitted to CDFW if/as required.

Mitigation Measure 4.7.1 as revised by CDFW has been further modified to reflect current indeterminate status of the WJT listing, and is presented below. For text corrections, additional text is identified by **bold underlined text**, while deletions are indicated by ~~strikeout~~ font. Revised Mitigation Measure 4.7.1 is incorporated at Final EIR Section 4.0, *Mitigation Monitoring Program*.

*4.7.1 ~~A State~~ **If the Western Joshua Tree (WJT) is formally listed as a Threatened Species under the California Endangered Species Act (CESA), in accordance with Fish and Game Code Section 208,** an Incidental Take Permit (ITP) shall be obtained **from CDFW** prior to any **actions comprising "take" of WJT.** ~~ground disturbing activities including site clearing, grubbing, grading, etc., that would be expected to impact the western Joshua tree. If any western Joshua tree (WJT) are to be relocated, removed, or otherwise taken~~ ← California Fish and*

~~Game Code Section 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.”), the City shall obtain an Incidental Take Permit (ITP) from the California Department of Fish and Wildlife (CDFW) in accordance with Fish and Game Code section 2081 prior to the relocation, removal, or take of WJT, a Threatened CESA listed species candidate.~~

~~To fully mitigate for Project-related impacts, including “take” of a CESA-listed species, permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA. CDFW recommends permanent protection through~~ **Pursuant to an ITP (if required) CDFW typically recommends acquisition of conservation credits through an existing Bank or through permanent species protection by** the establishment of a conservation easement, the development of a long-term management plan, and the securing of sufficient funds to implement management plan tasks in perpetuity. ~~These tasks should~~ **If an ITP is required, ITP actions required by CDFW shall** be completed, or financial security ~~must~~ **ensuring completion of CDFW-required actions shall** be provided, prior to initiating Project activities. To execute an ITP, CDFW requires documentation of CEQA compliance. **The City shall require such documentation as part of the ITP process.** CEQA documentation shall include a State Clearing House number and proof of filing fees and document circulation.

With the inclusion of revised Mitigation Measure 4.7.1 above, DEIR Mitigation Measure 4.7.5 is no longer required, and has been deleted (see below).

~~4.7.5 No Joshua Trees shall be removed from the site without first obtaining a State Incidental Take Permit (ITP) from the CDFW. The removal/salvage of any Joshua Trees shall occur in compliance with Hesperia Municipal Code Section 16.24.~~

Additionally, the discussion at Biological Resources Assessment at p. 10 is updated as follows to reflect tentative status listing of WJT. Other potentially affected discussions in the DEIR and supporting technical analyses are amended accordingly by reference.

State Incidental Take Permit

~~Due the recent listing of the western Joshua tree and the presence of 65 Joshua trees on the site, a state ITP will be required prior to any ground disturbing activities that would be expected to impact this species.~~

As of the date of the preparation of this study, formal listing of WJT as a threatened species under CESA is tentative. If WJT is indeed listed as a threatened species, the Project proponent would be required to obtain an ITP from CDFW, and would be required to comply with CDFW ITP requirements.

Comment CDFW-6

Nesting Birds

*During the September 22, 2021, field surveys no active nests or birds displaying nesting behavior were observed, which is unsurprising since the field survey was conducted outside the typical breeding season for most birds. The DEIR recognizes that plant communities and land cover types found on-site, such as rubber rabbitbrush (*Ericameria nauseosa*) scrub and creosote bush (*Larrea tridentata*) scrub have the potential to provide suitable nesting habitat for year-round and seasonal avian residents, as well as migrating songbirds.*

*The Biological Resources Assessment states that no raptors are expected to nest on-site due to lack of suitable nesting opportunities. Red-tailed hawk (*Buteo jamaicensis*) has a range that overlaps the Project area, and commonly occurs near the Project. Red-tailed hawk commonly uses Western Joshua tree (*Yucca brevifolia*) for nesting, and there are 65 trees on the Project site. Please note that it is the Project proponent's responsibility to avoid "take" of all nesting birds. California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill". Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish*

and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. These regulations apply anytime nests or eggs exist on the Project site.

*To address the above issues and help the Project applicant avoid unlawful take of nests and eggs, CDFW offers the following revisions to MM BIO-4.7.2 (edits are in ~~strikethrough~~ and **bold**)*

MM BIO-4.7.2

~~If construction occurs between February 1st and August 31st, Regardless of the time of year, a pre-construction clearance survey for nesting birds shall be conducted onsite within 500 feet of the Project site within three (3) days of the start of any vegetation removal or ground-disturbing activities to ensure that no nesting birds will be disturbed during construction. Surveys shall include any potential habitat (including trees, shrubs, the ground, or nearby structures) that may be impacted by Project activities. The biologist conducting the clearance survey shall document a negative survey with a brief letter report indicating that no impacts to active avian nests will occur.~~

*If an active avian nest is discovered during the pre-construction clearance survey, construction activities shall stay outside of a no-disturbance buffer. **The extent of the 'no-disturbance buffer' shall be no less than 300 feet (500 feet for raptors) although a smaller buffer may be determined by a qualified biologist.** ~~The size of the no disturbance buffer will be determined by the wildlife biologist and will depend on the level of noise and/or surrounding anthropogenic disturbances, line of sight between the nest and the construction activity, type and duration of construction activity, ambient noise, species habituation, and topographical barriers. These factors will be evaluated on a case-by-case basis when developing buffer distances. Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. A biological~~*

*monitor shall be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. **If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the 'no-disturbance buffer' shall be expanded.** Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur.*

Response CDFW-6

DEIR discussions of potential impacts to nesting birds as summarized by CDFW is materially correct. CDFW summary of Fish and Game Code rules and regulations prohibiting take of all nesting birds is recognized. Mitigation Measure 4.7.2 has been revised as suggested by CDFW. The revised mitigation measure is incorporated at Final EIR Section 4.0, *Mitigation Monitoring Program*.

Comment CDFW-7

*Burrowing Owl (*Athene cunicularia*)*

*CDFW understands that the Project site is fairly disturbed due to decades of recreational use. Because burrowing owl is commonly found in disturbed habitat and the Project site contains areas with suitable foraging and/or nesting habitat for burrowing owl, CDFW agrees with the DEIR that the Project site has potential to support burrowing owl. CDFW appreciates the inclusion of MM BIO 4.7.3 which considers pre-construction surveys for burrowing owl and offers the following revisions (edits are in ~~striketrough~~ and **bold**).*

MM BIO-4.7.3

*~~A pre-construction burrowing owl survey will be conducted within 30 days prior to construction to avoid any potential project-related impacts to this species.~~ **Prior to initiating Project activities, a qualified biologist shall conduct at least one survey covering the entire Project area and surrounding 15-meter buffer to identify the presence of suitable burrows and/or burrow surrogates (>11 cm in diameter [height and width] and >150 cm in depth) for burrowing owl and sign of burrowing owl (e.g., pellets, prey remains, whitewash, or decoration, etc.). If burrowing owls or suitable burrows and/or sign of burrowing owl are documented on-site, a breeding season survey for burrowing owl in accordance with the***

Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) shall be conducted by a qualified biologist prior to start of Project activities. If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no further action is necessary. If burrowing owl, active burrowing owl burrows, or sign thereof are found the Applicant qualified biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures ~~or passive exclusion, in coordination with~~ to be approved by CDFW prior to commencing Project activities and propose mitigation for permanent loss of occupied burrow(s) and habitat. Methodology for surveys, impact analysis, and reporting shall follow the recommendations and guidelines provided within the California Department of Fish and Game Staff Report on Burrowing Owl Mitigation (CDFW 2012 Staff Report).

Response CDFW-7

DEIR discussions of potential impacts to burrowing owls as summarized by CDFW is materially correct. Mitigation Measure 4.7.3 has been revised as suggested by CDFW. The revised mitigation measure is incorporated at Final EIR Section 4.0, *Mitigation Monitoring Program*.

Comment CDFW-8

Lake and Streambed Alteration

CDFW appreciates that the Project proponent recognizes that notification to CDFW is required, pursuant to section 1602 of the Fish and Game Code. CDFW recommends the City consult with CDFW early regarding notification to comply with the Fish and Game Code section 1602. CDFW offers the following revisions to MM BIO- (edits are in ~~striketrough~~ and **bold**).

MM BIO-4.7.4

*If Oro Grande Wash will be impacted by Project ~~development~~ activities, the Project Applicant shall obtain the following regulatory approvals prior to impacts occurring within the identified jurisdictional area: U.S. Army Corps CWA Section 404 Permit, Regional Board CWA Section 401 Water Quality Certification, and ~~to~~ **written correspondence from CDFW stating that notification under Section 1602 of the Fish and Game Code is not required for the Project, or the Project proponent shall obtain a CDFW-executed Lake and Streambed Alteration***

Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

Response CDFW-8

The City will consult early on with CDFW regarding Fish and Game Code section 1602 notification processes and compliance requirements. Mitigation Measure 4.7.4 has been revised as suggested by CDFW. The revised mitigation measure is incorporated at Final EIR Section 4.0, *Mitigation Monitoring Program*.

Comment CDFW-9

Desert tortoise (Gopherus agassizii) and Mohave ground squirrel (Xerospermophilus mohavensis)

The DEIR speculates that due to several decades of heavy recreational use of the site, desert tortoise and Mohave ground squirrel are not expected to occur. However, the Project is within the range and based on aerial imagery contains minimal potential habitat for desert tortoise, a state-threatened, proposed endangered species under CESA and Mohave ground squirrel, a CESA-threatened species on the northwest part of the Project site. Because the Project is within the range of Mohave ground squirrel and desert tortoise, CDFW recommends that prior to start of Project activities, a pre- construction survey and pre-construction sweep be conducted to ensure the absence of these species, thus CDFW recommends the City adopt MM BIO-4.7.5 and MM BIO-4.7.6 below:

MM BIO-4.7.5

A qualified biologist shall conduct pre-construction surveys within the Project area and a 500-foot buffer surrounding these areas 14-21 days prior to initiating Project activities. The surveys shall be conducted to identify and map for avoidance of any special-status species with the potential to occur on the site such as desert tortoise and Mohave ground squirrel. The qualified biologist shall ensure that the methods used to locate, identify, map, avoid, and buffer individuals or habitat are appropriate and effective, including the assurance that the surveyor has attained 100% visual coverage of the entirety of the potential impact areas, and an appropriate buffer surrounding those areas. Appropriate survey methods and timeframes shall be established, to ensure that chances of detecting the target species are maximized. In the event that listed species, such as the desert

tortoise or Mohave ground squirrel, are detected and avoidance is infeasible, proper authorization (i.e., incidental take permitting) from the USFWS and CDFW must be obtained. If nesting birds are detected, avoidance measures shall be implemented to ensure that nests are not disturbed until after young have fledged.

MM BIO-4.7.6

A qualified biologist shall conduct pre-construction sweeps within the Project area (including access routes) and a 500-foot buffer surrounding the Project areas, within 2 hours of initiating Project activities. The pre-construction sweeps shall confirm and mark/map for avoidance the location of any special-status species such as desert tortoise and Mohave ground squirrel and shall verify that no additional special-status species have occupied the Project areas or adjacent habitats. If any additional special-status species (or sign of presence) are identified within or adjacent to the project areas during the pre-construction sweep, the qualified biologist shall determine whether the proposed avoidance measures will be effective in fully avoiding impacts of the project on the identified resource(s) prior to initiating Project activities. If full avoidance cannot be accomplished, Permittee shall postpone the Project, and contact CDFW to discuss an appropriate path forward.

Response CDFW-9

CDFW states that the DEIR “speculates” that due to decades use of the Project site for recreational uses, the desert tortoise and the Mojave ground squirrel are not expected to occur within the Project. The DEIR conclusion in this regard is not speculation, but rather is based on the fact that there were no observed desert tortoise or Mojave ground squirrel within the Project site, and there is no suitable habitat for these species within the Project site. This conclusion is supported by accepted resources research, review, and survey protocols. As stated in the Project Biological Resources Assessment . . . “[a] literature review and records search were conducted to determine which special-status biological resources have the potential to occur on or within the general vicinity of the project site. In addition to the literature review, a general habitat assessment or field investigation of the project site was conducted to document existing conditions and assess the potential

for special-status biological resources to occur within the project site.”¹ As stated in the DEIR “ . . . previously-described on-site anthropogenic disturbances have eliminated the natural plant communities that once occurred on-site, which has reduced potential foraging and nesting/denning opportunities for wildlife species” (DEIR, p. 4.7-8).

Nonetheless, recognizing CDFW concerns regarding the [remote] potential for protected wildlife species to exist within the Project site, thorough pre-construction surveys for the desert tortoise and the Mojave ground squirrel will be conducted as suggested. To these ends, Mitigation Measures 4.7.5, 4.7.6 recommended by CDFW are incorporated at Final EIR Section 4.0, *Mitigation and Monitoring Program*.

Comment CDFW-10

Special-Status Plants

The DEIR states, “Of the 25 special-status plant species that have been recorded in the Project area, the only special-status plant species observed on-site during the field investigation was the Joshua tree”. CDFW is concerned that this conclusion was drawn based on a habitat assessment/field investigation that was conducted on September 22, 2021 considering that according to the Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018): (1) botanical field surveys should be conducted in the field at the times of year when plants will be both evident and identifiable, usually this is during flowering or fruiting and (2). Botanical field survey visits should be spaced throughout the growing season to accurately determine what plants exist in the project area which usually involves multiple visits to the project area (e.g., in early, mid, and late-season) to capture the floristic diversity at a level necessary to determine if special status plants are present. CDFW is aware of sagebrush loeflingia (Loeflingia squarrosa var. artemisiarum) occurring near the Project site. Sagebrush loeflingia is classified as State Rank (S) 2 and thus is considered “Imperiled”. Sagebrush loeflingia has a blooming period of April through May, consequently the September 22, 2021, habitat assessment precluded detecting sagebrush loeflingia. CDFW

¹ DEIR Appendix G: *Biological Resources Assessment for the Proposed Project located at the Southeast Corner of the Intersection of Los Banos Avenue and Sultana Street in the City of Hesperia, San Bernardino County, California* (ELMT Consulting) November 2, 2021, pp. 1, 2. See also Biological Resources Assessment topical discussions at: *Literature Review, Habitat Assessment/Field Investigation, Soil Series Assessment, Plant Communities, Plants, Wildlife, and Jurisdictional Drainages and Wetlands* (Assessment, pp. 2 – 3).

recommends that prior to start of Project activities, a botanical field survey according to the Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018) be conducted to adequately identify special-status plant species.

MM BIO-4.7.7

Prior to the initiation of Project activities, and during the appropriate season, a qualified biologist shall conduct botanical field surveys following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). If any special-status plants are identified, the Project proponent shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the Project proponent shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank or land acquisition and conservation, at a mitigation ratio determined by CDFW after Project analysis. If the Project has the potential to impact a state listed species, the Project proponent shall apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW.

Response CDFW-10

CDFW expresses concern that the Project Biological Resources Assessment conclusions regarding special-status plant species was . . . “based on a habitat assessment/field investigation that was conducted on September 22, 2021 considering various CDFW “Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities.” The cited Protocols suggest surveys should be conducted during periods other than that employed in the Project Biological Resources Assessment.

The Project Biological Resources Assessment conclusions are not based solely on the documented absence of Special Status Native Plant Populations and Sensitive Natural Communities within the Project site. The Assessment conclusions are bolstered and supported by documented extensive disturbance of the site and absence of suitable

habitat necessary to support Special Status Native Plant Populations and Sensitive Natural Communities. As noted by CDFW, these are suggested protocols, not requirements. See also related supporting discussions at Response CDFW-9, which document and support the Project Biological Resources Assessment protocols and methodologies.

Nonetheless, recognizing CDFW concerns regarding the [remote] potential for protected Special Status Native Plant Populations and Sensitive Natural Communities to exist within the Project site, thorough pre-construction surveys for these plant communities and natural communities will be conducted as suggested. Protection and/or mitigation for impacts to these species (if any are encountered) shall be accomplished as outlined at recommended Mitigation Measure 4.7.7 (above). Mitigation Measure 4.7.7 is incorporated at Final EIR Section 4.0, *Mitigation and Monitoring Program*.

Comment CDFW-11

ENVIRONMENTAL DATA

CEQA requires that information developed in Environmental Impact Reports and Negative Declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: [Submitting Data to the CNDDDB \(ca.gov\)](#). The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: [CNDDDB - Plants and Animals \(ca.gov\)](#).

Response CDFW-11

Any special-status species and natural communities detected during Project surveys will be reported to the CNDDDB. CNDDDB contact, information access, and information reporting information are noted. Findings and conclusions of the DEIR are not affected.

Biological resources database reporting requirements are acknowledged. Consistent with Pub. Resources Code, § 21003, subd. (e) requirements, any special status species and natural communities detected during Project surveys will be reported to the CNDDDB.

Comment CDFW-12

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

Response CDFW-12

CDFW NOD filing fees requirements are acknowledged. The Applicant will pay fees as required under Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089. Findings and conclusions of the DEIR are not affected.

Comment CDFW-13

CONCLUSION

CDFW requests that the City include in the final MND the suggested mitigation measures (Attachment 1) offered by CDFW to avoid, minimize, and mitigate Project impacts on California fish and wildlife resources.

CDFW appreciates the opportunity to comment on the Dara Industrial Project (SCH No.2022040060) and hopes our comments will assist the City in identifying, avoiding, minimizing, and mitigating Project impacts on fish and wildlife resources.

If you should have any questions pertaining to the comments provided in this letter, please contact Julian Potier, Environmental Scientist at julian.potier@wildlife.ca.gov.

Response CDFW-13

Additional and revised mitigation measures suggested by CDFW have been incorporated at FEIR Section 4.0, *Mitigation Monitoring Program*. Please refer to Mitigation Measures 4.7.1 through 4.7.7.

The City appreciates CDFW participation in the Project and DEIR review processes. CDFW comments and concerns are addressed in the Responses provided herein. CDFW contact information is acknowledged. Findings and conclusions of the DEIR are not affected.

Comment CDFW-14

ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

<i>Biological (BIO) Mitigation Measure</i>	<i>Implementation Schedule</i>	<i>Responsible Party</i>
<p><i>Biological Resources Mitigation Measure No. 4.7.1</i></p> <p><i>A State Incidental Take Permit (ITP) shall be obtained prior to any ground-disturbing activities including site clearing, grubbing, grading, etc., that would be expected to impact the western Joshua tree. If any western Joshua tree (WJT) are to be relocated, removed,</i></p>	<p><i>Prior to commencing ground- or vegetation-</i></p> <p><i>disturbing activities</i></p>	<p><i>Project Proponent</i></p>

<p><i>or otherwise taken (California Fish and Game Code Section 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”), the City shall obtain an Incidental Take Permit (ITP) from the California Department of Fish and Wildlife (CDFW) in accordance with Fish and Game Code section 2081 prior to the relocation, removal, or take of WJT, a Threatened CESA-listed species candidate.</i></p> <p><i>To fully mitigate for Project-related impacts, including “take” of a CESA-listed species, permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA. CDFW recommends permanent protection through the establishment of a conservation easement, the development of a long-term management plan, and the securement of sufficient funds to implement management plan tasks in perpetuity. These tasks shall be completed, or financial security must be provided prior to initiating Project activities. To execute an ITP, CDFW requires documentation of CEQA compliance. CEQA documentation shall include a State Clearing House number and proof of filing fees and document circulation.</i></p>		
<p>Biological Resources Mitigation Measure No. 4.7.2</p> <p><i>Regardless of the time of year, a pre-construction clearance survey for nesting birds shall be conducted onsite within 500 feet of the Project site within three (3) days of the start of any vegetation removal or ground- disturbing activities to ensure that no nesting birds will be disturbed during construction. Surveys shall include any potential habitat (including trees, shrubs, the ground, or nearby structures) that may be impacted by Project activities. The biologist conducting the clearance survey shall document a negative survey with a brief letter report indicating that no impacts to active avian nests will occur.</i></p> <p><i>If an active avian nest is discovered during the pre- construction clearance survey, construction activities shall stay outside of a no-disturbance buffer. The extent of the ‘no-disturbance buffer’ shall be no less than 300 feet (500 feet for raptors) although a smaller buffer may be determined by a qualified biologist.</i></p>	<p><i>Prior to commencing ground- or vegetation- disturbing activities</i></p>	<p><i>Project Proponent</i></p>

<p>Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. A biological monitor shall be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the 'no-disturbance buffer' shall be expanded. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur.</p>		
<p>Biological Resources Mitigation Measure No. 4.7.3</p> <p>Prior to initiating Project activities, a qualified biologist shall conduct at least one survey covering the entire Project area and surrounding 15-meter buffer to identify the presence of suitable burrows and/or burrow surrogates (>11 cm in diameter [height and width] and >150 cm in depth) for burrowing owl and sign of burrowing owl (e.g., pellets, prey remains, whitewash, or decoration, etc.). If burrowing owls or suitable burrows and/or sign of burrowing owl are documented on-site, a breeding season survey for burrowing owl in accordance with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) shall be conducted by a qualified biologist prior to start of Project activities. If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no further action is necessary. If burrowing owl, active burrowing owl burrows, or sign thereof are found the qualified biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures to be approved by CDFW prior to commencing Project activities and propose mitigation for permanent loss of occupied burrow(s) and habitat. Methodology for surveys, impact analysis, and reporting shall follow the recommendations and guidelines provided within the California Department of Fish and Game Staff Report on Burrowing Owl Mitigation (CDFW 2012 Staff Report).</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>Biological Resources Mitigation Measure No. 4.7.4</p> <p>If Oro Grande Wash will be impacted by Project activities, the</p>	<p>Prior to commencing</p>	<p>Project Proponent</p>

<p><i>Project Applicant shall obtain the following regulatory approvals prior to impacts occurring within the identified jurisdictional area: U.S. Army Corps CWA Section 404 Permit, Regional Board CWA Section 401 Water Quality Certification, and written correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project proponent shall obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</i></p>	<p><i>ground- or vegetation-disturbing activities</i></p>	
<p>Biological Resources Mitigation Measure No. 4.7.5</p> <p><i>A qualified biologist shall conduct pre-construction surveys within the Project area and a 500-foot buffer surrounding these areas 14-21 days prior to initiating Project activities. The surveys shall be conducted to identify and map for avoidance of any special-status species with the potential to occur on the site such as desert tortoise and Mohave ground squirrel. The qualified biologist shall ensure that the methods used to locate, identify, map, avoid, and buffer individuals or habitat are appropriate and effective, including the assurance that the surveyor has attained 100% visual coverage of the entirety of the potential impact areas, and an appropriate buffer surrounding those areas.</i></p> <p><i>Appropriate survey methods and timeframes shall be established, to ensure that chances of detecting the target species are maximized. In the event that listed species, such as the desert tortoise or Mohave ground squirrel, are detected and avoidance is infeasible, proper authorization (i.e., incidental take permitting) from the USFWS and CDFW must be obtained. If nesting birds are detected, avoidance measures shall be implemented to ensure that nests are not disturbed until after young have fledged.</i></p>	<p><i>Prior to commencing ground- or vegetation-disturbing activities</i></p>	<p><i>Project Proponent</i></p>
<p>Biological Resources Mitigation Measure No. 4.7.6</p> <p><i>A qualified biologist shall conduct pre-construction sweeps within the Project area (including access routes) and a 500-foot buffer surrounding the Project areas, within 2 hours of initiating Project activities. The pre-construction sweeps shall confirm and mark/map for avoidance the location of any special-status species such as desert tortoise and Mohave ground squirrel and shall verify that no</i></p>	<p><i>Prior to commencing ground- or vegetation-disturbing activities</i></p>	<p><i>Project Proponent</i></p>

<p><i>addition special-status species have occupied the Project areas or adjacent habitats. If any additional special-status species (or sign of presence) are identified within or adjacent to the project areas during the pre-construction sweep, the qualified biologist shall determine whether the proposed avoidance measures will be effective in fully avoiding impacts of the project on the identified resource(s) prior to initiating Project activities. If full avoidance cannot be accomplished, Permittee shall postpone the Project, and contact CDFW to discuss an appropriate path forward.</i></p>		
<p>Biological Resources Mitigation Measure No. 4.7.7</p> <p><i>Prior to the initiation of Project activities, and during the appropriate season, a qualified biologist shall conduct botanical field surveys following protocols set forth in the California Department of Fish and Wildlife’s (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). If any special-status plants are identified, the Project proponent shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the Project proponent shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank or land acquisition and conservation, at a mitigation ratio determined by CDFW after Project analysis. If the Project has the potential to impact a state listed species, the Project proponent shall apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW.</i></p>	<p><i>Prior to commencing ground- or vegetation-disturbing activities</i></p>	<p><i>Project Proponent</i></p>

Response CDFW-14

Additional and revised mitigation measures suggested by CDFW have been incorporated at FEIR Section 4.0, *Mitigation Monitoring Program*. Please refer to Mitigation Measures 4.7.1 through 4.7.7.



Lahontan Regional Water Quality Control Board

September 12, 2022

File: CEQA
San Bernardino County

Edgar Gonzalez, Associate Planner
City of Hesperia Planning Department
9700 Seventh Avenue
Hesperia, CA 92345
Phone (760) 974-1330
egonzalez@cityofhesperia.us

Comments on the Draft Environmental Impact Report, Dara Industrial Project, San Bernardino County, State Clearinghouse No. 2022040060

Lahontan Regional Water Quality Control Board (Water Board) staff received the Draft Environmental Impact Report (DEIR) for the above-referenced project (Project) on July 26, 2022. The DEIR, prepared by the City of Hesperia, was submitted in compliance with provisions of the California Environmental Quality Act (CEQA) in order to solicit input on the potential impacts to the environment and ways in which those significant effects are proposed to be avoided or mitigated. Water Board staff, acting as a responsible agency, is providing these comments to specify the scope and content of the environmental information germane to our statutory responsibilities pursuant to CEQA Guidelines, California Code of Regulations, title 14, section 15096. Based on our review of the DEIR, we recommend the Project site be able to fully manage runoff and runoff waters so as to minimally impact beneficial uses, natural function and flow of waters, and nuisance erosion to the surrounding uplands. Our comments and list of potential permitting requirements are outlined below.

WQCB-1

PROPOSED PROJECT

The Project proposes to construct a 750,000 square foot industrial building and associated municipal and stormwater facilities. A 15,000 square foot office area will be included in the building layout. Two stormwater retention basins will be on site located in the northeasterly (0.6 acre) and southwesterly (2.0 acres) corners. The approximately 43-acre Project site is located at the northwest corner of Highway 395 and Poplar Street in the City of Hesperia, San Bernardino County.

WQCB-2

WATER BOARD'S AUTHORITY

All groundwater and surface waters are considered waters of the State. Surface waters include streams, lakes, ponds, and wetlands, and may be ephemeral, intermittent, or

WQCB-3

PETER C. PUMPHREY, CHAIR | MICHAEL R. PLAZIAK, PG, EXECUTIVE OFFICER

perennial. All waters of the State are protected under California law. State law assigns responsibility for protection of the quality of waters of the State in the Lahontan Region to the Lahontan Water Board. Some waters of the State are also waters of the United States. The Federal Clean Water Act (CWA) provides additional protection for those waters of the State that are also waters of the United States.

The *Water Quality Control Plan for the Lahontan Region* (Basin Plan) contains policies that the Water Board uses with other laws and regulations to protect the quality of waters of the State within the Lahontan Region. The Basin Plan sets forth water quality standards for surface water and groundwater of the Region, which include designated beneficial uses as well as narrative and numerical objectives which must be maintained or attained to protect those uses. The Basin Plan can be accessed via the Water Board's web site at http://www.waterboards.ca.gov/lahontan/water_issues/programs/basin_plan/references.shtml.

WQCB-3
cont'd.

COMMENTS ON THE PROPOSED PROJECT

Based on our review of the DEIR, we recommend that the following issues be considered and addressed in applicable sections of the final environmental document.

Chapter 4.3 of the Lahontan Basin plan outlines the water quality challenges the region faces associated with the management of stormwater, including runoff, erosion, and sedimentation. The Project location is proposed within a tributary wash and adjacent to the Oro Grande Wash, in the Upper Mojave Hydrologic Area. Project construction will span the entirety of the tributary wash, with the southwestern stormwater basin resting on the eastern edge of the Oro Grande Wash.

WQCB-4

1. During high rainfall events the Project site will be subject to runoff stormwater, and run-on waters from upwash lands. The facility must be able to manage those dual waters without impacting beneficial uses, affecting function and flow of waters onsite, or causing nuisance erosion to the surrounding uplands.
2. Soils in the nearby surrounding uplands are highly susceptible to erosion. Southwest of the project site, east of Caliente Road (34.415081°, -117.409109°), is an example of concentrated waters deeply incising soils to the extent of creating a nuisance. The Project must not concentrate surface water flows in this manner.

PERMITTING REQUIREMENTS

A number of activities associated with the proposed Project may have the potential to impact waters of the State and, therefore, may require permits issued by either the State Water Board or Lahontan Water Board. The required permits may include the following.

WQCB-5

1. Construction of the Project will result in excavation in and discharge of fill to waters within the Mojave Hydrologic Unit, Upper Mojave (HA), minor surface waters. The discharger will be required to obtain either (1) a CWA, section 401 water quality certification for impacts to federal waters and/or (2) dredge and fill waste discharge requirements for impacts non-federal waters of the State, both of which are issued by the Lahontan Water Board. As part of that permitting process, the discharger will be required to avoid and minimize, to the extent possible, direct and indirect impacts to waters of the State. Information regarding these permits including application forms can be found online at http://www.waterboards.ca.gov/lahontan/water_issues/programs/clean_water_act_401/index.shtml. Early consultation with Water Board staff is highly encouraged.

2. Land disturbance of more than 1-acre will require a CWA, section 402(p) storm water permit, including a National Pollutant Discharge Elimination System (NPDES) General Construction Storm Water Permit, Water Quality Order (WQO) 2009-0009-DWQ, obtained from the State Water Board. The project specific SWPPP required by the permit must fully identify and describe both construction and post-construction BMPs that will be incorporated into the Project. The final EIR should fully describe the post-construction BMPs that will be used and show the locations of these features on Project maps and site plans.
 - a. The SWPPP should be applicable to all areas of the Project, including construction areas, access roads to and through the site, equipment staging, and stockpile locations.

 - b. The Project shall not result in an exceedance of any applicable water quality objective (WQO) for the receiving water. For this Project, the receiving waters are the Oro Grande Wash and its receiving water the Upper Mojave River Valley Groundwater basin. The primary water quality parameters potentially affected by the Project include chemical constituents (as defined by California Code of Regulations, title 22), oil and grease, pH, suspended materials, temperature, and turbidity. Numeric and narrative WQOs for these parameters in surface waters and groundwater are outlined in Chapter 3 of the Basin Plan.

 - c. Temporary BMPs must be implemented for all components of the Project until such time that vegetation has been restored to pre-Project conditions or permanent post-construction BMPs are in place and functioning.

 - d. All excess soil excavated as part of the Project that is not used onsite should be stockpiled in an upland location such that it will not be transported by wind or water into a surface water. An adequate combination of sediment and erosion control BMPs must be implemented and maintained to temporarily stabilize the stockpiled soils until such time that they are reused and/or permanently stabilized.

WQCB-5
cont'd.

Edgar Gonzalez

- 4 -

September 12, 2022

3. Water diversion and/or dewatering activities may be subject to discharge and monitoring requirements under either NPDES General Permit, Limited Threat Discharges to Surface Waters, Board Order R6T-2014-0049, or General Waste Discharge Requirements for Discharges to Land with a Low Threat to Water Quality, WQO-2003-0003, both issued by the Lahontan Water Board. Information regarding these permits, including application forms, can be downloaded from our web site at <http://www.waterboards.ca.gov/lahontan/>. Early consultation with Water Board staff is highly encouraged.

WQCB-5
cont'd.

Thank you for the opportunity to comment. If you have any questions regarding this letter, please contact me at (760) 243-444 (andrew.robinson@waterboards.ca.gov) or Jan Zimmerman, Senior Engineering Geologist, at (760) 241-7376 (jan.zimmerman@waterboards.ca.gov).

WQCB-6



Andrew Robinson
Environmental Scientist

cc: California Department of Fish and Wildlife (R6LSA@wildlife.ca.gov)
State Clearinghouse (SCH 2022040060) (state.clearinghouse@opr.ca.gov)

Lahontan Regional Water Quality Control Board
15095 Amargosa Road, Bldg. 2 - Suite 210
Victorville, CA 92394

Letter Dated September 12, 2022

Comment WQCB-1

Lahontan Regional Water Quality Control Board (Water Board) staff received the Draft Environmental Impact Report (DEIR) for the above-referenced project (Project) on July 26, 2022. The DEIR, prepared by the City of Hesperia, was submitted in compliance with provisions of the California Environmental Quality Act (CEQA) in order to solicit input on the potential impacts to the environment and ways in which those significant effects are proposed to be avoided or mitigated. Water Board staff, acting as a responsible agency, is providing these comments to specify the scope and content of the environmental information germane to our statutory responsibilities pursuant to CEQA Guidelines, California Code of Regulations, title 14, section 15096. Based on our review of the DEIR, we recommend the Project site be able to fully manage runoff and runoff waters so as to minimally impact beneficial uses, natural function and flow of waters, and nuisance erosion to the surrounding uplands. Our comments and list of potential permitting requirements are outlined below.

Response WQCB-1

Lahontan Regional Water Quality Control Board (WQCB) receipt of the DEIR, and authority and responsibility of the Water Board as a CEQA Responsible Agency are acknowledged. Stormwater management recommendations provided by WQCB are incorporated in the Project, or will be incorporated in the Project if/as necessary based on the final Project designs. Findings and conclusions of the DEIR are not affected.

Comment WQCB-2

PROPOSED PROJECT

The Project proposes to construct a 750,000 square foot industrial building and associated municipal and stormwater facilities. A 15,000 square foot office area will be included in the building layout. Two stormwater retention basins will be on site located in the northeasterly (0.6

acre) and southwesterly (2.0 acres) corners. The approximately 43-acre Project site is located at the northwest corner of Highway 395 and Poplar Street in the City of Hesperia, San Bernardino County.

Response WQCB-2

WQCB summary description of the Project and its location are materially correct. DEIR Section 3.0, *Project Description*, provides further detail regarding the Project and its context. Findings and conclusions of the DEIR are not affected.

Comment WQCB-3

WATER BOARD'S AUTHORITY

All groundwater and surface waters are considered waters of the State. Surface waters include streams, lakes, ponds, and wetlands, and may be ephemeral, intermittent, or perennial. All waters of the State are protected under California law. State law assigns responsibility for protection of the quality of waters of the State in the Lahontan Region to the Lahontan Water Board. Some waters of the State are also waters of the United States. The Federal Clean Water Act (CWA) provides additional protection for those waters of the State that are also waters of the United States.

The Water Quality Control Plan for the Lahontan Region (Basin Plan) contains policies that the Water Board uses with other laws and regulations to protect the quality of waters of the State within the Lahontan Region. The Basin Plan sets forth water quality standards for surface water and groundwater of the Region, which include designated beneficial uses as well as narrative and numerical objectives which must be maintained or attained to protect those uses. The Basin Plan can be accessed via the Water Board's web site at http://www.waterboards.ca.gov/lahontan/water_issues/programs/basin_plan/references.shtml.

Response WQCB-3

WQCB authority under California law and the CWA are recognized. Basin Plan policies and objectives acting to preserve and protect water quality are recognized. Web access to the Basin Plan is acknowledged. Findings and conclusions of the DEIR are not affected.

Comment WQCB-4

COMMENTS ON THE PROPOSED PROJECT

Based on our review of the DEIR, we recommend that the following issues be considered and addressed in applicable sections of the final environmental document.

Chapter 4.3 of the Lahontan Basin plan outlines the water quality challenges the region faces associated with the management of stormwater, including runoff, erosion, and sedimentation. The Project location is proposed within a tributary wash and adjacent to the Oro Grande Wash, in the Upper Mojave Hydrologic Area. Project construction will span the entirety of the tributary wash, with the southwestern stormwater basin resting on the eastern edge of the Oro Grande Wash.

1. During high rainfall events the Project site will be subject to runoff stormwater, and run-on waters from upwash lands. The facility must be able to manage those dual waters without impacting beneficial uses, affecting function and flow of waters onsite, or causing nuisance erosion to the surrounding uplands.

2. Soils in the nearby surrounding uplands are highly susceptible to erosion. Southwest of the project site, east of Caliente Road (34.415081°, -117.409109°), is an example of concentrated waters deeply incising soils to the extent of creating a nuisance. The Project must not concentrate surface water flows in this manner.

Response WQCB-4

The Project is required to develop and implement a Storm Water Pollution Prevention Plan (SWPPP). Potential erosion impacts incurred during construction activities such as those noted by WQCB are reduced below the level of significance through preparation of, and compliance with the approved SWPPP. In this regard, the Project proponent is required to file an approved SWPPP prior to initiation of construction activities. Compliance with the SWPPP is realized through ongoing inspection and monitoring of the subject site as provided for under the City's established building permit and site inspection processes. Please refer also to DEIR Appendix A, *Initial Study*, Item X. *Hydrology and Water Quality*. Findings and conclusions of the DEIR are not affected.

Comment WQCB-5

PERMITTING REQUIREMENTS

A number of activities associated with the proposed Project may have the potential to impact waters of the State and, therefore, may require permits issued by either the State Water Board or Lahontan Water Board. The required permits may include the following.

1. Construction of the Project will result in excavation in and discharge of fill to waters within the Mojave Hydrologic Unit, Upper Mojave (HA), minor surface waters. The discharger will be required to obtain either (1) a CWA, section 401 water quality certification for impacts to federal waters and/or (2) dredge and fill waste discharge requirements for impacts non-federal waters of the State, both of which are issued by the Lahontan Water Board. As part of that permitting process, the discharger will be required to avoid and minimize, to the extent possible, direct and indirect impacts to waters of the State. Information regarding these permits including application forms can be found online at http://www.waterboards.ca.gov/lahontan/water_issues/programs/clean_water_act_401/index.shtml. Early consultation with Water Board staff is highly encouraged.

2. Land disturbance of more than 1-acre will require a CWA, section 402(p) storm water permit, including a National Pollutant Discharge Elimination System (NPDES) General Construction Storm Water Permit, Water Quality Order (WQO) 2009-0009-DWQ, obtained from the State Water Board. The project specific SWPPP required by the permit must fully identify and describe both construction and post-construction BMPs that will be incorporated into the Project. The final EIR should fully describe the post-construction BMPs that will be used and show the locations of these features on Project maps and site plans.

a. The SWPPP should be applicable to all areas of the Project, including construction areas, access roads to and through the site, equipment staging, and stockpile locations.

b. The Project shall not result in an exceedance of any applicable water quality objective (WQO) for the receiving water. For this Project, the receiving waters are the Oro Grande Wash and its receiving water the Upper Mojave River Valley Groundwater basin. The primary water quality parameters potentially affected by the Project include chemical constituents (as defined by

California Code of Regulations, title 22), oil and grease, pH, suspended materials, temperature, and turbidity. Numeric and narrative WQOs for these parameters in surface waters and groundwater are outlined in Chapter 3 of the Basin Plan.

c. Temporary BMPs must be implemented for all components of the Project until such time that vegetation has been restored to pre-Project conditions or permanent post-construction BMPs are in place and functioning.

d. All excess soil excavated as part of the Project that is not used onsite should be stockpiled in an upland location such that it will not be transported by wind or water into a surface water. An adequate combination of sediment and erosion control BMPs must be implemented and maintained to temporarily stabilize the stockpiled soils until such time that they are reused and/or permanently stabilized.

3. Water diversion and/or dewatering activities may be subject to discharge and monitoring requirements under either NPDES General Permit, Limited Threat Discharges to Surface Waters, Board Order R6T-2014-0049, or General Waste Discharge Requirements for Discharges to Land with a Low Threat to Water Quality, WQO-2003-0003, both issued by the Lahontan Water Board. Information regarding these permits, including application forms, can be downloaded from our web site at <http://www.waterboards.ca.gov/lahontan/>. Early consultation with Water Board staff is highly encouraged.

Response WQCB-5

The Project would obtain, implement, and comply with requirements and performance standards of all permits determined necessary by WQCB. Provisions of the Project SWPPP and Project WQMP will be determined as the Project is further defined through the City design and development review processes. Findings and conclusions of the DEIR are not affected.

Comment WQCB-6

Thank you for the opportunity to comment. If you have any questions regarding this letter, please contact me at (760) 243-444 (andrew.robinson@waterboards.ca.gov) or Jan Zimmerman, Senior Engineering Geologist, at (760) 241-7376 (jan.zimmerman@waterboards.ca.gov).

Response WQCB-6

The City appreciates WQCB engagement and participation the Project design review, and Project CEQA review processes. Contact information provided by WQCB is noted. Findings and conclusions of the DEIR are not affected.

Main Office - 825 East Third Street, San Bernardino, CA 92415-0835 | Phone: 909.387.7910 Fax: 909.387.7911

www.SBCounty.gov



Department of Public Works

- Flood Control
- Operations
- Solid Waste Management
- Special Districts
- Surveyor
- Transportation

Brendon Biggs, M.S., P.E.
Director

Noel Castillo, P.E.
Assistant Director

Trevor Leja
Assistant Director

September 7, 2022

Transmitted Via Email
File: 10(ENV)-4.01

Edgar Gonzalez, Associate Planner
City of Hesperia Planning Department
9700 Seventh Avenue
Hesperia, California 92345
Phone: (760) 947-1330
Email: egonzalez@cityofhesperia.us

RE: CEQA – CITY OF HESPERIA, NOTICE OF AVAILABILITY OF A DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE DARA INDUSTRIAL PROJECT

Dear Mr. Valdez:

Thank you for allowing the San Bernardino County Department of Public Works the opportunity to comment on the above-referenced project. **We received this request on June 2, 2022**, and pursuant to our review, we have the following comments for your consideration and inclusion into public record:

DPW-1

Flood Control Planning & Water Resources Division (Michael Fam, Chief, 909-387-8120):

The Project is within the Victorville Master Plan of Drainage (MPD) - March 1992; Williamson & Schmid.

1. We are aware there may be storm drains in and around the site that may be affected by the proposed Project. When planning for or altering existing or future storm drains, be advised that the Project is subject to the Victorville MPD, dated March 1992. It is to be used as a guideline for drainage in the area and is available in the County's Flood Control District offices at (909) 387- 8120. Any revision to the drainage should be reviewed and approved by the City of Hesperia. Should construction of new, or alterations to existing storm drains be necessary as part of the Proposed Project, their impacts and any required mitigation should be discussed within the EIR before the document is adopted by the Lead Agency.
2. In general, it appears at the Draft has identified the major concerns of the District. However, the District's recommendations are most often made to site specific conditions. Therefore, the recommendations made here are general in nature until such time as more detailed plans become available.
3. According to the most recent FEMA Flood Insurance Rate Map, Panel 06071C6475H, dated August 28, 2008, the Project lies within FEMA Zone X (unshaded). Impacts associated with the project's occurrence in the FEMA Zone(s) mentioned and proposed mitigation for any impacts, should be discussed in the DEIR prior to adoption.

DPW-2

BOARD OF SUPERVISORS

COL. PAUL COOK (RET.) First District	JANICE RUTHERFORD Second District	DAWN ROWE Vice Chair, Third District	CURT HAGMAN Chairman, Fourth District	JOE BACA, JR. Fifth District
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Leonard X. Hernandez
Chief Executive Officer

4. Those portions of the Project lying in and abutting the natural drainage course and its overflow area may be subject to infrequent flood hazard until adequate channel and debris retention facilities are provided to intercept and conduct the flows through and away from the site.
5. One of the benefits of the MPD is to identify the potential alignments of future drainage and flood control facilities. It is recommended for the City to continue to use this document to protect the alignment of future facilities.

DPW-2
cont'd.

Permits/Operations Support Division (Fong Tse, Chief, 909-387-7995):

1. The proposed Project may be located adjacent to a San Bernardino County Flood Control District (District) right-of way and facilities. Any encroachments including, but not limited to access for grading, fence removal and installation, side drain connections, utilities, and new street dedications on the District's right-of-way or facilities will require a permit from the District prior to start of construction. The necessity for permits, and any impacts associated with them, should be addressed in the DEIR prior to adoption and certification. If you have any questions regarding this process, please contact the FCD Permit Section at (909) 387-1863

DPW-3

We respectfully request to be included on the circulation list for all project notices, public reviews, or public hearings. In closing, I would like to thank you again for allowing the San Bernardino County Department of Public Works the opportunity to comment on the above-referenced project. Should you have any questions or need additional clarification, please contact the individuals who provided the specific comment, as listed above.

DPW-4

Sincerely,

Nancy Sansonetti

Nancy Sansonetti,
Supervising Planner,
Environmental Management

San Bernardino County Department of Public Works
825 East Third Street
San Bernardino, CA 92415

Letter Dated September 7, 2022

Comment DPW-1

Thank you for allowing the San Bernardino County Department of Public Works the opportunity to comment on the above-referenced project. We received this request on June 2, 2022, and pursuant to our review, we have the following comments for your consideration and inclusion into public record:

Response DPW-1

DPW receipt of the Dara Industrial Project (Project) is acknowledged. Responses to DPW comments on the DEIR are provided below. Findings and conclusions of the DEIR are not affected.

Comment DPW-2

Flood Control Planning & Water Resources Division (Michael Fam, Chief, 909-387-8120):
The Project is within the Victorville Master Plan of Drainage (MPD) - March 1992; Williamson & Schmid.

1. We are aware there may be storm drains in and around the site that may be affected by the proposed Project. When planning for or altering existing or future storm drains, be advised that the Project is subject to the Victorville MPD, dated March 1992. It is to be used as a guideline for drainage in the area and is available in the County's Flood Control District offices at (909) 387-8120. Any revision to the drainage should be reviewed and approved by the City of Hesperia. Should construction of new, or alterations to existing storm drains be necessary as part of the Proposed Project, their impacts and any required mitigation should be discussed within the EIR before the document is adopted by the Lead Agency.

2. *In general, it appears at the Draft has identified the major concerns of the District. However, the District's recommendations are most often made to site specific conditions. Therefore, the recommendations made here are general in nature until such time as more detailed plans become available.*
3. *According to the most recent FEMA Flood Insurance Rate Map, Panel 06071C6475H, dated August 28, 2008, the Project lies within FEMA Zone X (unshaded). Impacts associated with the project's occurrence in the FEMA Zone(s) mentioned and proposed mitigation for any impacts, should be discussed in the DEIR prior to adoption.*
4. *Those portions of the Project lying in and abutting the natural drainage course and its overflow area may be subject to infrequent flood hazard until adequate channel and debris retention facilities are provided to intercept and conduct the flows through and away from the site.*
5. *One of the benefits of the MPD is to identify the potential alignments of future drainage and flood control facilities. It is recommended for the City to continue to use this document to protect the alignment of future facilities.*

Response DPW-2

Location of the Project in the Victorville Master Plan of Drainage (MPD) is recognized.

1. The Applicant will comply with all City of Hesperia requirements regarding potential connection to or localized modification of MPD facilities. The Project does not propose or require modification of the MPD that would result in any potentially significant impacts. Potential impacts resulting from potential connection to or local modification of MPD facilities is reflected in the scope of aggregate impacts resulting from the Project considered and addressed in the DEIR.
2. General recommendations provided by DPW are recognized as such. The Project will comply with specific DPW requirements and conditions such as may be identified as the Project is further defined and detailed plans are developed.

3. FEMA Zone X designates areas determined to be outside the 0.2% annual chance floodplain. As shown at City of Hesperia General Plan Exhibit SF-2, the Project site is not located within a flood hazard zone. On this basis, Project flood hazard impacts are less-than-significant. No mitigation is required.
4. The potential for infrequent localized overflow events to affect areas proximate to the natural drainage course to the west of the Project site are recognized. The Project does not propose or require improvements that would affect or be affected by such localized events. The Project Hydrology and Hydraulics Analysis (Appendix B to the Initial Study) substantiates that the Project would not be adversely affected by offsite drainage, nor would the Project contribute to adverse drainage conditions.
5. As recommended by DPW, the City will continue to use the MPD to protect the alignment of future MPD facilities.

Findings and conclusions of the DEIR are not affected.

Comment DPW-3

Permits/Operations Support Division (Fong Tse, Chief, 909-387-7995):

1. The proposed Project may be located adjacent to a San Bernardino County Flood Control District (District) right-of way and facilities. Any encroachments including, but not limited to access for grading, fence removal and installation, side drain connections, utilities, and new street dedications on the District's right-of-way or facilities will require a permit from the District prior to start of construction. The necessity for permits, and any impacts associated with them, should be addressed in the DEIR prior to adoption and certification. If you have any questions regarding this process, please contact the FCD Permit Section at (909) 387-1863

Response DPW-3

The Project will obtain all necessary permits from San Bernardino County Flood Control District (SBFCD) prior to start of construction. SBFCD contact information is noted. Findings and conclusions of the DEIR are not affected.

Comment DPW-4

We respectfully request to be included on the circulation list for all project notices, public reviews, or public hearings. In closing, I would like to thank you again for allowing the San Bernardino County Department of Public Works the opportunity to comment on the above-referenced project. Should you have any questions or need additional clarification, please contact the individuals who provided the specific comment, as listed above.

Response DPW-4

DPW will be included on the circulation list for all Project notices, public reviews, or public hearings. The City appreciates DPW engagement in and constructive input on the Project design and Project CEQA review processes. Contact information provided by DPW is noted. Findings and conclusions of the DEIR are not affected.



September 8, 2022

Sent via email

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Re: Comments on the Draft Environmental Impact Report for the Dara Industrial Project (State Clearinghouse No. 2022040060)

Dear Mr. Gonzalez:

The Center for Biological Diversity (the “Center”) submits the following comments regarding the Draft Environmental Impact Report (“DEIR”) for the Dara Industrial Project (“Project”), State Clearinghouse No. 2022040060. The Center has reviewed the DEIR closely and is concerned about the Project’s significant impacts to biological resources, greenhouse gas emissions, and air quality, among others. The Center urges the City to correct the deficiencies identified below and recirculate a revised DEIR for public review and comment prior to approving the Project.

CBD-1

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.7 million members and online activists throughout California and the United States. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in Hesperia and San Bernardino County, including in the vicinity of the Project.

I. THE DEIR FAILS TO ADEQUATELY DISCLOSE, ANALYZE, OR MITIGATE THE PROJECT’S IMPACTS.

An adequate description of adverse environmental effects is “the core of the EIR.” (*Sierra Club v. County of Fresno* (2018) 6 Cal. 5th 502, 514.) This description guides the discussion of mitigation measures and project alternatives, fulfilling CEQA’s informational purpose to inform government decisionmakers and the public about the potential environmental consequences of proposed activities before they happen.

CBD-2

“As a general matter the EIR must present facts and analysis, not simply the bare conclusions or opinions of the agency.” (*Bay Area Citizens v. Association of Bay Area Governments* (2016) 248 Cal.App.4th 966, 977 (quoting *Californians for Alternatives to Toxics v. Calif. Dept. of Food and Agric.* (2005) 136 Cal.App.4th 1, 13.) The discussion of impacts must provide sufficient information and analysis to allow the public to discern the basis for the agency’s impact findings. (*Sierra Club, supra*, 6 Cal. 5th at p. 513 [“There must be a disclosure of the ‘analytic route the ... agency traveled from evidence to action.’”].) A “conclusory discussion” of a significant environmental impact makes an EIR ‘inadequate as an informational document’ as a matter of law.” (*Id.* at 514.)

Throughout the DEIR, the City fails to present the facts and analyses underlying its conclusions. One need look no further than the DEIR’s halfhearted attempt to analyze whether the Project will have significant impacts on riparian habitat, one of five thresholds of significance in its biological resources analysis. The City identifies the Oro Grande Wash as a stream that flows through the Project site; it then concludes that the Project impact would be “potentially significant.” (DEIR at 4.7-14.) Missing is any information about what that impact might be. Rather than analyze the impact, the DEIR concludes that any impact would be less-than-significant after implementation of Mitigation Measure 4.7.4, which merely requires that “if Oro Grande Wash will be impacted by Project development, the Project Applicant shall be required to obtain [] regulatory approvals.” (*Id.* at 4.7-15.)

As drafted, the mitigation measure’s reliance on the later study of Project impacts creates an enormous loophole and allows the Project applicant (and not the City) to determine—at a later date, without oversight or standards, and without supporting its decision with substantial evidence—whether an impact exists and whether mitigation will be adopted. The DEIR offers no information to allow the public to discern the basis of this finding, let alone any information regarding the nature and magnitude of the impact. (*Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 3 Cal.5th 497, 514–515.)

The DEIR also offers no evidence to support its conclusion that this measure will mitigate the unstudied impacts to less-than-significant levels. Here, and in numerous other places, the DEIR assumes – absent any explanation – that compliance with other regulations and programs will mitigate the Project’s impacts to less-than-significant levels. (See, e.g., DEIR mitigation measures 4.7.1, 4.7.4, and 4.7.5.) Without any project-specific analysis, the DEIR lacks a basis to conclude that these regulatory programs in and of themselves will reduce the environmental impacts of this Project to less-than-significant levels. Compliance with the law alone – absent project-specific analysis—is not sufficient evidence to support a finding of no significant impact under the CEQA. (*Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal. App. 3d 872, 881–882.)

Furthermore, CEQA generally requires that mitigation be in place *before* a significant impact occurs, not after. (*POET, LLC v. State Air Resources Bd.* (2013) 217 Cal.App.4th 1214.) Specific details of a mitigation measure “may be developed after project approval when it is impractical or infeasible to include those details during the project’s environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance

CBD-2
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standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will [be] considered, analyzed, and potentially incorporated in the mitigation measure.” (*Golden Door Properties, LLC. v. County of San Diego* (2020) 50 Cal.App.5th 467, 518.) Mitigation measures 4.7.3, 4.7.4, 4.8.1, 4.8.2, 4.8.3, 4.8.4, and 4.8.5 fall short of this standard. For each, the DEIR commits to developing plans after Project approval, should project-related impacts later be discovered. Without performance standards to guide the development of mitigation, these measures fail to identify the available pathways and potential measures or actions that could be included as part of the plan. Because these measures improperly defer a determination of the feasibility of mitigation to a later date at the discretion of the Project applicant, they are inadequate mitigation and fail to comply with CEQA.

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The above is an illustrative example; these deficiencies exist throughout the EIR. Its conclusory treatment of impacts and unsupported mitigation simply “do not fit the CEQA bill.” (*Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App.4th 1, 17.) The DEIR must be revised to adequately analyze the Project’s impacts, acknowledge their significance, and consider and adopt feasible mitigation to reduce those impacts. Once the City fixes such glaring errors, it must recirculate the document for public review and comment.

II. THE DEIR’S ANALYSIS OF AND MITIGATION FOR THE PROJECT’S IMPACTS TO BIOLOGICAL RESOURCES IS INADEQUATE.

A. The DEIR’s Analysis of and Mitigation for Impacts to the Western Joshua Tree is Inadequate.

1. The Project Site Is Home to a Natural Community of Concern.

The Project site is located in the western part of the City, within San Bernardino’s Victor Valley region. The City is located within the range of the western Joshua tree South population (YUBR South). The geographic area in which YUBR South is situated is comprised of 3.7 million acres, with just over 50% in private ownership, 48% federally owned, and just under 2% state, county and local owned (USFWS 2018). The USFWS (2018) estimates that 3,255,088 acres of this area was suitable for Joshua trees based on soils and other habitat factors. However, Joshua tree actually occupy only a fraction of this area, as they have a patchy and disjunct distribution, and large areas of former habitat have been lost to development or agricultural conversion.

CBD-3

Increasing development, climate change, increasing drought and wildfires, invasive species that adversely affect fire dynamics, and other threats have led to ongoing reductions in western Joshua trees and western Joshua tree habitat range-wide. Protecting western Joshua trees and their habitat from continued destruction and habitat loss is therefore of utmost importance to the persistence of the species in California. However, within the City and surrounding communities in particular, western Joshua tree habitat is shrinking at an alarming rate due to increasing development. While western Joshua trees currently persist in the less-developed areas

of the City, they are absent from the more developed areas as well as the agricultural lands in the region, making the Project site all the more valuable.

While the DEIR characterizes the Project site as “vacant disturbed” property and “heavily impacted” (DEIR at 4.4-9, 4.7-2), the Project site is in fact comprised of ecologically significant habitat for Joshua trees. As the DEIR admits in passing, the Project site is primarily “Joshua tree woodland,” of which the Project will destroy an undisclosed number of acres, resulting in a considerable loss of this natural community in the region. Joshua tree woodland is a community recognized by the California Department of Fish and Wildlife (CDFW) as a Natural Community of Concern. (See DEIR at 4.7-14 to 4.7-15 [failing to disclose or analyze that Joshua Tree Woodland is a natural community identified by CDFW].) Sensitive natural communities are communities that are of limited distribution statewide or within a county or region and are often vulnerable to environmental effects of projects (CDFW 2018). CDFW’s List of California Terrestrial Natural Communities is based on the best available information, and indicates which natural communities are considered sensitive at the current stage of the California vegetation classification effort.¹ The DEIR fails to disclose or adequately evaluate the impacts from destroying nearly fifty acres of this Natural Community of Concern.

CBD-3
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2. The DEIR Does not Adequately Analyze the Project’s Significant Impacts on Western Joshua Trees.

The Project proposes to develop approximately 50 acres of valuable Joshua tree habitat into 750,000 square feet of industrial/warehouse space and associated improvements. (DEIR at 4.1-2.) Yet the DEIR describes the impacts that the Project will have on Joshua trees in only the most cursory manner. Despite its flawed analysis, the DEIR acknowledges that impacts to the species and its habitat will be “potentially significant” without mitigation. (ES 1-35.)

CBD-4

a. Western Joshua Trees Are a Special Status Species, the Impacts to Which are Presumed to be Significant.

The CEQA Guidelines indicate that a Project can be expected to have significant impacts to biological resources if the Project has a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service. (CEQA Guidelines, Appendix G, subd. IV(a).) Accordingly, the DEIR itself indicates that the Project’s impacts will be significant if it will “have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate . . . species . . . by the California Department of Fish and Game.” (DEIR at 4.3-18; see also CEQA Guidelines § 15065(a)(1) [when performing an initial study, agencies shall make a mandatory finding of significance where a proposed project has the potential to substantially reduce the number or restrict the range of a listed species], California

CBD-5

¹ See the Vegetation Classification and Mapping Program (VegCAMP) website for additional information on natural communities and vegetation classification. Available at: <https://www.wildlife.ca.gov/Data/VegCAMP>

Fish and Game Code § 2085 [CESA candidate species treated like threatened or endangered species].)

On September 22, 2020, the California Fish and Game Commission (“CFGF”) advanced the western Joshua tree to candidacy under the California Endangered Species Act (“CESA”), protecting these imperiled plants from harm during the ongoing review process. (CFGF 2020.) Consequently, the Project’s impacts to the western Joshua trees must be considered significant and fully evaluated and disclosed to the public.

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b. The DEIR Fails to Disclose the Baseline Environmental Conditions on the Project Site.

An EIR must describe “the physical environmental conditions in the vicinity of the project” which “will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” (CEQA Guidelines § 15125(a).) Unfortunately, the DEIR’s description of baseline conditions with respect to Joshua trees is limited to one brief paragraph and is wholly inadequate. The DEIR merely states that there are 65 Joshua trees located on the Project site and that the site is comprised of Joshua tree woodland. (See DEIR at 4.7-3.) The DEIR itself contains no information on where these trees are located. The DEIR does not describe the surveys conducted for Joshua trees, nor did it disclose whether surveys would be conducted in the future, no less when these surveys would be conducted, what survey protocols would be followed, or why such surveys could not be conducted as part of the environmental review for the Project before it was approved. (DEIR at 4.7-3; Appendix G.) Without access now to this information about current conditions on the Project site, the public and decisionmakers are deprived of the basic facts necessary to evaluate the Project’s significant impacts to western Joshua trees and to determine whether proposed mitigation measures or alternatives will be adequate to reduce those impacts to less than significant.

CBD-6

c. The DEIR Does not Adequately Analyze or Disclose the Extent of the Project’s Impacts to Joshua Trees and Joshua Tree Habitat.

The Project’s proposed warehouse will require the removal of vegetation from the site prior to the start of construction (ES at 1-1), which will necessarily include any Joshua trees located in the Project footprint. Yet the DEIR does not disclose even the most basic information about impacts to this special status species, such as how many Joshua trees will be actually removed as a result of Project construction.

What’s more, the DEIR fails to acknowledge any potentially significant direct or indirect impacts associated with the destruction or adverse modification of the western Joshua tree’s *habitat*. Development, climate change, and increasing wildfire occurrences exacerbated by drought and invasive species negatively impact western Joshua trees and their habitat. (DeFalco et al. 2010; Harrower and Gilbert 2018.) Climate change, in particular, represents the single greatest threat to the continued existence of western Joshua trees. Even under the most optimistic climate scenarios, western Joshua trees will be eliminated from significant portions of their range by the end of the century; under warming scenarios consistent with current domestic and global emissions trajectories, the species will likely be close to being functionally extinct in the wild in

CBD-7

California by century’s end. (Dole et al. 2003; Cole et al. 2011; Sweet et al. 2019.) Studies indicate that the species’ range is contracting at lower elevations, recruitment is limited, and mortality is increasing, all of which would likely reflect a population already starting to decline due to recent warming. Even greater changes are projected to occur over the coming decades.

The DEIR does not acknowledge significant impacts to Joshua trees associated with the reduction in habitat connectivity. Maintaining successful habitat connectivity nearby is particularly important to western Joshua trees: for successful reproduction and recruitment, Joshua trees require the presence of their obligate pollinator, rodents to disperse and cache seeds and nurse plants to shelter emerging seedlings. Therefore, to the degree that any Joshua trees are left remaining on the Project site, such moths and rodents must have access to and also be maintained on site in order for these remnant western Joshua trees to successfully reproduce. Construction on the project site will reduce habitat connectivity necessary for sustainable Joshua tree recruitment onsite. Moreover, construction on the Project site will result not just in the loss of Joshua trees and their pollinators and dispersers from the site itself, but will further fragment habitat, potentially resulting in significant adverse impacts to remnant Joshua tree woodland in nearby areas if pollinator or disperser populations are reduced. None of these impacts are analyzed in the DEIR.

CBD-7
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3. *Mitigation Measure 4.7.1 is Inadequate to Mitigate the Project’s Significant Impacts to Joshua Trees and Joshua Tree Habitat.*

Despite its inadequate assessment of baseline conditions on the Project site relating to Joshua trees, and its inadequate analysis of the Project’s impacts to Joshua trees and Joshua tree habitat, the DEIR concludes that the sole mitigation measure it proposes will reduce the Project’s impacts to Joshua trees to less than significant. (DEIR at 4.7-14 [“With the implementation of mitigation...the Project’s potential impacts to species identified as a candidate, sensitive, or special-status species are considered less-than-significant.”].) But the DEIR’s single proposed mitigation measure does not comply with CEQA’s and the CEQA Guidelines’ requirements for legally adequate mitigation. The proposed mitigation is improperly deferred and lacks evidence of its effectiveness.

The DEIR’s only stated mitigation for impacts to Joshua trees boils down to a single sentence – Mitigation Measure 4.7.1 – which requires that “A State Incidental Take Permit (ITP) shall be obtained prior to any ground-disturbing activities that would be expected to impact the western Joshua tree.” (DEIR at 4.7-13.) No further information is provided. The DEIR lacks any project-specific analysis of the potential impacts and the effect that regulatory compliance could have on those impacts. This is insufficient under CEQA. (*Californians for Alternatives to Toxics, supra*, Cal.App.4th at p. 1 [EIR set aside for a crop disease control plan for failing to include an evaluation of the risks to the environment from the proposed program; rather, the EIR simply presumed that no adverse impacts would occur from use of pesticides in accordance with pesticide regulations].)

CBD-8

The DEIR’s claim that an ITP will successfully mitigate the Project’s significant impacts is not supported by substantial evidence in the record. The DEIR improperly assumes that incorporation of Mitigation Measure 4.7.1, that is, mere adherence to the ITP requirements, will

alone be sufficient to mitigate Project impacts under CEQA to less than significant levels (DEIR at 4.3-31). This is incorrect. The DEIR nowhere explains why Mitigation Measure 4.7.1 will successfully mitigate significant impacts to Joshua trees. The DEIR offers no site-specific mitigation for Joshua Trees and Joshua Tree woodland. The DEIR simply presumes that no adverse environmental impacts will occur as long as the Project secures an ITP. This assertion lacks evidence in the record, and the proposed mitigation is unlawfully deferred.

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In short, the DEIR offers no description or plan for how western Joshua Trees on the site will be monitored, handled, removed, protected, transplanted, or their impacts mitigated.

4. *The DEIR Fails to Consider Other, Feasible Mitigation Measures to Reduce the Project’s Significant Impacts to Joshua Trees and Joshua Tree Habitat.*

Because the available evidence demonstrates that the Mitigation Measure 4.7.1 is inadequate and does not comply with CEQA, and the Project’s impacts will remain significant, the City must consider and adopt the following additional feasible mitigation measures.

In addition to Project design measures that will better avoid and minimize impacts onsite, offsite mitigation will be necessary. This should be in the form of protection and preservation of western Joshua trees in other areas at a suitable mitigation ratio. Given the Joshua Tree Woodland habitat onsite is a recognized Natural Community of Concern, and such high-quality woodland comprises only a small portion of the larger range of the western Joshua tree, a higher level of mitigation is warranted to offset the Project’s significant impacts. A 5:1 mitigation ratio is appropriate here and is consistent with mitigation required by CDFW for projects impacting important desert tortoise habitat.²

CBD-9

There are multiple paths to meeting mitigation requirements that the City can and should adopt to more successfully mitigate the Project’s significant impacts to western Joshua trees. For example, the City and/or Project proponent may purchase credits from a CDFW-approved conservation or mitigation bank, which is a privately or publicly owned land managed for its natural resource values. Credits are established for the specific CESA-listed species that occur on the site. As a result of the recent advancement to candidacy of the species under CESA, CDFW has established a Western Joshua Tree Mitigation Fund in which payments may be made for mitigation purposes. (See Cal. Code Regs., tit. 14, § 749.10.) This is likely the most straightforward path and would align CEQA mitigation requirements with those needed to meet incidental take permit conditions under CESA. Alternatively, the Project proponent could work with a land trust or other qualified organization to acquire a conservation easement over habitat of equal or greater value. (See Gov. Code, § 65965 *et seq.*; Civil Code, § 813 *et seq.*) Regardless of which path the City and Project proponent follow, these mitigation approaches are eminently

² For example, a 5:1 mitigation ratio was required for a recent highway project in San Bernardino County impacting critical habitat for the tortoise. See <http://www.sbcounty.gov/Uploads/lus/Environmental/CDFW%202081%20Permit%20-%20Kramer%20CMGC%20-%20Enviro%20Permits%2010-2-17.pdf>.

feasible; in order to comply with CEQA, the City must consider and adopt additional feasible mitigation for the Project’s significant adverse impacts to western Joshua trees.

CBD-9
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B. The DEIR Does Not Adequately Describe the Environmental Baseline for Various Other Species.

The DEIR fails to provide adequate baseline information and description of the environmental setting for species other than the western Joshua tree. This deficiency extends to the DEIR’s treatment of rare plants, animals, and communities, including desert tortoise, Mohave ground squirrel, burrowing owls and other imperiled and desert species, as well as more common species likely present on the Project site. For some species or habitats baseline conditions are lacking or totally absent and as a result no impact assessment is provided for these biological resources. The failure to address numerous species may be the result of inadequate surveys. For example, the DEIR conducted no pre-project surveys for Desert tortoise – a threatened species under the federal and state Endangered Species Acts (ESA) – and Mohave ground squirrel – a threatened species under the state ESA. Without conducting any surveys to inform an adequate baseline, the Project presumed both species were absent from the Project site, based merely on the observation that “the site and adjacent open spaces are surrounded by existing development and are isolated from known occupied areas.” (DEIR Appendix G, Attachment C.) To the contrary, under the DEIR’s own observation, and as shown in the DEIR’s map and photographs of the Project site, “[t]he Project site, and all properties immediately adjacent, are currently vacant.” (DEIR at 3-1, Figure 3.2-1.) Desert tortoise and Mojave ground squirrel surveys are necessary to evaluate if the species exist on the site. Indeed, CDFW’s Conservation Strategy for the Mohave Ground Squirrel documented squirrels near the Project site during its most recent status review, most relevantly in the suburban/wildland interface in the general area south of Edwards Air force Base. (CDFW 2019.)

CBD-10

The DEIR also lacks an adequate baseline for relevant plant species. Many sensitive plant species are either annuals or herbaceous perennials. The plant list in Attachment C of Appendix G only found Joshua Tree, presuming the remaining special-status plant species were absent, even though the vast majority – according to the DEIR – bloom in the spring. Seasonally appropriate surveys (e.g., spring surveys after adequate precipitation) are necessary to accurately evaluate whether these sensitive annual and herbaceous perennial species are present on site. In CDFW’s comments on the Notice of Preparation (NOP), CDFW cautioned the City to ensure its surveys were seasonally appropriate:

The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and *conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable*, are required. (Appendix A, Initial NOP Study, CDFW Comment Letter, p. 4 [emphasis added].) The City ignored this obligation, and the DEIR conducted one survey on September 22, 2021.

Consequently, because of the deficiencies of the baseline data for the proposed project area, the DEIR fails to adequately describe the environmental baseline for biological conditions

on the Project site. The DEIR should be revised to fully describe and disclose these baseline conditions, and that baseline must be used to evaluate the impacts of the proposed Project.

CBD-10
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C. The DEIR Fails to Identify and Analyze Direct and Indirect Impacts to Other Species.

The DEIR fails to adequately analyze the direct, indirect, and cumulative impacts of the proposed Project on the environment. The City must look at avoidance, minimization and reasonable mitigation measures to avoid impacts in the DEIR but failed to do so here. Even in those cases where the extent of impacts may be somewhat uncertain due to the complexity of the issues, the City is not relieved of its responsibility to discuss avoidance through alternatives, minimization or mitigation of reasonably likely impacts at the outset.

In addition to inadequately describing the baseline of biological conditions, the DEIR fails to fully analyze or disclose the Project’s direct, indirect, and cumulative impacts to numerous species, or to mitigate those impacts. For example, while the DEIR states that it will conduct burrowing owl surveys 30 days before construction (DEIR at 4.7-14), the DEIR includes no plan for avoidance or translocation in the event that burrowing owls are found on the site. A burrowing owl translocation plan is required if burrowing owls are identified on the Project site. The DEIR does not have such a plan—instead it simply states that the Applicant “shall prepare and implement a plan.” (DEIR at 4.7-14.) This provides the public and decision makers with no information by which to assess the Project’s potential impacts on burrowing owls and further constitutes unlawfully deferred mitigation.

CBD-11

Failure to conduct adequate surveys and adopt proper management plans prior to Project approval and construction effectively eliminates the most important function of surveys: using the information from the surveys to avoid and minimize harm caused by the project and reduce the need for mitigation. Often efforts to mitigate harm are far less effective than avoiding and preventing the harm in the first place. In addition, without understanding the scope of harm before it occurs, it is difficult to quantify an appropriate amount and type of mitigation.

III. THE DEIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE THE PROJECT’S GREENHOUSE GAS EMISSIONS.

The DEIR’s analysis of the proposed Project’s greenhouse gas (“GHG”) emissions (DEIR Section 4.4-1) is also deeply flawed. The Project would result in significant amounts of GHG emissions during construction and operation, yet the DEIR does not properly analyze the significance of, or attempt to mitigate, all the significant GHG impacts. (See CEQA Guidelines § 15126.2; Pub. Res. Code § 21002.)

CBD-12

A. Climate Change Is a Catastrophic and Pressing Threat to California.

A strong, international scientific consensus has established that human-caused climate change is causing widespread harms to human society and natural systems, and that the threats from climate change are becoming increasingly dangerous. The Intergovernmental Panel on Climate Change (“IPCC”), the leading international scientific body for the assessment of climate

CBD-13

change, concluded in its 2014 Fifth Assessment Report that: “[w]arming of the climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia. The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, and sea level has risen,” and further that “[r]ecent climate changes have had widespread impacts on human and natural systems.” (IPCC 2014, p. 2) These findings were echoed in the United States’ own 2014 Third National Climate Assessment and 2017 Climate Science Special Report, prepared by scientific experts and reviewed by the National Academy of Sciences and multiple federal agencies. The Third National Climate Assessment concluded that “[m]ultiple lines of independent evidence confirm that human activities are the primary cause of the global warming of the past 50 years” (Melillo et al. 2014, p. 7) and “[i]mpacts related to climate change are already evident in many regions and are expected to become increasingly disruptive across the nation throughout this century and beyond.” (*Id.* at 10.) The 2017 Climate Science Special Report similarly concluded:

[B]ased on extensive evidence, ... it is extremely likely that human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th century. For the warming over the last century, there is no convincing alternative explanation supported by the extent of the observational evidence.

In addition to warming, many other aspects of global climate are changing, primarily in response to human activities. Thousands of studies conducted by researchers around the world have documented changes in surface, atmospheric, and oceanic temperatures; melting glaciers; diminishing snow cover; shrinking sea ice; rising sea levels; ocean acidification; and increasing atmospheric water vapor.

(USGCRP 2017, p. 10.)

The U.S. National Research Council determined that “[c]limate change is occurring, is caused largely by human activities, and poses significant risks for—and in many cases is already affecting—a broad range of human and natural systems.” (NRC 2010, p. 2.) Based on observed and expected harms from climate change, in 2009 the U.S. Environmental Protection Agency found that greenhouse gas pollution endangers the health and welfare of current and future generations. (74 Fed. Reg. 66496 (Dec. 15, 2009) [U.S. EPA, Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule].)

These authoritative climate assessments decisively establish the dominant role of anthropogenic GHG emissions in driving climate change. As the Third National Climate Assessment explains: “observations unequivocally show that climate is changing and that the warming of the past 50 years is primarily due to human-induced emissions of heat-trapping gases.” (Melillo et al. 2014, p. 2; *see also id.* at 15 [Finding 1: “The global warming of the past 50 years is primarily due to human activities, predominantly the burning of fossil fuels.”].) The Assessment makes clear that “reduc[ing] the risks of some of the worst impacts of climate change” will require “aggressive and sustained greenhouse gas emission reductions” over the

CBD-13
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course of this century. (*Id.* at 13-14, 649; *see also id.* at 15 [Finding 3: “Human-induced climate change is projected to continue, and it will accelerate significantly if global emissions of heat-trapping gases continue to increase.”].)

The impacts of climate change will be felt by humans and wildlife. Climate change is increasing stress on species and ecosystems—causing changes in distribution, phenology, physiology, vital rates, genetics, ecosystem structure and processes—in addition to increasing species extinction risk. (Warren et al. 2011.) Climate-change-related local extinctions are already widespread and have occurred in hundreds of species. (Weins 2016.) Catastrophic numbers of species extinctions are projected to occur during this century if climate change continues unabated. (Thomas, et al. 2004; Maclean et al. 2011; Urban 2015.) In California, climate change will transform our climate, resulting in impacts including, but not limited to, increased temperatures and wildfires and a reduction in snowpack and precipitation levels and water availability.

Therefore, immediate and aggressive GHG emission reductions are necessary to keep warming well below 2°C above pre-industrial levels. The IPCC Fifth Assessment Report and other expert assessments have established global carbon budgets, or the total amount of carbon that can be burned while maintaining some probability of staying below a given temperature target. According to the IPCC, total cumulative anthropogenic emissions of CO₂ must remain below about 1,000 GtCO₂ from 2011 onward for a 66 percent probability of limiting warming to 2°C above pre-industrial levels, and to 400 GtCO₂ from 2011 onward for a 66 percent probability of limiting warming to 1.5°C. (IPCC 2013, p. 25; IPCC 2014, pp. 63-64, Table 2.2.) These carbon budgets have been reduced to 850 GtCO₂ and 240 GtCO₂, respectively, from 2015 onward. (Rogeli et al. 2016, Table 2.) Given that global CO₂ emissions in 2016 alone totaled 36 GtCO₂ (Le Quéré et al. 2017), humanity is rapidly consuming the remaining carbon budget needed to avoid the worst impacts of climate change. As of early 2018, climate policies by the world’s countries would lead to an estimated 3.4°C of warming, and possibly up to 4.7°C of warming, well above the level needed to avoid the worst dangers of climate change. (Climate Action Tracker 2017.)

The United States has contributed more to climate change than any other country. The U.S. is the world’s biggest cumulative emitter of GHGs, responsible for 27 percent of cumulative global CO₂ emissions since 1850, and the U.S. is the world’s second highest emitter on an annual and per capita basis. (World Resources Institute 2014.) Nonetheless, U.S. climate policy is wholly inadequate to meet the international climate target to hold global average temperature rise to well below 2°C above pre-industrial levels to avoid the worst dangers of climate change.

In its 2018 *Special Report on Global Warming of 1.5°C*, the IPCC—the leading international scientific body for the assessment of climate change—describes the devastating harms that would occur at 2°C warming. The report highlights the necessity of limiting warming to 1.5°C to avoid catastrophic impacts to people and life on Earth. (IPCC 2018.) The report also provides overwhelming evidence that climate hazards are more urgent and more severe than previously thought, and that aggressive reductions in emissions within the next decade are essential to avoid the most devastating climate change harms.

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In response to inadequate action on the national level, California has taken steps through legislation and regulation to fight climate change and reduce statewide GHG emissions. Enforcement of and compliance with these measures is essential to help stabilize the climate and avoid catastrophic impacts to our environment. AB 32 mandates that California reach 1990 levels of GHG emissions by the year 2020, equivalent to approximately a 15 percent reduction from a business-as-usual projection. (Health & Saf. Code § 38550.) Based on the warning of the IPCC and leading climate scientists, Governor Brown issued an executive order in April 2015 requiring GHG emissions reductions to 40 percent below 1990 levels by 2030. (Executive Order B-30-15 (2015).) The Executive Order is in line with a previous Executive Order mandating the state reduce emission levels to 80 percent below 1990 levels by 2050 in order to minimize significant climate change impacts. (Executive Order S-3-05 (2005).) In enacting SB 375, the legislature has also recognized the critical role that land use planning plays in achieving greenhouse gas emission reductions in California.

The Legislature has found that failure to achieve GHG emissions reductions would be “detrimental” to California’s economy. (Health & Saf. Code § 38501(b).) In his 2015 Inaugural Address, Governor Brown reiterated his commitment to reduce greenhouse gas emissions with three new goals for the next fifteen years:

- To increase electricity derived from renewable sources to 50 percent;
- To reduce petroleum use in cars and trucks by 50 percent;
- To double the efficiency of existing buildings and make heating fuels cleaner.

(Brown 2015.) In 2018, Governor Brown issued Executive Order B-55-18, in which he declared it to be a statewide goal to “achieve carbon neutrality as soon as possible, and no later than 2045, and achieve and maintain net negative emissions thereafter.”

Although some sources of GHG emissions may appear insignificant in isolation, climate change is a problem with cumulative impacts and effects. (*Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.* (9th Cir. 2008) 538 F.3d 1172, 1217 [“the impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis” that agencies must conduct].) One source or one small project may not appear to have a significant effect on climate change, but the combined impacts of many sources can drastically damage California’s climate as a whole. Therefore, project-specific GHG emissions disclosure, analysis and mitigation is vital to California meeting its climate goals and maintaining our climate.

The impacts of climate change are already being felt by humans and wildlife. Thousands of studies conducted by researchers around the world have documented changes in surface, atmospheric, and oceanic temperatures; melting glaciers; diminishing snow cover; shrinking sea ice; rising sea levels; ocean acidification; and increasing atmospheric water vapor. (USGCRP 2017.) In California, climate change will result in impacts including, but not limited to, increased temperatures and wildfires and a reduction in snowpack and precipitation levels and water availability.

Given the increasingly urgent need for drastic action to reduce GHG emissions, the DEIR’s failure to fully disclose, analyze, mitigate, or consider alternatives to reduce

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the Project’s significant climate change effects is all the more alarming.

The Project would result in significant amounts of GHG emissions during construction and operation, yet the DEIR does not properly analyze the significance of, or attempt to mitigate, all the significant GHG impacts. (See CEQA Guidelines § 15126.2; Pub. Res. Code § 21002.) The DEIR’s analysis of the proposed Project’s greenhouse gas (“GHG”) emissions (DEIR Section 4.4) is also deeply flawed.

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B. The EIR’s Use of a 100,000 MTCO₂e Annual Emissions Threshold of Significance for GHG Emissions Drastically Downplays the Project’s Significant Impacts and Is Not Supported by Substantial Evidence.

The DEIR estimates the Project’s GHG emissions, (including the applicable regulatory requirements), to be between 6,498.12 and 8,383.61 MTCO₂e³ annually during the life of the Project. (DEIR at 4.4-36, 4.4-37.)⁴ The DEIR then purports to evaluate this enormous emissions impact against the first of the CEQA Guidelines Appendix G thresholds, asking whether the project would “generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment?” (DEIR at 4.4-36 [citing CEQA Guidelines Appendix G]; *see also* DEIR Appendix D [Greenhouse Gas Analysis Report] at p. 43.) In applying the threshold, however, the DEIR substitutes a numeric threshold of an astounding 100,000 MTCO₂e annually, finding that the proposed Project would not exceed 100,000 MTCO₂e annually and thus that the Project’s GHG impacts are less than significant, requiring no mitigation. (DEIR at 4.3-37 to -38.)

A lead agency’s selection of a threshold of significance must be supported with substantial evidence. Moreover, a determination that an environmental impact complies with a particular threshold of significance does not relieve a lead agency of its obligation to consider evidence that indicates the impact may be significant despite compliance with the threshold. (CEQA Guidelines § 15064(b)(2).) If evidence shows that an environmental impact might be significant despite the significance standard used in the EIR, the agency must address that evidence. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111.)

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The DEIR’s use of 100,000 MTCO₂e annual emissions as a threshold of significance is not supported by substantial evidence and drastically downplays the Project’s significant GHG emissions impacts. The DEIR states:

On May 13, 2010 EPA finalized the GHG Tailoring Rule (75 FR 31514, June 3, 2010). The Tailoring Rule sets major source emissions thresholds that define when federal operating permits under Prevention Significant Deterioration (PSD) or Title V are required. The Tailoring Rule establishes a threshold of 100,000 tons per year or 90,719 MT per year of GHGs from new sources above which sources are considered major sources requiring a federal operating permit.

³ Metric tons of carbon dioxide equivalent gases.

⁴ The DEIR’s estimate of the Project’s GHG emissions is not consistent and must be clarified in the final EIR.

As such, the MDAQMD has adopted a significance threshold for GHGs of 100,000 tons per year and is thus applied to this Project. More specifically, 100,000 tons per year of GHG emissions from a single facility constitutes major sources that require a federal operating permit. Similarly, the MDAQMDs NOX significance threshold of 25 tons per year is equal to the major source threshold applicable to areas designated severe non-attainment for ozone. As such, use of the EPA's determination of whether a Project is a major source and consequently establishing a threshold based on that is supported by substantial evidence.

(DEIR Appendix D [Greenhouse Gas Analysis Report] at pp. 40-41.) Neither justification for its attempted use of this threshold is valid.

The EIR determines that the threshold is justified because the EPA's prior "Tailoring Rule" established that new sources emitting GHGs in excess of 100,000 tons per year are considered "major sources" under the federal Clean Air Act and require a federal operating permit under that statute. (DEIR Appendix D [Greenhouse Gas Analysis Report] at p. 40-41.) But this is an attempt to compare apples and oranges, and the DEIR's logic does not hold. In developing its "Tailoring Rule" in 2010, the EPA was interpreting a federal statute and using its discretion to determine which U.S. stationary sources (as defined by federal law) of GHG emissions would be required to obtain a federal Title V operating permit. This determination has no bearing on whether *this land use Project's* GHG emissions may have a significant impact on the environment under CEQA and the CEQA guidelines. In any event, the EPA's "Tailoring Rule" was overturned by the U.S. Supreme Court in 2014 in *Util. Air Regulatory Group v. EPA* (2014) 573 U.S. 302.

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The DEIR makes a second attempt at justifying its astounding 100,000 threshold by offering that "the MDAQMD has adopted a significance threshold for GHGs of 100,000 tons per year and is thus applied to this Project [*sic*]." (DEIR Appendix D [Greenhouse Gas Analysis Report] at p. 40.) As an initial matter, this statement is factually untrue. The DEIR appears to be referring to a guidance document entitled "MDAQMD California Environmental Quality Act (CEQA) And Federal Conformity Guidelines" that was issued by MDAQMD staff in 2016. (MDAQMD 2016.) The document was issued informally by staff and never approved, let alone "adopted" by the MDAQMD Board, nor was it subject to any notice and comment rulemaking process.⁵ As such, it does not qualify for use as a CEQA threshold of significance of general applicability. (*See Golden Door Props. v County of San Diego* (2018) 27 Cal.App.5th 892, 901 [rejecting local GHG analysis guidance document as improperly adopted threshold of significance and because it applied state standards without justifying their application to local conditions].)

What's more, the MDAQMD guidance document invokes a 100,000 ton "threshold" only once, in passing, in a table that makes no reference to CEQA, and the document does not make any other reference to a 100,000 ton annual "significance threshold" for GHG emissions.

⁵ Personal telephone communication with Tracy Walters, MDAQMD Air Quality Planner, October 28, 2020.

(MDAQMD 2016 at p. 9, Table 6.) In fact, the document contains no discussion at all of how the 100,000 ton/yr number was derived, why it might be suitable for measuring projects' impacts under CEQA, or how it should be applied by local agencies considering land use proposals. (*Id.*) The document simply supplies no evidence to support the City's use and application of the 100,000 ton number as a threshold of significance for evaluating individual projects under CEQA. Nor has the MDAQMD separately provided any such evidence: the document was issued without a staff report or any supporting materials.⁶ The City's use of a 100,000 MTCO_{2e} annual GHG emissions threshold is therefore not supported by substantial evidence and violates CEQA; the EIR should be revised to include an adequate threshold of significance that does not obscure the Project's GHG impacts.

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C. The DEIR Fails to Adequately Disclose and Underestimates the Project's Already Significant GHG Impacts.

As discussed in section I, *infra*, a “conclusory discussion” of a significant environmental impact makes an EIR “inadequate as an informational document” as a matter of law. (*Sierra Club, supra*, 6 Cal.5th at p. 514.) An EIR must provide information regarding the project's significant environmental impacts that is sufficient to allow decision-makers and the public to understand the environmental consequences of the project. (*Id.* at p. 520; *Laurel Heights Improvement Ass'n v Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 404; See CEQA Guidelines § 15151.) The document must include enough detail to enable the public “to understand and to consider meaningfully the issues raised by the proposed project.” (*Id.* at 516 (citation omitted).)

The EIR's analysis of greenhouse gas impacts offers the public little information to allow the public and decisionmakers to understand Project activities that will generate GHG emissions. In the impact analysis section, the City presents a single table with the Project's projected GHG emissions. (DEIR at 4.4-37.) While the DEIR expends dozens of pages identifying the global sources of GHG emissions, the DEIR nowhere discloses the Project's sources of emissions underlying these totals, such as the Project activities that would generate emissions. The DEIR should analyze and disclose the construction activities that would result in GHG emissions, primarily associated with use of off-road construction equipment, on-road hauling and vendor (material delivery) trucks, and worker vehicles. The DEIR must also analyze and disclose the long-term operations of the Project that would result in GHG emissions, such as through mobile sources and on-site equipment, area sources (landscape maintenance equipment); energy use (natural gas and generation of electricity consumed by the Project); generation of electricity associated with wastewater treatment and with water supply, treatment, and distribution; and solid waste disposal. Instead, the majority, if not all, of the EIR's substantive disclosures and analyses of the Project's potential greenhouse gas impacts are contained in appendices, rather than in those portions of the EIR that purport to address those impacts. The California Supreme Court has repeatedly cautioned that readers should not be forced to sift through appendices to detect the EIR's environmental analysis. (*Cleveland Nat. Forest Found. v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 516; *Cal. Oak Found. v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1239 [“[I]nformation scattered here and there in EIR appendices, or a report

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⁶ Personal telephone communication with Tracy Walters, MDAQMD Air Quality Planner, October 28, 2020.

buried in an appendix, is not a substitute for good faith reasoned analysis.”], internal quotations omitted.) From the sole table provided, and without any basic explanation, the public and decisionmakers have no way to understand and independently evaluate the environmental consequences of the Project. (See DEIR Sec. 4.3 and Appendix C.)

Given the information gleaned from elsewhere in the EIR, however, there is ample evidence to suggest that the Project would have significant GHG impacts. This Project proposes to construct up to 750,000 square feet (sf) of high-cube logistics warehousing, with approximately 10 percent of the footprint dedicated to refrigerated uses. Refrigerated goods must be kept in cold environments to maintain quality, which requires that cold storage warehouses “continually consume[] energy, contrary to other type of warehouses.” (Dimitrov 2022.) This drives up energy consumption, resulting in increased greenhouse gas emissions. (Wu 2013; Tassou 2009.) Food transport refrigeration is so energy-intensive that it consumes 15% of world fossil fuel energy. (Adekomaya 2016.) The DEIR elsewhere estimates that the Project could generate up to 1,718 vehicle trips per day, the main driver of greenhouse gas emissions for the Project. (DEIR, Appendix B at 41.)⁷ The Project proposes to utilize gasoline-powered on-site equipment and rely primarily on natural gas – an anthropogenic source of carbon – for energy generation. The Project identifies not a single project design feature or mitigation measures aimed to lessen these GHG emissions.

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Consequently, because of the deficiencies of the impact analysis for the proposed Project, the DEIR fails to adequately disclose and properly estimate the Project’s GHG emissions. The DEIR should be revised to fully describe and disclose these impacts, and that information must be used against a proper threshold of significance to evaluate the impacts of the proposed Project.

D. Because the DEIR Improperly Found that the Project’s GHG Emissions Were Less Than Significant, It Failed to Consider, Much Less Adopt, Feasible Mitigation Measures to Reduce or Avoid the Project’s GHG Impacts.

As the DEIR readily admits, it does not consider or adopt any mitigation measures to reduce, avoid or mitigate the Project’s more than 8,000 MTCO₂e annual GHG emissions. (DEIR at 1-33, Table 1.12-1.) Because, as described above, the Project’s GHG emissions impacts are significant, the EIR’s failure to consider and adopt all feasible mitigation to reduce or avoid the Project’s significant impacts violates CEQA. (See Pub. Res. Code § 21002 [It is the “policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which will avoid or substantially lessen the significant environmental effects of such projects.”], CEQA Guidelines §§ 15092(b), 15043, 15126.4(a)(1).) The DEIR should be revised to adequately analyze the Project’s GHG impacts, acknowledge their significance, and consider and adopt feasible mitigation to reduce those

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⁷ As discussed in section V.C., *infra*, it is readily apparent that the DEIR grossly underestimates the vehicle trips associated with the Project, which already makes up the bulk of the Project’s estimated GHG emissions.

impacts, and it should be recirculated for public review and comment. Section IV.C. suggests feasible mitigation measures for the City’s consideration.

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IV. THE DEIR’S ANALYSIS OF AND MITIGATION FOR THE PROJECT’S IMPACTS TO AIR QUALITY IS INADEQUATE.

Air quality is a significant environmental and public health concern in California. Unhealthy, polluted air contributes to and exacerbates many diseases and increases mortality rates. The U.S. government estimates that between 10-12 percent of total health costs can be attributed to air pollution. (VCAPCD 2003.) Many plants and trees, including agricultural crops, are also injured by air pollutants. This damage ranges from decreases in productivity, a weakened ability to survive drought and pests, to direct mortality. (*Id.*) Terrestrial wildlife is also affected by air pollution as the plants and trees that constitute their habitats are weakened or killed. Aquatic species and habitats are also affected by air pollution through the formation of acid rain that raises the pH level in oceans, rivers and lakes. (EPA 2016b.) Greenhouse gases, such as the air pollutant carbon dioxide which is released by fossil fuel combustion, contribute directly to human-induced climate change (EPA 2016a), and in a positive feedback loop, poor air quality that contributes to climate change will in turn worsen the impacts of climate change and attendant air pollution. (BAAQMD 2016.)

Air pollution and its impacts are felt most heavily by young children, the elderly, pregnant women and people with existing heart and lung disease. People living in poverty are also more susceptible to air pollution as they are less able to relocate to less polluted areas, and their homes and places of work are more likely to be located near sources of pollution, such as freeways or ports, as those areas are more affordable. (BAAQMD 2016; ALA 2022.) Some of the nation’s most polluted counties are in Southern California, and San Bernardino County continually tops the list. (ALA 2022.) According to the American Lung Association’s 2022 “State of the Air” report, San Bernardino is the ninth-worst ranked county in the nation for both year-round ozone and particulate matter (PM_{2.5}) pollution, with a “Fail” grade from the report. (*Id.*) Even more disturbing, the same report found that San Bernardino County is *the worst-ranked county in the nation* for ozone pollution, with an “F” grade and an average number of 180 days per year with ozone levels in the unhealthy range. (*Id.*)

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Although there are many different types of air pollution, Ozone, PM_{2.5}, and Toxic Air Contaminants are of greatest concern in San Bernardino County. These three air pollutants have been linked to an increased incidence and risk of cancer, birth defects, low birth weights and premature death, in addition to a variety of cardiac and lung diseases such as asthma, COPD, stroke and heart attack. (Laurent 2016; ALA 2022.) Ozone (commonly referred to as smog) is created by the atmospheric mixing of gases from fossil fuel combustion and other volatile organic compounds and sunlight. Although it is invisible, ozone poses one of the greatest health risks, prompting the EPA to strengthen its National Ambient Air Quality Standard for Ozone in 2015. (ALA 2022.) PM_{2.5} is a common component of vehicle exhaust emissions, and contribute to visible air pollution. These tiny particulates are dangerous because they are small enough to escape our body’s natural defenses and enter the blood stream. Fugitive dust is a term used for fine particulate matter that results from disturbance by human activity such as construction and road-building operations. (VCAPCD 2003.) Toxic Air Contaminants are released from vehicle

fuels, especially diesel, which accounts for over 50% of the cancer risk from TACs. (BAAQMD 2016) This is especially relevant for Southern California with its abundance of diesel shipping traffic. (Bailey; Betancourt 2012.)

Warehouse projects in particular are well-documented sources of air quality degradation that can create serious, negative health outcomes for surrounding communities and can have a profound negative impact on regional air quality. (Betancourt 2012 at 4-5.) With the rapid increase in global trade, the Ports of LA and Long Beach have become a primary entryway for goods, processing over 40 percent of all imports into the United States, and accounting for 20 percent of diesel particulate pollutants in southern California—more than from any other source. (Minkler, et al. 2012.) These goods are often ‘transloaded’ before leaving Southern California, meaning that they spend some time in warehouse storage facilities before they reach their final destination. (Betancourt 2012, p. 2.) This has resulted in a massive expansion of warehouse development in Southern California.

Nowhere has the expansion of the warehouse and logistics industry been more drastic than in San Bernadino and Riverside counties. (Betancourt 2012.) The number of warehouses in these two counties alone has grown from 162 in 1975 to 4,299 in 2021, according to a recent mapping project from the Robert Redford Conservancy for Southern California Sustainability at Pitzer College. (Rode 2022.) There were 970 warehouses by 2000, which almost doubled to 1,574 in 2005, then 2,089 in 2010 and to 2,757 in 2015. (*Ibid.*) From 2020 to 2021, the number rose again from 3,727 to 4,299. (*Ibid.*) The approximately 840 million square feet of new warehouse facilities—and the roads and railyards that serve them – has permanently altered the landscape of the region, creating a logistics hub so massive that it is now visible from space. (Pitzer 2022.)

This Project proposes to construct up to 750,000 square feet (sf) of high-cube logistics warehousing, with approximately 10 percent of the footprint dedicated to refrigerated uses, and up to 1,718 vehicle trips per day. (DEIR, Appendix B at 41.) Particulate emissions from diesel vehicles that carry freight to and from warehouses contribute to “cardiovascular problems, cancer, asthma, decreased lung function and capacity, reproductive health problems, and premature death.” (*Id.* at 5.) For warehouses with refrigeration, called “cold storage” warehouses, trucks and trailers visiting the Project site are typically equipped with transport refrigeration units (TRU), internal refrigeration systems powered by diesel internal combustion engines. (CARB 2022.) TRUs on trucks and trailers exacerbate air quality impacts by emitting large quantities of diesel exhaust while operating within the Project site. (Fennell 2020.)

In light of these facts, one would expect the DEIR to have objectively evaluated whether the Project would result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in non-attainment under applicable federal or state ambient air quality standards. (CEQA Guidelines, Appendix G, III. Air Quality.) Instead, the DEIR concludes without analysis that the Project would result in less-than-significant impacts under *all* CEQA Guidelines Appendix G thresholds of significance. (DEIR at 4.3-1.) As discussed below, the DEIR relied on improper thresholds of significance and underestimated air quality impacts. The DEIR must be revised to adequately analyze the Project’s GHG impacts, acknowledge their

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significance, and consider and adopt feasible mitigation to reduce those impacts, and it should be recirculated for public review and comment.

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A. The DEIR Relies on Inappropriate Thresholds of Significance and Therefore Erroneously Concludes the Project Would Not Have Significant Impacts Relating to Air Quality.

The City’s failure to adequately analyze, support, and disclose air quality risks and related impacts stems, at least in part, from the DEIR’s failure to establish appropriate thresholds of significance for this topic. The DEIR estimates the Project *daily* will emit 26.04 pounds of VOC, 44.34 pounds of NOx, 46.89 pounds of CO, and 15.33 pounds of PM10. (DEIR at 4.3-28.)

The DEIR then claims to evaluate these air quality impacts against three thresholds, only one of which is relevant to the amounts of criteria pollutants produced by the Project: whether the Project will “[r]esult in a cumulatively considerable net increase of any criteria pollutant for which the Project region is in non-attainment under an applicable federal [national] or state ambient air quality standard.” (DEIR at 4.3-23 [citing CEQA Guidelines Appendix G]; *see also* DEIR Appendix C [Air Quality Analysis Report] at p. 26.) In applying the threshold, however, the DEIR swaps in massive numeric thresholds—137 pounds per day of VOC, 137 pounds per day of NOx, 548 pounds per day of CO, and 82 pounds per day of PM10—finding that the proposed Project would not exceed any of these numeric thresholds and thus that the Project’s air quality impacts are less than significant, requiring no mitigation. (DEIR at 4.3-27.)

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As discussed above, a lead agency’s selection of a threshold of significance must be supported with substantial evidence. (CEQA Guidelines § 15064(b)(2); *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111.) The DEIR’s use of these daily emissions as a threshold of significance is not supported by substantial evidence and drastically downplays the Project’s significant air quality impacts. The DEIR fails to justify these thresholds.

The DEIR attempts to justify these exorbitant thresholds by offering that “MDAQMD has developed regional significance thresholds for regulated pollutants” and “[t]he MDAQMD’s Guidelines indicate that any projects in the MDAB with daily regional emissions that exceed any of the indicated thresholds should be considered as having an individually and cumulatively significant air quality impact.” (DEIR Appendix C at p. 26.) Both statements are factually untrue. The DEIR appears to be referring to the same guidance document entitled “MDAQMD California Environmental Quality Act (CEQA) And Federal Conformity Guidelines” that was issued by MDAQMD staff in 2016. (MDAQMD 2016.) But this document was issued informally by staff and never adopted by the MDAQMD Board (nor subject to any notice and comment rulemaking process).⁸ And again, the MDAQMD guidance document invokes these numerical “thresholds” only once, in passing, in a table that makes no reference to CEQA, and the document does not make any other reference to these “significance thresholds” for air quality. (MDAQMD 2016 at p. 9-10, Table 6.) No evidence supports its use as a CEQA threshold of

⁸ Personal telephone communication with Tracy Walters, MDAQMD Air Quality Planner, October 28, 2020.

significance of general applicability or for this Project. (*See Golden Door Props. v. County of San Diego* (2018) 27 Cal.App.5th 892, 901.)

The EIR’s reliance on these numerical emissions thresholds is therefore not supported by substantial evidence and violates CEQA; the EIR should be revised to include an adequate threshold of significance that does not obscure the Project’s air quality impacts.

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B. The DEIR Underestimates the Project’s Already Significant Air Quality.

The DEIR’s analysis of air quality impacts gives the public and decisionmakers no understanding of the Project activities that generate emissions of the various criteria pollutants. In the impact analysis section, the City presents two charts to the public – one detailing the total construction criteria pollutant emissions, and another detailing the operational emissions. (DEIR at 4.3-27 to 4.3-28.) The DEIR fails to describe the Project activities that could generate emissions of criteria air pollutants, such as area sources – consumer products, on-site equipment, architectural coating, and landscaping—and operational sources, such as the Project’s electricity and natural gas use, off-road cargo handling equipment, transport refrigeration units, backup generators, and mobile sources, including cars and heavy-duty trucks. The air quality analysis does not even disclose the estimated vehicle trips associated with the Project, which under the DEIR’s own admission is the primary driver of air quality impacts. (DEIR at 4.3-27 to 4.3-28.) All the relevant information is buried in a technical appendix. This fails to fulfill CEQA’s core information purpose.

Without these fundamental disclosures, the public and decisionmakers have no way to understand and independently evaluate the environmental consequences of the Project. (See DEIR Sec. 4.3 and Appendix C.) There is ample evidence that a project that would attract thousands of vehicles daily to a location in non-attainment for multiple criteria pollutants would significantly compound poor air quality in the region and expose sensitive receptors to substantial pollution concentrations. Yet the air quality analysis includes nothing about the estimated truck trips, the information upon which these estimations are based, or modelling assumptions. Again, the majority, if not all, of the EIR’s substantive disclosures and analyses of the Project’s potential environmental impacts are contained in appendices, rather than in those portions of the EIR that purport to address those impacts. Because the DEIR fails to even consider –let alone disclose – the potential emission sources of the Project, the DEIR incorrectly concludes that the Project’s impacts relating to air quality would be less than significant.

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From the little information provided, it is readily apparent that the DEIR here grossly underestimates the vehicle trips associated with the Project, the main driver of the Project’s NOx, CO, and PM10 (and greenhouse gas) impacts. (DEIR at 4.3-28.) It estimates that the Project will generate 1,718 daily vehicle trips, which it calculates using the Institute of Transportation Engineers (ITE) Common Trip Generation Rates. (DEIR, Appendix C at 40.) The ITE estimates trip generations based on the type of facility and square footage of the facility. (ITE 2017; DEIR, Appendix C at 40.) The DEIR relies on two facility types: Land Use 154: High-Cube Short-Term Storage and ITE Land Use 157: High-Cube Cold Storage, which have generation rates of .1 and .12 trips per unit respectively (ITE 2017.) Other types of warehouse projects identified by ITE,

such as High-Cube Fulfillment Center Warehouses and High-Cube Parcel Hub Warehouses, have significantly higher vehicle trip estimates, 1.37 and .64 trips per unit, respectively.

The DEIR provides no information or evidence justifying its selection of high-cube short-term storage and warehousing when other types of high cube warehouse centers result in truck trip estimates orders of magnitude higher. The DEIR provides no information describing why this facility should be categorized as a high-cube short-term storage or high-cube cold storage, nor any limits that would prevent the Project applicant from constructing a high-cube fulfillment center or high-cube parcel hub warehouse onsite. The Project objectives, at their most specific, aim to “provide industrial uses response to current and anticipated market demands” and to “establish new development providing construction and long-term employment opportunities.” (DEIR at 1-8.) Otherwise, the public is left in the dark about the type of warehousing facility proposed. The DEIR places no limits on the type of e-commerce facility that could operate on the site. Absent additional information, it appears that any tenant could operate a high-cube center or parcel hub warehouse on the site, which would generate significantly more truck trips than the DEIR disclosed, analyzed, or mitigated. The DEIR’s approach violates CEQA’s requirement that an EIR fully analyze and attempt to mitigate all significant direct and indirect impacts of a project. (CEQA Guidelines, § 15126.2; Pub. Resources Code, § 21002.)

The City must support its choice to rely upon these lower estimates, or select an estimate that more conservatively and accurately accounts for the Project’s potential to generate truck trips. Should the City ultimately rely on these lower estimates, the City must condition any project approval on a lease provision that guarantees a Project tenant could not operate a high-cube fulfillment center or parcel hub warehouse on the site, absent additional environmental review and mitigation.

The DEIR then compounds its error by relying on an average truck trip length that is not supported by substantial evidence in the record, significantly downplaying the diesel pollution that would be generated by each truck trip. In calculating vehicles miles travelled, the DEIR assumes that, on average, trucks will travel 40 miles one way. (DEIR, Appendix 3 at 31.) It selected this number based on the assumed average trip length for heavy trucks identified by South Coast Air Quality Management District (SCAQMD) in its calculations for the Warehouse Indirect Source Rule, which are based upon average distances travelled within the basin from the Port of Los Angeles and Long Beach. (DEIR, Appendix 3 at 31.) While an agency may use an environmental standard adopted by another public agency in determining the significance of an impact, the lead agency must explain why the standard is relevant to the analysis of the project’s impacts. (CEQA Guidelines §15064.7(d)(3)–(4).) Hesperia offers no such explanation here.

All available evidence indicates that this standard is wholly inappropriate for an inland City such as Hesperia. Hesperia is not in the South Coast Air Quality Management District. It is approximately 100 miles from the Ports of LA and Long Beach. In guidance issued by the California Air Resources Board (CARB) to estimate average truck miles travelled from the Ports of LA and Long Beach, CARB concludes that trucks within the South Coast basin travel 33.2 miles on average, whereas trucks travelling from the boundary of the South Coast basin to the

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Mojave Basin travel between 82 and 164 miles on average. (CARB 2007, pp. B22-B23.)⁹ There is simply no logical basis for Hesperia to assume that trucks to the Mojave basin will travel 40 miles on average. The City’s use and application of the SCAQMD 40-mile standard is not supported by substantial evidence and thus violates CEQA.¹⁰

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C. Because the DEIR Improperly Found that the Project’s Air Quality Emissions Were Less Than Significant, It Failed to Consider, Much Less Adopt, Feasible Mitigation Measures to Reduce or Avoid the Project’s Air Quality Impacts.

As the DEIR readily admits, it does not consider or adopt any mitigation measures to reduce avoid or mitigate the Project’s air quality emissions. (DEIR at 1-33, Table 1.12-1.) Because, as described above, the Project’s air quality emissions impacts are significant, the EIR’s failure to consider and adopt all feasible mitigation to reduce or avoid the Project’s significant impacts violates CEQA. (See Pub. Res. Code § 21002 [It is the “policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which will avoid or substantially lessen the significant environmental effects of such projects.”], CEQA Guidelines §§ 15092(b), 15043, 15126.4(a)(1).) “Even when a project's benefits outweigh its unmitigated effects, agencies are still required to implement all mitigation measures unless those measures are truly infeasible.” (*Sierra Club, supra*, 6 Cal.5th at pp. 524–525.) The EIR should be revised to adequately analyze the Project’s air quality impacts, acknowledge their significance, and consider and adopt feasible mitigation to reduce those impacts, and it should be recirculated for public review and comment.

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For example, the South Coast Air Quality Management District (“SCAQMD”) has recently prepared and published Draft Proposed Rule 2305 - *Warehouse Indirect Source Rule—Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program* (SCAQMD 2020). The rule will apply to individual warehouses and distribution facility projects and is intended to reduce air quality emissions from mobile sources associated with the projects. The draft rule contains a host of mitigation measures that warehouse facilities an adopt, which include, but are not limited to:

- Acquiring and using Zero Emissions yard trucks onsite.
- Requiring that a certain percentage of trucks in warehouse operators’ fleet(s) be Zero Emissions or Near Zero Emissions.

⁹ California Air Resources Board (CARB) (2007), Emissions Estimation Methodology for On-Road Diesel-Fueled Heavy-Duty Drayage Trucks at California Ports and Intermodal Rail Yards, Webpage. Available at: https://ww3.arb.ca.gov/msei/onroad/downloads/drayage_trucks/appbf.pdf

¹⁰ These same flaws that infect the DEIR’s air quality analysis cause the DEIR to underestimate the Project’s already significant and unavoidable GHG impacts, which are driven primarily by truck trips. (DEIR at 4.4-37.)

- Installing and using onsite Zero Emissions vehicle charging stations beyond the minimum required by applicable laws, rules, or regulations.
- Installing and using onsite solar panels.
- Installing high-efficiency air filters or filtering systems in residences, schools, daycares, hospitals, or community centers.

Additionally, the California Air Resources Board (“CARB”) has compiled a list of “Recommended Air Pollution Emission Reduction Measures for Warehouses and Distribution Centers.” (see CARB 2019, Attachment A.) These include:

Recommended Construction Measures

1. Ensure the cleanest possible construction practices and equipment are used. This includes eliminating the idling of diesel-powered equipment, and providing the necessary infrastructure (e.g. electrical hookups) to support zero and near-zero equipment and tools.
2. Implement, and plan accordingly for, the necessary infrastructure to support the zero and near-zero emission technology vehicles and equipment that will be operating onsite. This includes the physical (e.g. needed footprint), energy, and fueling infrastructure for construction equipment, onsite vehicles and equipment, and medium-heavy and heavy-heavy duty trucks.
3. In construction contracts, include language that requires all off-road diesel-powered equipment used during construction to be equipped with Tier 4 or cleaner engines, except for specialized construction equipment in which Tier 4 engines are not available. In lieu of Tier 4 engines, equipment can incorporate retrofits such that emission reductions achieved equal or exceed that of a Tier 4 engine.
4. In construction contracts, include language that requires all off-road equipment with a power rating below 19 kilowatts (e.g., plate compactors, pressure washers, etc.) used during project construction be battery powered.
5. In construction contracts, include language that requires all heavy-duty trucks entering the construction site, during either the grading or building construction phases be model year 2014 or later. Starting in the year 2022, all heavy-duty haul trucks should also meet CARB’s lowest optional low-NOx standard.
6. In construction contracts, include language that requires all construction equipment and fleets to be in compliance with all current air quality regulations. CARB staff is available to provide assistance in implementing this recommendation.

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Recommended Operation Measures

1. Include contractual language in tenant lease agreements that require tenants to use the cleanest technologies available, and to provide the necessary infrastructure to support zero-emission vehicles and equipment that will be operating onsite.
2. Include contractual language in tenant lease agreements that requires all loading/unloading docks and trailer spaces be equipped with electrical hookups for trucks with transport refrigeration units (TRU) or auxiliary power units (APU). This will eliminate the amount of time that a TRU powered by a fossil-fueled internal combustion engine can operate from within the project site. Use of zero-emission all-electric plug-in TRUs, hydrogen fuel cell transport refrigeration, and cryogenic transport refrigeration are encouraged and can also be included in lease agreements.
3. Include contractual language in tenant lease agreements that requires all service equipment (e.g., yard hostlers, yard equipment, forklifts, and pallet jacks) used within the site to be electric or powered by compressed natural gas.
4. Include contractual language in tenant lease agreements that requires all heavy-duty trucks entering the project site to be model year 2014 or later.
5. Starting in the year 2022, include contractual language in tenant lease agreements that requires all trucks entering the project site to meet CARB's lowest optional low-NOx standard.
6. Include contractual language in tenant lease agreements that requires the tenant be in, and monitor compliance with, all current air quality regulations for on-road trucks including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation, Periodic Smoke Inspection Program (PSIP), and the Statewide Truck and Bus Regulation.
7. Include contractual language in tenant lease agreements restricting trucks and support equipment from idling longer than five minutes while onsite.
8. Include contractual language in tenant lease agreements that limits onsite TRU diesel engine runtime to no longer than 15 minutes. If no cold storage operations are planned, include contractual language and permit conditions that prohibit cold storage operations unless a health risk assessment is conducted and the health impacts mitigated.
9. To reduce indirect greenhouse gas (GHG) emissions, include rooftop solar panels for each proposed warehouse to the extent feasible, with a capacity that matches the maximum allowed for distributed solar connections to the grid.

The California Office of the Attorney General also has published a document entitled “Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California

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Environmental Quality Act” to help lead agencies comply with these requirements. (AGOa 2021.) Nearly all of the example mitigation measures in this document have been adopted in a warehouse project in California, demonstrating their feasibility. (*Ibid.*) At minimum, the City should consider the following mitigation measures:

- Requiring all off-road construction equipment to be zero-emission, where available, and all diesel-fueled off-road construction equipment, to be equipped with CARB Tier IV-compliant engines or better, and including this requirement in applicable bid documents, purchase orders, and contracts, with successful contractors demonstrating the ability to supply the compliant construction equipment for use prior to any ground-disturbing and construction activities.
- Prohibiting off-road diesel-powered equipment from being in the “on” position for more than 10 hours per day.
- Providing electrical hook ups to the power grid, rather than use of diesel-fueled generators, for electric construction tools, such as saws, drills, and compressors, and using electric tools whenever feasible.
- Limiting the amount of daily grading disturbance area.
- Prohibiting grading on days with an Air Quality Index forecast of greater than one hundred for particulates or ozone for the project area.
- Forbidding idling of heavy equipment for more than two minutes.
- Keeping onsite and furnishing to the lead agency or other regulators upon request, all equipment maintenance records and data sheets, including design specifications and emission control tier classifications.
- Conducting an on-site inspection to verify compliance with construction mitigation and to identify other opportunities to further reduce construction impacts.
- Using paints, architectural coatings, and industrial maintenance coatings that have volatile organic compound levels of less than 10 g/L.
- Requiring that all facility-owned and operated fleet equipment with a gross vehicle weight rating greater than 14,000 pounds accessing the site meet or exceed 2010 model-year emissions equivalent engine standards as currently defined in California Code of Regulations Title 13, Division 3, Chapter 1, Article 4.5, Section 2025.
- Requiring all heavy-duty vehicles entering or operated on the project site to be zero-emission beginning in 2030.
- Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations.
- Forbidding trucks from idling for more than two minutes and requiring operators to turn off engines when not in use.
- Posting both interior- and exterior-facing signs, including signs directed at all eight dock and delivery areas, identifying idling restrictions and contact information to report violations to CARB, the air district, and the building manager.
- Installing and maintaining, at the manufacturer’s recommended maintenance intervals, air filtration systems at sensitive receptors within a certain radius of facility for the life of the project.

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- Installing and maintaining, at the manufacturer’s recommended maintenance intervals, an air monitoring station proximate to sensitive receptors and the facility for the life of the project and making the resulting data publicly available in real time. While air monitoring does not mitigate the air quality or greenhouse gas impacts of a facility, it nonetheless benefits the affected community by providing information that can be used to improve air quality or avoid exposure to unhealthy air.
- Constructing electric truck charging stations proportional to the number of dock doors at the project.
- Constructing electric light-duty vehicle charging stations proportional to the number of parking spaces at the project.
- Requiring all stand-by emergency generators to be powered by a non-diesel fuel.
- Requiring operators to establish and promote a rideshare program that discourages single-occupancy vehicle trips and provides financial incentives for alternate modes of transportation, including carpooling, public transit, and biking.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations.
- Planting trees and vegetation near structures to shade buildings and reduce energy requirements for heating/cooling.
- Preserving or replacing onsite trees (that are removed due to development) as a means of providing carbon storage.
- Replacing traffic lights, streetlights, and other electrical uses to energy efficient bulbs and appliances.
- Retrofitting municipal water and wastewater systems with energy efficient motors, pumps, and other equipment, and recover wastewater treatment methane for energy production.

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Additionally, the California Air Resources Board (“CARB”) has compiled a list of “Recommended Air Pollution Emission Reduction Measures for Warehouses and Distribution Centers.” (CARB 2019). These include:

Recommended Construction Measures

- In construction contracts, including language that requires all off-road diesel-powered equipment used during construction to be equipped with Tier 4 or cleaner engines, except for specialized construction equipment in which Tier 4 engines are not available. In lieu of Tier 4 engines, equipment can incorporate retrofits such that emission reductions achieved equal or exceed that of a Tier 4 engine.
- In construction contracts, including language that requires all off-road equipment with a power rating below 19 kilowatts (e.g., plate compactors, pressure washers, etc.) used during project construction be battery powered.

- In construction contracts, including language that requires all heavy-duty trucks entering the construction site, during either the grading or building construction phases be model year 2014 or later. Starting in the year 2022, all heavy-duty haul trucks should also meet CARB's lowest optional low-NOx standard.

Recommended Operation Measures

- Including contractual language in tenant lease agreements that require tenants to use the cleanest technologies available, and to provide the necessary infrastructure to support zero-emission vehicles and equipment that will be operating onsite.
- Including contractual language in tenant lease agreements that requires all loading/unloading docks and trailer spaces be equipped with electrical hookups for trucks with transport refrigeration units (TRU) or auxiliary power units (APU). This will eliminate the amount of time that a TRU powered by a fossil-fueled internal combustion engine can operate from within the project site. Use of zero-emission all-electric plug-in TRUs, hydrogen fuel cell transport refrigeration, and cryogenic transport refrigeration are encouraged and can also be included in lease agreements.
- Including contractual language in tenant lease agreements that requires the tenant be in, and monitor compliance with, all current air quality regulations for on-road trucks including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation, Periodic Smoke Inspection Program (PSIP), and the Statewide Truck and Bus Regulation.
- Covering rooftops with rooftop solar panels, with a capacity that matches the maximum allowed for distributed solar connections to the grid.

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Because the DEIR improperly failed to consider these and other feasible mitigation measures, the City cannot make the requisite CEQA findings prior to approving the Project. The DEIR should be revised to include these and other measures to reduce, avoid, or minimize the Project's admittedly significant impacts to air quality and recirculated for public review and comment. As a reminder, should the City decide that one of the suggested mitigation measures is not feasible, it must explain in the record why it concluded that specific mitigation measure was not feasible, supported by substantial evidence. (*Los Angeles Unified Sch. Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029.)

V. CUMULATIVE IMPACTS

The CEQA Guidelines define cumulative impacts as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." (CEQA Guidelines §15355.) Sections 15130 and 15065 elaborate that a project has a significant cumulative impact when a project's incremental addition to environmental impacts from past, current, and reasonably probable future projects is cumulatively considerable. Significant cumulative impacts can result from the incremental effects of many projects that do not individually have a significant environmental impact.

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As a threshold matter, the DEIR failed to disclose other past, present, or reasonable foreseeable future projects in the vicinity. As a result, the DEIR could not consider whether, in

the context of the many other pollution sources near the Project, the Project would add a cumulatively considerable contribution to the existing significant cumulative air pollution faced by the community, as required by CEQA. Therefore, the DEIR's subsequent conclusions that the Project will not create significant cumulative environmental impacts are unsupported.

The DEIR based its less-than-significant cumulative impact finding on “no known or probable related projects that would interact with the less-than-significant effects of the Project and thereby result in cumulatively significant impacts.” (DEIR at pp. 5-11, 5-12 to 5-13.) While the City possesses the most current information on future developments planned for the community, the Center is aware of numerous other warehouse projects in the vicinity that the City either recently approved or is currently considering:

- United States Cold Storage Hesperia Project (SCH No.: 2020069036)
- Poplar 18 Project (Notice of Preparation issued on August 11, 2022)
- I-15 Industrial Park Project (SCH No.: No. 2021060397)
- Hesperia Commerce Center II Project (SCH No.: 2019110418)

There are likely far more projects to disclose, since the “primary intent” of the Hesperia Main Street and Freeway Corridor Specific Plan area—within which this Project is located—is “to promote industrial development” with a “focus on distribution and warehousing uses.” (Hesperia 2021.)

The DEIR omits disclosure of the numerous warehouses and other development in the Project's immediate vicinity that could impact air quality, GHG, and biological resources, including other developments that are being planned or have been approved but are not yet operating. As a result, the DEIR could not consider whether, in the context of the many other pollution sources near the Project, the Project would add a cumulatively considerable contribution to the existing significant cumulative air pollution faced by the community, as required by CEQA. Therefore, the DEIR's subsequent conclusions that the Project will not create significant environmental impacts are unsupported.

For biological resources, for example, the DEIR concludes that – because the ITP will supposedly reduce any individual Project impacts to less-than-significant, and there are no other known projects in the vicinity that could result in cumulatively significant impacts to any of the biological resources, any cumulative effects are less-than-significant. (DEIR at 5-22.) The DEIR further dismisses the potential for cumulative impacts to occur because cumulative projects would each “require[] a discretionary action by a public agency” and through that process “will be assessed for its potential impacts” and be required to adopt “appropriate biological resources mitigation.” (DEIR at 5-22.) The DEIR cannot simply assume that applying laws and regulations to future projects obviates the potential for cumulative impacts. (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111-14 (compliance with an environmental regulatory program cannot displace an agency's *separate* obligation to consider whether a project's environmental impacts are significant); *Californians for Alternatives to Toxics, supra*, 136 Cal.App.4th 1, 15-17 (same.)) Here, the DEIR provides no basis for assuming that unspecified regulatory compliance or future environmental review would

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ameliorate any potential cumulative impacts. The DEIR therefore fails to analyze the cumulative impacts on biological resources.

The DEIR relies on these faulty significance thresholds throughout its cumulative impacts analysis. It concluded the Project would have a less than significant cumulative air quality, biological resources, transportation, and greenhouse gas impact because the Project would have a less than significant individual impact in these areas. This reasoning contravenes CEQA's core mandate for studying cumulative impacts in the first place – projects that do not have significant individual impacts may nonetheless create significant cumulative impacts. (See, e.g., *Kings Cty. Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720.)

To support its threshold of significance for cumulative impacts to air quality, for example, the DEIR cites Appendix D of an August 2003 white paper published by the South Coast Air Quality Management District (“SCAQMD”) entitled “White Paper on Potential Control Strategies to Address Cumulative Impacts from Air Pollution” (“2003 SCAQMD White Paper”). (DEIR at 4.23-4.24; SCAQMDa 2003.) To the extent that the 2003 SCAQMD White Paper asserts that any project with less than significant individual air quality impacts also necessarily has less than significant cumulative air quality impacts, it is inconsistent with CEQA for at least the reasons stated above.

Moreover, the DEIR fails to provide substantial evidence to support its reliance on the 2003 SCAQMD White Paper, Appendix D as “guidance.” (DEIR at 4.3-23.) This document was issued informally by staff, intended as a “policy document” and “starting point,” and never approved, let alone subject to any rulemaking process. (SCAQMDb 2003.)¹¹ Rather, the document was a “proposal” with a slew of options brought before the Board “just to get the Board’s approval to move forward to develop formal policies and rules, which would be brought back to the Board after having undergone a full public airing.” (SCAQMDb 2003.) Those rules have yet to be developed.¹²

More recently, the California Attorney General’s Office sued the City of Fontana for its reliance on this “guidance” to inform a cumulative impacts analysis for a similar warehouse project. (AGOb 2021.) That lawsuit settled, and as a result, SCAQMD announced a process to revise its CEQA guidance for analyzing cumulative air quality impacts. (AGO 2022; SCAQMD 2022.) The City simply lacks a basis to rely upon this outdated and unlawful standard. (See *Golden Door Props. v County of San Diego* (2018) 27 Cal.App.5th 892, 901.)

Finally, even if the DEIR’s reliance on the 2003 SCAQMD White Paper were proper and supported by substantial evidence, the DEIR did not consider the other evidence—such as the existence of many other sources of pollution near the Project site—showing that the Project could have a significant cumulative air quality impact. (CEQA Guidelines § 15064, subd. (b).) The 2003 SCAQMD White Paper lacks substantial evidence to support the City’s contention that no cumulative impacts exist, and thus the DEIR’s reliance on it violates CEQA. (CEQA Guidelines § 15064.7, subd. (c).)

¹¹ Personal telephone communication with Kathryn Roberts, SCAQMD Attorney, August 31, 2022.

¹² Personal telephone communication with Kathryn Roberts, SCAQMD Attorney, August 31, 2022.

VI. THE REIR MUST BE RECIRCULATED.

Under California law, this DEIR cannot properly form the basis of a final EIR. CEQA and the CEQA Guidelines describe the circumstances that require recirculation of a draft EIR. Such circumstances include: (1) the addition of significant new information to the EIR after public notice is given of the availability of the DEIR but before certification, or (2) the DEIR is so “fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” (CEQA Guidelines, § 15088.5.)

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Here, both circumstances apply. Decisionmakers and the public cannot possibly assess the Project’s impacts through the present DEIR, which is riddled with error. Among other fundamental deficiencies, the DEIR repeatedly fails to disclose and underestimates the Project’s significant impacts, and assumes that compliance with existing regulatory programs will effectively reduce those impacts. In order to resolve these issues, the City must prepare a revised EIR that would necessarily include substantial new information.

VII. CONCLUSION

Thank you for the opportunity to submit comments on the Draft EIR for the Dara Industrial Project. Due to the shortcomings described above, the City should make corrections to the EIR and Project—including properly analyzing and mitigating for the Projects significant impacts to biological resources, GHG emissions, and air quality—and recirculate a revised and legally adequate EIR for public review and comment.

Given the possibility that the Center will be required to pursue legal remedies in order to ensure that the City complies with its legal obligations including those arising under CEQA, we note the City’s statutory duty to maintain and preserve all documents and communications that may constitute part of the “administrative record” of this proceeding. (§ 21167.6(e); *Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733.) The administrative record encompasses any and all documents and communications that relate to any and all actions taken by the City with respect to the Project, and includes “pretty much everything that ever came near a proposed [project] or [] the agency’s compliance with CEQA” (*County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 8.) The administrative record further includes all correspondence, emails, and text messages sent to or received by the City’s representatives or employees that relate to the Project, including any correspondence, emails, and text messages sent between the City’s representatives or employees and the Project applicant’s representatives or employees. Maintenance and preservation of the administrative record requires that, *inter alia*, the City (1) suspend all data destruction policies; and (2) preserve all relevant hardware unless an exact replica of each file is made.

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Please add the Center to your notice list for all future updates to the Project and do not hesitate to contact the Center with any questions at the number or email listed below.

Sincerely,

A handwritten signature in black ink that reads "Hallie Kutak". The signature is written in a cursive style with a large, looped initial "H".

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Letter Dated September 8, 2022

Comment CBD-1

The Center for Biological Diversity (the “Center”) submits the following comments regarding the Draft Environmental Impact Report (“DEIR”) for the Dara Industrial Project (“Project”), State Clearinghouse No. 2022040060. The Center has reviewed the DEIR closely and is concerned about the Project’s significant impacts to biological resources, greenhouse gas emissions, and air quality, among others. The Center urges the City to correct the deficiencies identified below and recirculate a revised DEIR for public review and comment prior to approving the Project.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.7 million members and online activists throughout California and the United States. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in Hesperia and San Bernardino County, including in the vicinity of the Project.

Response CBD-1

Center for Biological Diversity (CBD) receipt of, and comments on, the Draft Environmental Impact Report for the Dara Industrial Project (State Clearinghouse No. 2022040060) are acknowledged. CBD concerns regarding the Project’s potential impacts affecting biological resources, greenhouse gas emissions, and air quality are acknowledged. The Lead Agency disagrees with CBD statements regarding the significance of Project biological resources impacts, greenhouse gas emissions impacts, and air quality impacts.

The DEIR substantiates that the Project's potential biological resources impacts would be less-than-significant as mitigated. (DEIR Section 4.7, *Biological Resources*; DEIR Appendix G, *Biological Resources Assessment*). Note here that the Project biological resources mitigation measures have been modified in response to comments provided by the California Department of Fish and Wildlife (CDFW). Please refer to CDFW comments and responses, and revised biological resources mitigation measures incorporated at Final EIR Section 4.0, *Mitigation Monitoring Program*. The DEIR also substantiates that Project greenhouse gas emissions impacts and Project air quality impacts would be less-than-significant. (DEIR Section 4.3, *Air Quality*; DEIR Appendix C, *Air Quality Impact Analyses*; DEIR Section 4.4, *Greenhouse Gas Emissions*, DEIR Appendix D, *Greenhouse Gas Analysis*).

CBD background, organization, and purpose are recognized.

Findings and conclusions of the DEIR are not affected.

Comment CBD-2

I. THE DEIR FAILS TO ADEQUATELY DISCLOSE, ANALYZE, OR MITIGATE THE PROJECT'S IMPACTS.

An adequate description of adverse environmental effects is "the core of the EIR." (Sierra Club v. County of Fresno (2018) 6 Cal. 5th 502, 514.) This description guides the discussion of mitigation measures and project alternatives, fulfilling CEQA's informational purpose to inform government decisionmakers and the public about the potential environmental consequences of proposed activities before they happen.

"As a general matter the EIR must present facts and analysis, not simply the bare conclusions or opinions of the agency." (Bay Area Citizens v. Association of Bay Area Governments (2016) 248 Cal.App.4th 966, 977 (quoting Californians for Alternatives to Toxics v. Calif. Dept. of Food and Agric. (2005) 136 Cal.App.4th 1, 13.) The discussion of impacts must provide sufficient information and analysis to allow the public to discern the basis for the agency's impact findings. (Sierra Club, supra, 6 Cal. 5th at p. 513 ["There must be a disclosure of the 'analytic route the ... agency traveled from evidence to action."].) A "conclusory discussion" of a significant

environmental impact makes an EIR ‘inadequate as an informational document’ as a matter of law.” (Id. at 514.)

Throughout the DEIR, the City fails to present the facts and analyses underlying its conclusions. One need look no further than the DEIR’s halfhearted attempt to analyze whether the Project will have significant impacts on riparian habitat, one of five thresholds of significance in its biological resources analysis. The City identifies the Oro Grande Wash as a stream that flows through the Project site; it then concludes that the Project impact would be “potentially significant.” (DEIR at 4.7-14.) Missing is any information about what that impact might be. Rather than analyze the impact, the DEIR concludes that any impact would be less- than-significant after implementation of Mitigation Measure 4.7.4, which merely requires that “if Oro Grande Wash will be impacted by Project development, the Project Applicant shall be required to obtain [] regulatory approvals.” (Id. at 4.7-15.)

As drafted, the mitigation measure’s reliance on the later study of Project impacts creates an enormous loophole and allows the Project applicant (and not the City) to determine—at a later date, without oversight or standards, and without supporting its decision with substantial evidence—whether an impact exists and whether mitigation will be adopted. The DEIR offers no information to allow the public to discern the basis of this finding, let alone any information regarding the nature and magnitude of the impact. (Cleveland National Forest Foundation v. San Diego Association of Governments (2017) 3 Cal.5th 497, 514–515.)

The DEIR also offers no evidence to support its conclusion that this measure will mitigate the unstudied impacts to less-than-significant levels. Here, and in numerous other places, the DEIR assumes – absent any explanation – that compliance with other regulations and programs will mitigate the Project’s impacts to less-than-significant levels. (See, e.g., DEIR mitigation measures 4.7.1, 4.7.4, and 4.7.5.) Without any project-specific analysis, the DEIR lacks a basis to conclude that these regulatory programs in and of themselves will reduce the environmental impacts of this Project to less-than-significant levels. Compliance with the law alone – absent project-specific analysis – is not sufficient evidence to support a finding of no significant impact under the CEQA. (Oro Fino Gold Mining Corp. v. County of El Dorado (1990) 225 Cal. App. 3d 872, 881–882.)

Furthermore, CEQA generally requires that mitigation be in place before a significant impact occurs, not after. (POET, LLC v. State Air Resources Bd. (2013) 217 Cal.App.4th 1214.) Specific details of a mitigation measure “may be developed after project approval when it is impractical or infeasible to include those details during the project’s environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will [be] considered, analyzed, and potentially incorporated in the mitigation measure.” (Golden Door Properties, LLC. v. County of San Diego (2020) 50 Cal.App.5th 467, 518.) Mitigation measures 4.7.3, 4.7.4, 4.8.1, 4.8.2, 4.8.3, 4.8.4, and 4.8.5 fall short of this standard. For each, the DEIR commits to developing plans after Project approval, should project-related impacts later be discovered. Without performance standards to guide the development of mitigation, these measures fail to identify the available pathways and potential measures or actions that could be included as part of the plan. Because these measures improperly defer a determination of the feasibility of mitigation to a later date at the discretion of the Project applicant, they are inadequate mitigation and fail to comply with CEQA.

The above is an illustrative example; these deficiencies exist throughout the EIR. Its conclusory treatment of impacts and unsupported mitigation simply “do not fit the CEQA bill.” (Californians for Alternatives to Toxics v. Department of Food & Agriculture (2005) 136 Cal.App.4th 1, 17.) The DEIR must be revised to adequately analyze the Project’s impacts, acknowledge their significance, and consider and adopt feasible mitigation to reduce those impacts. Once the City fixes such glaring errors, it must recirculate the document for public review and comment.

Response CBD-2

The Lead Agency disagrees with CBD assertion that “[t]he DEIR fails to adequately disclose, analyze, or mitigate the project’s impacts.” Various CEQA citations provided by CBD are acknowledged.

With regard to the Project’s potential impacts to the Oro Grande Wash, the DEIR conservatively assumes that the Wash could be affected by the Project. Ultimately, the Wash and potential impacts to the Wash are contingent on the Project final design(s), which cannot be determined at this early stage of Project concept development.

CBD states that the DEIR improperly defers mitigation. This is incorrect. As required under CEQA, the Lead Agency has evaluated potentially significant impacts and has identified measures that would mitigate the impacts. The Lead Agency need not commit to any specific mitigation aspects as long as the Lead Agency commits to mitigate the impact. Such commitment is reflected in the DEIR Mitigation Measures. For example, per MM 4.7.4 [as refined by CDFW], if the Oro Grande Wash would be impacted by Project development, the Applicant would be required to obtain the following regulatory approvals: U.S. Army Corps CWA Section 404 Permit, Regional Board CWA Section 401 Water Quality Certification, and written correspondence from CDFW stating that notification under Section 1602 of the Fish and Game Code is not required for the Project. If CDWF determines that Section 1602 compliance is required, the Project proponent shall obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project. As detailed in the Mitigation Monitoring Program (FEIR Section 4.0), compliance with MM 4.7.4 is required prior to commencing ground- or vegetation- disturbing activities.

Moreover, under CEQA, where impacts are of a type for which mitigation is known to be feasible (in this case, obtaining and complying with agency permits), but practical considerations prohibit devising such measures early in the planning process (precise parameters of the required permits are unknown at this time, but would be defined based on the Project final designs) the Lead Agency can permissibly articulate specific performance criteria and commit to ultimately devising mitigation measures that will satisfy the criteria. Mitigation Measure 4.7.4 articulates relevant permitting requirements and commits to complying with permit requirements. At this preliminary stage of development, it is impractical to determine/devise site or situational-appropriate mitigation beyond that identified in the DEIR. Other DEIR Mitigation Measures similarly commit to mitigating potentially significant impacts, and outlines the means to assure such mitigation is timely and fully implemented.

Findings and conclusions of the DEIR are not affected. Recirculation of the DEIR is not required.

Comment CBD-3

II. THE DEIR'S ANALYSIS OF AND MITIGATION FOR THE PROJECT'S IMPACTS TO BIOLOGICAL RESOURCES IS INADEQUATE.

A. The DEIR's Analysis of and Mitigation for Impacts to the Western Joshua Tree is Inadequate.

1. The Project Site Is Home to a Natural Community of Concern.

The Project site is located in the western part of the City, within San Bernardino's Victor Valley region. The City is located within the range of the western Joshua tree South population (YUBR South). The geographic area in which YUBR South is situated is comprised of 3.7 million acres, with just over 50% in private ownership, 48% federally owned, and just under 2% state, county and local owned (USFWS 2018). The USFWS (2018) estimates that 3,255,088 acres of this area was suitable for Joshua trees based on soils and other habitat factors. However, Joshua tree actually occupy only a fraction of this area, as they have a patchy and disjunct distribution, and large areas of former habitat have been lost to development or agricultural conversion.

Increasing development, climate change, increasing drought and wildfires, invasive species that adversely affect fire dynamics, and other threats have led to ongoing reductions in western Joshua trees and western Joshua tree habitat range-wide. Protecting western Joshua trees and their habitat from continued destruction and habitat loss is therefore of utmost importance to the persistence of the species in California. However, within the City and surrounding communities in particular, western Joshua tree habitat is shrinking at an alarming rate due to increasing development. While western Joshua trees currently persist in the less-developed areas of the City, they are absent from the more developed areas as well as the agricultural lands in the region, making the Project site all the more valuable.

While the DEIR characterizes the Project site as "vacant disturbed" property and "heavily impacted" (DEIR at 4.4-9, 4.7-2), the Project site is in fact comprised of ecologically significant habitat for Joshua trees. As the DEIR admits in passing, the Project site is primarily "Joshua tree woodland," of which the Project will destroy an undisclosed number of acres, resulting in a considerable loss of this natural community in the region. Joshua tree woodland is a community

recognized by the California Department of Fish and Wildlife (CDFW) as a Natural Community of Concern. (See DEIR at 4.7-14 to 4.7-15 [failing to disclose or analyze that Joshua Tree Woodland is a natural community identified by CDFW].) Sensitive natural communities are communities that are of limited distribution statewide or within a county or region and are often vulnerable to environmental effects of projects (CDFW 2018). CDFW's List of California Terrestrial Natural Communities is based on the best available information, and indicates which natural communities are considered sensitive at the current stage of the California vegetation classification effort.¹ The DEIR fails to disclose or adequately evaluate the impacts from destroying nearly fifty acres of this Natural Community of Concern.

Response CBD-3

Context of the Project presented by CBD is recognized. Effects of global climate change noted by CBD are recognized. Effects of greenhouse gases and global climate change are accurately and appropriately discussed at DEIR pp. 4.4-1 – 4.4-12. The Project would not result in or cause individually or cumulatively significant climate change impacts (DEIR, pp. 4.4-36 – 4.4-43).

The Lead Agency disagrees with CBD assertions that the Project would “destroy” a natural community of concern. Approximately half of the western Joshua Trees (WJT) found on the Project site would be removed.² A corresponding approximately 50 acres of degraded habitat would be developed with the Project uses. Most of the extant WJT within the site are sparse and dispersed. This is the result of extensive site disturbance and use of the site as a dirt bike racecourse. Generally, WJT on the site do not exhibit density levels sufficient to be considered WJT woodland or other natural community of concern. Notwithstanding, a small patch of WJT occurring within the northwest corner of the site is considered to qualify as woodland. This area of the Project site would not be disturbed or otherwise affected by the Project, and therefore no impact to WJT in this area would result. The loss of other WJT from degraded and habitat-compromised areas of

² Survey of the Project site conducted as part of a draft Section 2081 Incidental Take Permit Application for the Project indicates up to 74 WJT are present within the Project site boundaries. Please refer to *Southeast Corner of Los Banos Avenue & Sultana Street, City of Hesperia, San Bernardino County, California Section 2081 Incidental Take Permit Application* (ELMT Consulting, Inc.) February 2022, Attachment A to this FEIR.

the Project site would not result in ecologically or otherwise potentially significant impacts to WJT, and would therefore not result in adverse impacts to a natural community of concern.

It is further noted that the candidacy status of WJT for formal listing as a threatened species has been extended several times beyond the normal one-year review period. This affects mitigation and permit requirements for potential impacts to WJT. A final decision on WJT listing is tentatively scheduled for the California Department of Fish and Wildlife (CDFW) meeting in October 2022. It is the Lead Agency's understanding the CDFW Staff has recommended against listing WJT as a threatened species due to the lack of sufficient scientific data to support such listing.

However, if the CDFW votes to formally list WJT as a threatened species, the Project would be required to acquire an Incidental Take Permit (ITP) processed under Section 2081 of CESA. In this regard, DEIR Mitigation Measure 4.7.1 has been revised, as suggested by CDFW, to include language requiring the acquisition of an ITP, if WJT is formally listed. Before CDFW can issue an ITP, subsequent analysis would be conducted to support the issuance of an ITP by CDFW. If required, the subsequent analysis to support the acquisition of an ITP for impacts to WJT would be prepared and processed through the City of Hesperia. A copy of the ITP would be provided to CDFW. A draft Section 2081 ITP application for the Project has been prepared and will be submitted to CDFW if/as required. The draft ITP is presented at FEIR Attachment A.

Mitigation Measure 4.7.1 is presented at FEIR Section 4.0, *Mitigation Monitoring Program*. Please refer also to responses to CDFW comments presented in this FEIR. Findings and conclusions of the DEIR are not affected.

Comment CBD-4

2. The DEIR Does not Adequately Analyze the Project's Significant Impacts on Western Joshua Trees.

The Project proposes to develop approximately 50 acres of valuable Joshua tree habitat into 750,000 square feet of industrial/warehouse space and associated improvements. (DEIR at 4.1-2.) Yet the DEIR describes the impacts that the Project will have on Joshua trees in only the most cursory manner. Despite its flawed analysis, the DEIR acknowledges that impacts to the species and its habitat will be “potentially significant” without mitigation. (ES 1-35.)

Response CBD-4

CBD reiterates incorrect assertions regarding the viability of on-site habitat and the significance of Project biological resources impacts. The Lead Agency disagrees with these CBD assertions.

It is also noted here that WJT has been protected under the California Desert Native Plant Act for decades, and more recently has been advanced to candidacy for listing by CDFW under the California Endangered Species Act (CESA). Both the California Desert Native Plant Act and CESA require mitigation addressing impacts to WJT. The Project would implement required mitigation pursuant to one or both of these laws reducing the Project's potential impacts to WJT to levels that would be less-than-significant. Please refer also to Response CBD-3. Findings and conclusions of the DEIR are not affected.

Comment CBD-5

a. Western Joshua Trees Are a Special Status Species, the Impacts to Which are Presumed to be Significant.

The CEQA Guidelines indicate that a Project can be expected to have significant impacts to biological resources if the Project has a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service. (CEQA Guidelines, Appendix G, subd. IV(a).) Accordingly, the DEIR itself indicates that the Project's impacts will be significant if it will “have a substantial

adverse effect, either directly or through habitat modifications, on any species identified as a candidate . . . species . . . by the California Department of Fish and Game.” (DEIR at 4.3-18; see also CEQA Guidelines § 15065(a)(1) [when performing an initial study, agencies shall make a mandatory finding of significance where a proposed project has the potential to substantially reduce the number or restrict the range of a listed species], California Fish and Game Code § 2085 [CESA candidate species treated like threatened or endangered species].)

On September 22, 2020, the California Fish and Game Commission (“CFGC”) advanced the western Joshua tree to candidacy under the California Endangered Species Act (“CESA”), protecting these imperiled plants from harm during the ongoing review process. (CFGC 2020.) Consequently, the Project’s impacts to the western Joshua trees must be considered significant and fully evaluated and disclosed to the public.

Response CBD-5

CBD summary of CEQA and CDFW provisions addressing potential impacts biological resources is noted. Potential impacts to biological resources has been adequately and appropriately addressed in the DEIR (see: DEIR Section 4.7, *Biological Resources*; DEIR Appendix G, *Biological Resources Assessment*). CBD reiterates incorrect assertions regarding the significance of Project biological resources impacts. The Lead Agency disagrees with these CBD assertions. Candidacy status for WJT listing as a threatened species is tentative. It is the Lead Agency’s understanding the CDFW Staff has recommended against listing WJT as a threatened species due to the lack of sufficient scientific data to support such listing. Irrespective, the Project is committed to WJT mitigation stipulated by CDFW. Mitigation presented in this FEIR reflects current CDFW mitigation protocols addressing potential impacts to WJT. Please refer to also FEIR Section 4.0, *Mitigation Monitoring Program*, and Responses CBD-3, CBD-4. Findings and conclusions of the DEIR are not affected.

Comment CBD-6

b. The DEIR Fails to Disclose the Baseline Environmental Conditions on the Project Site.

An EIR must describe “the physical environmental conditions in the vicinity of the project” which “will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” (CEQA Guidelines § 15125(a).) Unfortunately, the DEIR’s description of baseline conditions with respect to Joshua trees is limited to one brief paragraph and is wholly inadequate. The DEIR merely states that there are 65 Joshua trees located on the Project site and that the site is comprised of Joshua tree woodland. (See DEIR at 4.7-3.) The DEIR itself contains no information on where these trees are located. The DEIR does not describe the surveys conducted for Joshua trees, nor did it disclose whether surveys would be conducted in the future, no less when these surveys would be conducted, what survey protocols would be followed, or why such surveys could not be conducted as part of the environmental review for the Project before it was approved. (DEIR at 4.7-3; Appendix G.) Without access now to this information about current conditions on the Project site, the public and decisionmakers are deprived of the basic facts necessary to evaluate the Project’s significant impacts to western Joshua trees and to determine whether proposed mitigation measures or alternatives will be adequate to reduce those impacts to less than significant.

Response CBD-6

CBD continues misrepresentation of the DEIR analysis of impacts to biological resources generally, and impacts to WJT specifically. The Lead Agency disagrees with CBD characterization of the DEIR analyses. Contrary to CBD assertions otherwise, biological resources context for the Project including detailed Joshua Tree inventory information is presented in the Project *Biological Resources Assessment*, DEIR Appendix G. Information presented in the Assessment is appropriately summarized at DEIR Section 4.7, *Biological Resources*. Project biological resources setting is accurately and appropriately discussed at DEIR pp. 4.7-2 – 4.7-9. Description of WJT within the Project boundaries is presented at DEIR pp. 4.7-3, 4.7-4. It is also noted that subsequent to preparation of the DEIR, refined WJT inventory information has been developed in conjunction with a draft Section 2081 Incidental Take Permit Application for the Project. The draft Take Permit Application is presented at FEIR Attachment A. Findings and conclusions of the DEIR are not affected.

Comment CBD-7

c. The DEIR Does not Adequately Analyze or Disclose the Extent of the Project's Impacts to Joshua Trees and Joshua Tree Habitat.

The Project's proposed warehouse will require the removal of vegetation from the site prior to the start of construction (ES at 1-1), which will necessarily include any Joshua trees located in the Project footprint. Yet the DEIR does not disclose even the most basic information about impacts to this special status species, such as how many Joshua trees will be actually removed as a result of Project construction.

What's more, the DEIR fails to acknowledge any potentially significant direct or indirect impacts associated with the destruction or adverse modification of the western Joshua tree's habitat. Development, climate change, and increasing wildfire occurrences exacerbated by drought and invasive species negatively impact western Joshua trees and their habitat. (DeFalco et al. 2010; Harrower and Gilbert 2018.) Climate change, in particular, represents the single greatest threat to the continued existence of western Joshua trees. Even under the most optimistic climate scenarios, western Joshua trees will be eliminated from significant portions of their range by the end of the century; under warming scenarios consistent with current domestic and global emissions trajectories, the species will likely be close to being functionally extinct in the wild in California by century's end. (Dole et al. 2003; Cole et al. 2011; Sweet et al. 2019.) Studies indicate that the species' range is contracting at lower elevations, recruitment is limited, and mortality is increasing, all of which would likely reflect a population already starting to decline due to recent warming. Even greater changes are projected to occur over the coming decades.

The DEIR does not acknowledge significant impacts to Joshua trees associated with the reduction in habitat connectivity. Maintaining successful habitat connectivity nearby is particularly important to western Joshua trees: for successful reproduction and recruitment, Joshua trees require the presence of their obligate pollinator, rodents to disperse and cache seeds and nurse plants to shelter emerging seedlings. Therefore, to the degree that any Joshua trees are left remaining on the Project site, such moths and rodents must have access to and also be maintained on site in order for these remnant western Joshua trees to successfully reproduce. Construction on the project site will reduce habitat connectivity necessary for sustainable Joshua tree recruitment

onsite. Moreover, construction on the Project site will result not just in the loss of Joshua trees and their pollinators and dispersers from the site itself, but will further fragment habitat, potentially resulting in significant adverse impacts to remnant Joshua tree woodland in nearby areas if pollinator or disperser populations are reduced. None of these impacts are analyzed in the DEIR.

Response CBD-7

CBD continues misrepresentation of the DEIR analysis of impacts to biological resources generally and impacts to WJT specifically. The Lead Agency disagrees with CBD characterization of the DEIR analyses. Required removal of WJT is expressly evaluated and addressed in the Project Biological Resources Assessment. CDFW, as a CEQA Trustee/Responsible Agency, provides biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources. CDFW has commented on the Project and has provided refinements to ITP provisions identified at DEIR Mitigation Measure 4.7.1, acting to ensure effective mitigation of potential impacts to WJT. Before CDFW can issue an ITP, supporting CEQA analysis must be provided. Such analysis would typically include topics such as potential impacts from development, climate change, increasing wildfires, and the potential spread of invasive species. Should CDFW require supporting ITP analysis beyond that presented in the DEIR, such analysis would be prepared and processed through the City of Hesperia in conjunction with ITP Application processes. As an initial preemptory action, a draft ITP Application for the Project has been prepared and is presented at FEIR Attachment A. A final ITP Application will be submitted to CDFW if/as required.

With respect to habitat connectivity, populations of WJT are regionally pervasive as well as in the Project site vicinity. The Project site is within the south regional portion of WJT known to support an estimated 3,724,080 WJT, the largest regional population of the species. Loss of WJT within the Project site, a degraded and habitat-compromised area, would not reduce habitat connectivity, nor substantially or adversely affect pollinators or dispersers. Findings and conclusions of the DEIR are not affected.

Comment CBD-8

3. Mitigation Measure 4.7.1 is Inadequate to Mitigate the Project's Significant Impacts to Joshua Trees and Joshua Tree Habitat.

Despite its inadequate assessment of baseline conditions on the Project site relating to Joshua trees, and its inadequate analysis of the Project's impacts to Joshua trees and Joshua tree habitat, the DEIR concludes that the sole mitigation measure it proposes will reduce the Project's impacts to Joshua trees to less than significant. (DEIR at 4.7-14 ["With the implementation of mitigation...the Project's potential impacts to species identified as a candidate, sensitive, or special-status species are considered less-than-significant."].) But the DEIR's single proposed mitigation measure does not comply with CEQA's and the CEQA Guidelines' requirements for legally adequate mitigation. The proposed mitigation is improperly deferred and lacks evidence of its effectiveness.

The DEIR's only stated mitigation for impacts to Joshua trees boils down to a single sentence – Mitigation Measure 4.7.1 – which requires that “A State Incidental Take Permit (ITP) shall be obtained prior to any ground-disturbing activities that would be expected to impact the western Joshua tree.” (DEIR at 4.7-13.) No further information is provided. The DEIR lacks any project-specific analysis of the potential impacts and the effect that regulatory compliance could have on those impacts. This is insufficient under CEQA. (Californians for Alternatives to Toxics, supra, Cal.App.4th at p. 1 [EIR set aside for a crop disease control plan for failing to include an evaluation of the risks to the environment from the proposed program; rather, the EIR simply presumed that no adverse impacts would occur from use of pesticides in accordance with pesticide regulations].)

The DEIR's claim that an ITP will successfully mitigate the Project's significant impacts is not supported by substantial evidence in the record. The DEIR improperly assumes that incorporation of Mitigation Measure 4.7.1, that is, mere adherence to the ITP requirements, will alone be sufficient to mitigate Project impacts under CEQA to less than significant levels (DEIR at 4.3-31). This is incorrect. The DEIR nowhere explains why Mitigation Measure 4.7.1 will successfully mitigate significant impacts to Joshua trees. The DEIR offers no site-specific mitigation for Joshua Trees and Joshua Tree woodland. The DEIR simply presumes that no adverse environmental impacts will occur as long as the Project secures an ITP. This assertion lacks evidence in the record, and the proposed mitigation is unlawfully deferred.

In short, the DEIR offers no description or plan for how western Joshua Trees on the site will be monitored, handled, removed, protected, transplanted, or their impacts mitigated.

Response CBD-8

CBD reiterates various previous erroneous and inaccurate statements regarding DEIR biological resources analyses, potential significance of biological resources impacts, and appropriate mitigation of biological resources impacts. The Lead Agency disagrees with these statements.

CBD also states that the DEIR improperly defers mitigation. This is incorrect. As required under CEQA, the Lead Agency has evaluated potentially significant impacts and has identified measures that would mitigate the impacts. The Lead Agency need not commit to any specific mitigation aspects as long as the Lead Agency commits to mitigate the impact. Such commitment is reflected in the DEIR Mitigation Measures (e.g., DEIR Mitigation Measure 4.7.1 presented at FEIR Section 4.0, *Mitigation Monitoring Program*). Parameters of the Project ITP specified under Mitigation Measure 4.7.1 would be developed in conjunction with CDFW through Fish and Game Code Section 2081 processes, and would be based on detailed final Project site plan designs.

Moreover, under CEQA, where impacts are of a type for which mitigation is known to be feasible (in this case, obtaining and complying with agency permits), but practical considerations prohibit devising such measures early in the planning process (precise parameters of the required permits are unknown at this time, but would be defined based on the Project final designs) the Lead Agency can permissibly articulate specific performance criteria and commit to ultimately devising mitigation measures that will satisfy the criteria. Mitigation Measure 4.7.1 articulates relevant permitting requirements and commits to complying with permit requirements. At this preliminary stage of development, it is impractical to determine/devise site or situational-appropriate mitigation beyond that identified in the DEIR. Other DEIR Mitigation Measures similarly commit to mitigating potentially significant impacts, and outline the means to assure such mitigation is timely and fully implemented. Findings and conclusions of the DEIR are not affected.

Comment CBD-9

4. The DEIR Fails to Consider Other, Feasible Mitigation Measures to Reduce the Project's Significant Impacts to Joshua Trees and Joshua Tree Habitat.

Because the available evidence demonstrates that the Mitigation Measure 4.7.1 is inadequate and does not comply with CEQA, and the Project's impacts will remain significant, the City must consider and adopt the following additional feasible mitigation measures.

In addition to Project design measures that will better avoid and minimize impacts onsite, offsite mitigation will be necessary. This should be in the form of protection and preservation of western Joshua trees in other areas at a suitable mitigation ratio. Given the Joshua Tree Woodland habitat onsite is a recognized Natural Community of Concern, and such high-quality woodland comprises only a small portion of the larger range of the western Joshua tree, a higher level of mitigation is warranted to offset the Project's significant impacts. A 5:1 mitigation ratio is appropriate here and is consistent with mitigation required by CDFW for projects impacting important desert tortoise habitat.

There are multiple paths to meeting mitigation requirements that the City can and should adopt to more successfully mitigate the Project's significant impacts to western Joshua trees. For example, the City and/or Project proponent may purchase credits from a CDFW-approved conservation or mitigation bank, which is a privately or publicly owned land managed for its natural resource values. Credits are established for the specific CESA-listed species that occur on the site. As a result of the recent advancement to candidacy of the species under CESA, CDFW has established a Western Joshua Tree Mitigation Fund in which payments may be made for mitigation purposes. (See Cal. Code Regs., tit. 14, § 749.10.) This is likely the most straightforward path and would align CEQA mitigation requirements with those needed to meet incidental take permit conditions under CESA. Alternatively, the Project proponent could work with a land trust or other qualified organization to acquire a conservation easement over habitat of equal or greater value. (See Gov. Code, § 65965 et seq.; Civil Code, § 813 et seq.) Regardless of which path the City and Project proponent follow, these mitigation approaches are eminently feasible; in order to comply with CEQA, the City must consider and adopt additional feasible mitigation for the Project's significant adverse impacts to western Joshua trees.

Response CBD-9

CBD reiterates various previous erroneous and inaccurate statements regarding DEIR biological resources analyses, potential significance of biological resources impacts, and appropriate mitigation of biological resources impacts. The Lead Agency disagrees with these statements. Responses to these CBD comments have been provided previously. Please refer to Responses CBD-1 – CBD-8.

Globally, the DEIR and supporting technical analyses accurately and appropriately evaluate potential biological resources impacts. Effective and enforceable mitigation is provided for those biological resources impacts determined to be potentially significant. Application of the proposed mitigation would reduce potentially significant impacts to levels that would be less-than-significant. Findings and conclusions of the DEIR are not affected.

Comment CBD-10

B. The DEIR Does Not Adequately Describe the Environmental Baseline for Various Other Species.

The DEIR fails to provide adequate baseline information and description of the environmental setting for species other than the western Joshua tree. This deficiency extends to the DEIR's treatment of rare plants, animals, and communities, including desert tortoise, Mohave ground squirrel, burrowing owls and other imperiled and desert species, as well as more common species likely present on the Project site. For some species or habitats baseline conditions are lacking or totally absent and as a result no impact assessment is provided for these biological resources. The failure to address numerous species may be the result of inadequate surveys. For example, the DEIR conducted no pre-project surveys for Desert tortoise – a threatened species under the federal and state Endangered Species Acts (ESA) – and Mohave ground squirrel – a threatened species under the state ESA. Without conducting any surveys to inform an adequate baseline, the Project presumed both species were absent from the Project site, based merely on the observation that “the site and adjacent open spaces are surrounded by existing development and are isolated from known occupied areas.” (DEIR Appendix G, Attachment C.) To the contrary, under the DEIR's own observation, and as shown in the DEIR's map and photographs of the Project site, “[t]he Project

site, and all properties immediately adjacent, are currently vacant.” (DEIR at 3-1, Figure 3.2-1.) Desert tortoise and Mojave ground squirrel surveys are necessary to evaluate if the species exist on the site. Indeed, CDFW’s Conservation Strategy for the Mohave Ground Squirrel documented squirrels near the Project site during its most recent status review, most relevantly in the suburban/wildland interface in the general area south of Edwards Air force Base. (CDFW 2019.)

The DEIR also lacks an adequate baseline for relevant plant species. Many sensitive plant species are either annuals or herbaceous perennials. The plant list in Attachment C of Appendix G only found Joshua Tree, presuming the remaining special-status plant species were absent, even though the vast majority – according to the DEIR – bloom in the spring. Seasonally appropriate surveys (e.g., spring surveys after adequate precipitation) are necessary to accurately evaluate whether these sensitive annual and herbaceous perennial species are present on site. In CDFW’s comments on the Notice of Preparation (NOP), CDFW cautioned the City to ensure its surveys were seasonally appropriate:

The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. (Appendix A, Initial NOP Study, CDFW Comment Letter, p. 4 [emphasis added].) The City ignored this obligation, and the DEIR conducted one survey on September 22, 2021.

Consequently, because of the deficiencies of the baseline data for the proposed project area, the DEIR fails to adequately describe the environmental baseline for biological conditions on the Project site. The DEIR should be revised to fully describe and disclose these baseline conditions, and that baseline must be used to evaluate the impacts of the proposed Project.

Response CBD-10

CBD states “[t]he DEIR fails to provide adequate baseline information and description of the environmental setting for species other than the western Joshua tree.” This is incorrect. The Lead Agency disagrees with such statements. As discussed in the DEIR and the Project Biological Resources Assessment, due to decades of use of the Project site

for recreational uses, protected species are not expected to occur within the Project site (DEIR, p. 4.7-8 et. al; Project Biological Resources Assessment, p. 8 et. al). The DEIR conclusion in this regard is based in fact, i.e., there were no observed desert tortoise, Mojave ground squirrel or other protected species within the Project site, and there is no suitable habitat within the Project site that could support these species. A general habitat assessment/field investigation of the Project site was conducted to document existing conditions and assess the potential for special-status biological resources to occur within the project site.”³ As stated in the DEIR “. . . previously-described on-site anthropogenic disturbances have eliminated the natural plant communities that once occurred on-site, which has reduced potential foraging and nesting/denning opportunities for wildlife species” (DEIR, p. 4.7-8).

The DEIR conclusion is further supported by accepted resources research, review, and survey protocols. As stated in the Project biological resources assessment “[a] literature review and records search were conducted to determine which special-status biological resources have the potential to occur on or within the general vicinity of the Project site” (Biological Resources Assessment, p. 1).

Nonetheless, recognizing CDFW concerns regarding the [remote] potential for protected wildlife species to exist within the Project site, thorough pre-construction surveys for the desert tortoise and the Mojave ground squirrel will be conducted as suggested by CDFW. To these ends, Mitigation Measures 4.7.5, 4.7.6 (recommended by CDFW) are incorporated at Final EIR Section 4.0, *Mitigation and Monitoring Program*.

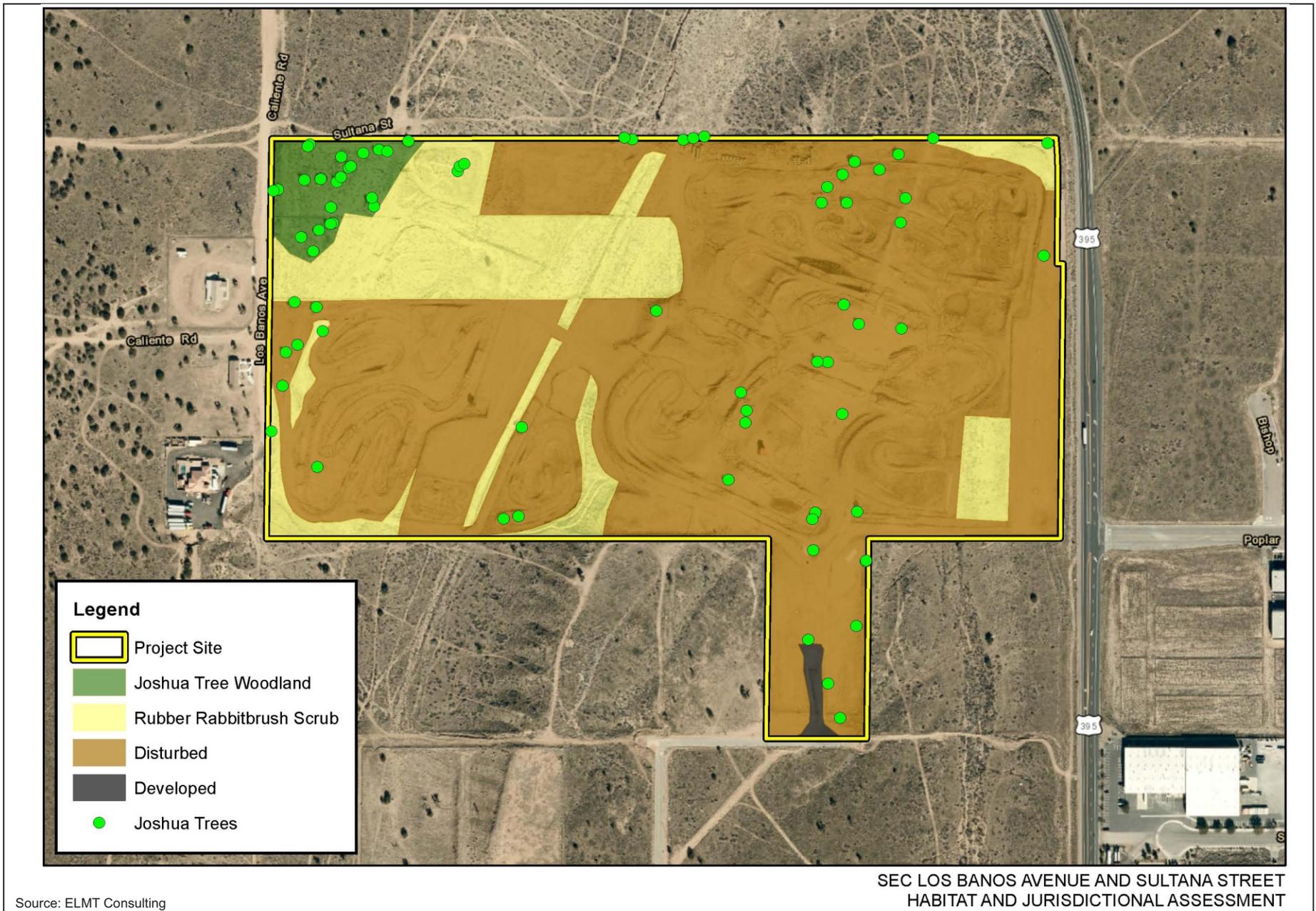
With regard to CBD comments addressing potential impacts to other plant species, the Project Biological Resources Assessment conclusions are supported by surveyed absence of special status plant populations and sensitive natural communities within the Project site. Biological Resources Assessment Exhibit 5 (reproduced as Figure 1, following)

³ DEIR Appendix G: *Biological Resources Assessment for the Proposed Project located at the Southeast Corner of the Intersection of Los Banos Avenue and Sultana Street in the City of Hesperia, San Bernardino County, California* (ELMT Consulting) November 2, 2021, pp. 1, 2. See also Biological Resources Assessment topical discussions at: *Literature Review, Habitat Assessment/Field Investigation, Soil Series Assessment, Plant Communities, Plants, Wildlife, and Jurisdictional Drainages and Wetlands* (Assessment, pp. 2 – 3).

accurately presents the extent and state of vegetation within the Project site. As indicated, a cluster of WJT is present within the northwest corner of the Project site. This area would not be disturbed or otherwise affected by the Project. The predominance of the Project site comprises heavily-disturbed property evidenced by traversing motorcycle trails. Sparse WJT individuals and interspersed areas rubber rabbitbrush scrub are also present. No special status plant populations or sensitive natural communities were observed within the Project site.

The Assessment conclusions are bolstered and supported by cross-referencing potentially occurring species, their habitat requirements and on-site observations as summarized at Biological Resources Assessment Table C-1: *Potentially Occurring Special-Status Biological Resources, Special Status Plant Species* (excerpted in pertinent part at Table 1, following). As indicated at Table 1, with the exception of WJT, the Project site does not provide habitat necessary to support special-status plant species nor were special-status plant species observed with the Project site. The Biological Resources Assessment therefore appropriately concludes that, again with the exception of WJT, special status plant species are presumed to be absent from the Project site.

Nonetheless, recognizing CDFW concerns regarding the [remote] potential for protected Special Status Native Plant Populations and Sensitive Natural Communities to exist within the Project site, thorough pre-construction surveys for these plant communities and natural communities will be conducted as suggested by CDFW. Protection and/or mitigation for impacts to these species (if any are encountered) shall be accomplished as outlined at recommended Mitigation Measure 4.7.7. Mitigation Measure 4.7.7 is incorporated at Final EIR Section 4.0, *Mitigation and Monitoring Program*. Findings and conclusions of the DEIR are not affected.



Source: ELMT Consulting

Figure 1
Project Site Vegetation

<i>Scientific Name</i> Common Name	Status	Habitat Description	Observed On-site	Potential to Occur
<i>Vireo bellii pusillus</i> least Bell's vireo	Fed: END CA: END	Primarily occupy Riverine riparian habitat that typically feature dense cover within 1 -2 meters of the ground and a dense, stratified canopy. Typically it is associated with southern willow scrub, cottonwood-willow forest, mule fat scrub, sycamore alluvial woodlands, coast live oak riparian forest, arroyo willow riparian forest, or mesquite in desert localities. It uses habitat which is limited to the immediate vicinity of water courses, 2,000 feet elevation in the interior.	No	Presumed Absent There is no suitable habitat present within or adjacent to the project site.
<i>Vireo vicinior</i> gray vireo	Fed: None CA: SSC	A common factor to the habitat type is shrub cover that forms a continuous zone of twig growth from one to five feet above the ground. Shrubbery may either be closed as in chaparral, or partly open, as in the understory of pinyon-juniper woodland.	No	Presumed Absent There is no suitable habitat present within or adjacent to the project site.
<i>Xerospermophilus mohavensis</i> Mohave ground squirrel	Fed: None CA: THR	Restricted to the Mojave Desert in open desert scrub, alkali desert scrub, annual grassland, and Joshua tree woodland. Prefers sandy to gravelly soils and tends to avoid rocky areas. Occurs sympatrically with the white-tailed antelope squirrel.	No	Presumed Absent Suitable foraging and burrowing habitat are present within the project site. Based on surrounding development and known distributions and occurrences, this species is likely precluded from the site.
SPECIAL-STATUS PLANT SPECIES				
<i>Asclepias nyctaginifolia</i> Mojave milkweed	Fed: None CA: None CNPS: 2B.1	Grows in Mojavean desert scrub and pinyon and juniper woodland. Found at elevations ranging from 2,870 to 5,580 feet. Blooming period is from May to June.	No	Presumed Absent There is no suitable habitat present within or adjacent to the project site.
<i>Calochortus palmeri</i> var. <i>palmeri</i> Palmer's mariposa-lily	Fed: None CA: None CNPS: 1B.2	Occurs in meadows and seeps, chaparral, and lower montane coniferous forest in vernal moist places. From 3,281 to 7,841 feet in elevation. Blooming period is from April to July.	No	Presumed Absent There is no suitable habitat present within or adjacent to the project site.
<i>Calochortus plummerae</i> Plummer's mariposa-lily	Fed: None CA: None CNPS: 4.2	Prefers openings in chaparral, foothill woodland, coastal sage scrub, valley foothill grasslands, cismontane woodland, lower montane coniferous forest and yellow pine forest. Often found on dry, rocky slopes and soils and brushy areas. Can be very common after a fire. Found at elevations ranging from 459 to 6,299 feet. Blooming period is from May to July.	No	Presumed Absent There is no suitable habitat present within or adjacent to the project site.
<i>Canbya candida</i> white pygmy-poppy	Fed: None CA: None CNPS: 4.2	Occurs on gravelly, sandy, granitic soils in Joshua tree woodland, Mojavean desert scrub, and pinyon and juniper woodland. Found at elevations ranging from 2,297 to 5,249 feet above mean sea level (msl). Blooming period is from March to June.	No	Presumed Absent There is no suitable habitat within or adjacent to the project site.
<i>Castilleja plagiotoma</i> Mojave paintbrush	Fed: None CA: None CNPS: 4.3	Grows within Great Basin scrub (alluvial), Joshua tree woodland, lower montane coniferous forest, and pinyon and juniper woodland habitats. Found at elevations ranging from 984 to 8,202 feet. Blooming period is from April to June.	No	Presumed Absent There is no suitable habitat within or adjacent to the project site.

Source: ELMT Consulting

Scientific Name Common Name	Status	Habitat Description	Observed On-site	Potential to Occur
<i>Chorizanthe spinosa</i> Mojave spineflower	Fed: None CA: None CNPS: 4.2	Grows in alkaline or non-alkaline soils in chenopod scrub, Joshua tree woodland, Mojavean desert scrub, and playas. Found at elevations ranging from 20 to 4,265 feet. Blooming period is from March to July.	No	Presumed Absent There is no suitable habitat within or adjacent to the project site.
<i>Chorizanthe xanti</i> var. <i>leucotheca</i> white-bracted spineflower	Fed: None CA: None CNPS: 1B.2	Found in sandy or gravelly soils within coastal scrub (alluvial fans), Mojavean desert scrub, pinyon and juniper woodland habitats. Found at elevations ranging from 984 to 3,937 feet. Blooming period is from April to June.	No	Presumed Absent There is no suitable habitat present within or adjacent to the project site.
<i>Diplacus johnstonii</i> Johnston's monkeyflower	Fed: None CA: None CNPS: 4.3	Grows within lower montane coniferous forest (scree, disturbed areas, rocky or gravelly, roadside) habitat. Found at elevations ranging from 3,199 to 9,580 feet. Blooming period is typically from May to August and can begin as early as April.	No	Presumed Absent. No suitable habitat is present within or adjacent to the project site.
<i>Eremothera boothii</i> ssp. <i>boothii</i> Booth's evening-primrose	Fed: None CA: None CNPS: 2B.3	Occurs in desert washes, open plains, and scrubland. Found at elevations ranging from 814 to 2,402 feet above msl. Blooming period is from June to August.	No	Presumed Absent. Suitable habitat is present within the project site; however, the project site occurs outside the known elevation range for this species.
<i>Eriogonum umbellatum</i> var. <i>minus</i> alpine sulphur-flowered buckwheat	Fed: None CA: None CNPS: 4.3	Occurs in gravelly soils within subalpine coniferous forest and upper montane coniferous forests. Found at elevations ranging from 5,906 to 10,066 feet above msl. Blooming period is from June to September.	No	Presumed Absent There is no suitable habitat present within or adjacent to the project site. The project site occurs outside of the known elevation range for this species.
<i>Heuchera parishii</i> Parish's alumroot	Fed: None CA: None CNPS: 1B.3	Occurs in rocky, sometimes carbonate soils in alpine boulder and rock fields, lower and upper montane coniferous forests, and subalpine coniferous forests. Found at elevations ranging from 4,921 to 12,467 feet. Blooming period is from June to August.	No	Presumed Absent There is no suitable habitat present within or adjacent to the project site. The project site occurs outside of the known elevation range for this species.
<i>Johnstonella costata</i> ribbed cryptantha	Fed: None CA: None CNPS: 4.3	Occurs in sandy soils within desert dunes and Mojavean and Sonoran desert scrub. Found at elevations ranging from -197 to 1,640 feet. Blooming period is from February to May.	No	Presumed Absent There is no suitable habitat present within or adjacent to the project site. The project site occurs outside of the known elevation range for this species.
<i>Juglans californica</i> southern California black walnut	Fed: None CA: None CNPS: 4.2	Found in chaparral, cismontane woodland, coastal scrub, and riparian woodland habitats. Found at elevations ranging from 164 to 2,953 feet. Blooming period is from March to August.	No	Presumed Absent There is no suitable habitat present within or adjacent to the project site. The project site occurs outside of the known elevation range for this species.
<i>Lilium humboldtii</i> ssp. <i>ocellatum</i> ocellated humboldt lily	Fed: None CA: None CNPS: 4.2	Found in openings within chaparral, cismontane woodland, coastal scrub, lower montane coniferous forest, and riparian woodland habitats. Found at elevations ranging from 98 to 5,906 feet in elevation above msl. Blooming period is from March to August.	No	Presumed Absent. No suitable habitat is present within or adjacent to the project site.

Source: ELMT Consulting

<i>Scientific Name</i> Common Name	Status	Habitat Description	Observed On-site	Potential to Occur
<i>Loeflingia squarrosa</i> var. <i>artemisiarum</i> sagebrush loeflingia	Fed: None CA: None CNPS: 2B.2	Grows in sandy soils within desert dunes, Great Basin scrub, and Sonoran desert scrub habitats. Blooming period is from April to May. Grows in elevation from 2,297 to 5,299 feet.	No	Presumed absent. No suitable habitat is present within the project site.
<i>Muilla coronata</i> crowned muilla	Fed: None CA: None CNPS: 4.2	Found in chenopod scrub, Joshua tree woodland, Mojavean desert scrub, and pinyon and juniper woodland habitats. Blooming period is from May to April. Grows in elevation from 2,198 to 6,430 feet.	No	Presumed Absent There is no suitable habitat within or adjacent to the project site.
<i>Opuntia basilaris</i> var. <i>brachyclada</i> short-joint beavertail	Fed: None CA: None CNPS: 1B.2	Habitats include chaparral, Joshua tree woodland, Mojavean desert scrub, pinyon and juniper woodlands. Found at elevations ranging from 1,394 to 5,906 feet. Blooming period is from April to August.	No	Presumed Absent There is no suitable habitat present within or adjacent to the project site.
<i>Romneya coulteri</i> Coulter's matilija poppy	Fed: None CA: None CNPS: 4.2	Found in recently burned areas within chaparral and coastal scrub habitats. Found at elevations ranging from 66 to 3,937 feet. Blooming period is from March to July.	No	Presumed Absent There is no suitable habitat within or adjacent to the project site.
<i>Saltugilia latimeri</i> Latimer's woodland-gilia	Fed: None CA: None CNPS: 1B.2	Habitats include chaparral, Mojavean desert scrub, pinyon and juniper woodland. Prefers rocky or sandy, often granitic soils. Found at elevations ranging from 1,312 to 6,234 feet. Blooming period is from March to June.	No	Presumed Absent There is no suitable habitat present within or adjacent to the project site.
<i>Schoenus nigricans</i> black bog-rush	Fed: None CA: None CNPS: 2B.2	Grows within marshes and swamps (often alkaline). Found at elevations ranging from 492 to 6,562 feet. Blooming period is from August to September.	No	Presumed Absent There is no suitable habitat within or adjacent to the project site.
<i>Streptanthus bernardinus</i> Laguna Mountains jewelflower	Fed: None CA: None CNPS: 4.3	Associated with chaparral and lower montane coniferous forest. Found at elevations ranging from 2,198 to 8,202 feet above msl. Blooming period is from May to August.	No	Presumed Absent There is no suitable habitat within or adjacent to the project site.
<i>Symphotrichum defoliatum</i> San Bernardino aster	Fed: None CA: None CNPS: 1B.2	Grows in cismontane woodland, coastal scrub, lower montane coniferous forest, meadows and seeps, marshes and swamps, valley and foothill grassland (vernally mesic). Can be found growing near ditches, streams, and springs within these habitats. Found at elevations ranging from 7 to 6,693 feet. Blooming period is from July to November.	No	Presumed Absent There is no suitable habitat within or adjacent to the project site.
<i>Symphotrichum greatae</i> Greata's aster	Fed: None CA: None CNPS: 1B.3	Grows in mesic soils within broadleafed upland forest, chaparral, cismontane woodland, lower montane coniferous forest, and riparian woodland habitats. Found at elevations ranging from 984 to 6,594 feet. Blooming period is from June to October.	No	Presumed Absent There is no suitable habitat within or adjacent to the project site.
<i>Syntrichopappus lemmonii</i> Lemmon's syntrichopappus	Fed: None CA: None CNPS: 4.3	Occurs in sandy or gravelly soils within chaparral, Joshua tree woodland, and pinyon and juniper woodland. Found at elevations ranging from 1,640 to 6,003 feet. Blooming period is typically from April to May and occasionally through June.	No	Presumed Absent There is no suitable habitat within or adjacent to the project site.

Source: ELMT Consulting

<i>Scientific Name</i> Common Name	Status	Habitat Description	Observed On-site	Potential to Occur
<i>Yucca brevifolia</i> western Joshua tree	Fed: None CA: CE CNPS: N/A	Occurs in a variety of arid habitats within the Mojave Desert. Found at elevations ranging from 1,600 to 6,600 feet. Blooming period is from March to June.	Yes	Present Was observed through the project site.

U.S. Fish and Wildlife Service (Fed) - Federal
 END – Federal Endangered
 THR – Federal Threatened
 DL - Delisted

California Department of Fish and Wildlife (CA) - California
 END – California Endangered
 THR – California Threatened
 CTHR – California Candidate Threatened
 DL - Delisted
 FP – California Fully Protected
 SSC – California Species of Special Concern
 WL – California Watch List
 CE – Candidate Endangered

California Native Plant Society (CNPS) - California Rare Plant Rank
 1B Plants Rare, Threatened, or Endangered in California and Elsewhere
 2B Plants Rare, Threatened, or Endangered in California, but More Common Elsewhere
 4 Plants of Limited Distribution – A Watch List

Threat Ranks
 0.2- Moderately threatened in California
 0.3- Not very threatened in California

Source: ELMT Consulting

Comment CBD-11

C. The DEIR Fails to Identify and Analyze Direct and Indirect Impacts to Other Species.

The DEIR fails to adequately analyze the direct, indirect, and cumulative impacts of the proposed Project on the environment. The City must look at avoidance, minimization and reasonable mitigation measures to avoid impacts in the DEIR but failed to do so here. Even in those cases where the extent of impacts may be somewhat uncertain due to the complexity of the issues, the City is not relieved of its responsibility to discuss avoidance through alternatives, minimization or mitigation of reasonably likely impacts at the outset.

In addition to inadequately describing the baseline of biological conditions, the DEIR fails to fully analyze or disclose the Project's direct, indirect, and cumulative impacts to numerous species, or to mitigate those impacts. For example, while the DEIR states that it will conduct burrowing owl surveys 30 days before construction (DEIR at 4.7-14), the DEIR includes no plan for avoidance or translocation in the event that burrowing owls are found on the site. A burrowing owl translocation plan is required if burrowing owls are identified on the Project site. The DEIR does not have such a plan — instead it simply states that the Applicant “shall prepare and implement a plan.” (DEIR at 4.7-14.) This provides the public and decision makers with no information by which to assess the Project's potential impacts on burrowing owls and further constitutes unlawfully deferred mitigation.

Failure to conduct adequate surveys and adopt proper management plans prior to Project approval and construction effectively eliminates the most important function of surveys: using the information from the surveys to avoid and minimize harm caused by the project and reduce the need for mitigation. Often efforts to mitigate harm are far less effective than avoiding and preventing the harm in the first place. In addition, without understanding the scope of harm before it occurs, it is difficult to quantify an appropriate amount and type of mitigation.

Response CBD-11

CBD asserts that “[t]he DEIR fails to adequately analyze the direct, indirect, and cumulative impacts of the proposed Project on the environment.” CBD assertions are again incorrect. The Lead Agency disagrees with CBD assertions.

Extensive evaluation and substantiation of the Project's potential biological resources impacts is provided at DEIR Section 4.7, *Biological Resources*; DEIR Appendix G, *Biological Resources Assessment*; and DEIR Section 5.1.1.7, *Cumulative Impacts Related to Biological Resources*. CBD disregards and misstates mitigation that would reduce the Project's individual and cumulative impacts to levels that would be less-than-significant.

For instance, contrary to CBD assertion otherwise, the DEIR does not "simply state that the Applicant 'shall prepare and implement a plan.'" Correctly and in context, with regard to mitigation for potential impacts to the burrowing owl, the DEIR states. . ." A pre-construction burrowing owl survey will be conducted within 30-days prior to construction to avoid any potential project-related impacts to this species. If burrowing owls are documented on-site, the Applicant shall prepare and implement a plan for avoidance or passive exclusion, in coordination with CDFW. Methodology for surveys, impact analysis, and reporting shall follow the recommendations and guidelines provided within the California Department of Fish and Game Staff Report on Burrowing Owl Mitigation (CDFW 2012 Staff Report)." Clearly, the DEIR mitigation provides direction for developing and implementing mitigation for potential impacts to the burrowing owl, and requires that the plan comport with applicable CDFW recommendations and guidelines.

The Lead Agency recognizes CDFW as the CEQA Trustee/Responsible Agency providing biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources. CDFW has not indicated that Project would result in significant and unavoidable biological resources impacts. Rather, CDFW has provided useful input that would strengthen and broaden the DEIR mitigation measures to ensure that the Project's potential impacts to biological resources would be reduced to levels that would be less-than-significant.

In response to CDFW comments and suggestions, Project biological mitigation measures have been supplemented and refined to bolster mitigation efficacy. All Project Mitigation Measures are presented at FEIR Section 4.0, *Mitigation Monitoring Program*. The Project

Mitigation Monitoring Program, as implemented by the City would ensure that mitigation measures are timely and effectively applied. Various other CBD statements comprise reiterations of previous inaccuracies. Responses CBD-1 – CBD-10 rebut these statements. Findings and conclusions of the DEIR are not affected.

Comment CBD-12

II. THE DEIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE THE PROJECT'S GREENHOUSE GAS EMISSIONS.

The DEIR's analysis of the proposed Project's greenhouse gas ("GHG") emissions (DEIR Section 4.4-1) is also deeply flawed. The Project would result in significant amounts of GHG emissions during construction and operation, yet the DEIR does not properly analyze the significance of, or attempt to mitigate, all the significant GHG impacts. (See CEQA Guidelines § 15126.2; Pub. Res. Code § 21002.)

Response CBD-12

The Lead Agency disagrees with CBD statements regarding the significance of Project GHG emissions. CBD incorrectly states that the DEIR analysis of Project GHG emissions is deeply flawed. CBD incorrectly states that the Project would result in "significant amounts" of GHG emissions during Project construction and operations.

Rather, it is CBD's basis for determining GHG impact significance and related conclusory statements that are deeply flawed. The DEIR substantiates and correctly concludes that the Project would not generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment; or GHG emissions that would conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases (DEIR, pp. 4.4-36 – 4.4-44; DEIR Appendix D, *Greenhouse Gas Analysis*, pp. 50 – 56). Further discussion is provided under the following Responses to CBD Comments. Findings and conclusions of the DEIR are not affected.

Comment CBD-13

A. Climate Change Is a Catastrophic and Pressing Threat to California.

A strong, international scientific consensus has established that human-caused climate change is causing widespread harms to human society and natural systems, and that the threats from climate change are becoming increasingly dangerous. The Intergovernmental Panel on Climate Change (“IPCC”), the leading international scientific body for the assessment of climate change, concluded in its 2014 Fifth Assessment Report that: “[w]arming of the climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia. The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, and sea level has risen,” and further that “[r]ecent climate changes have had widespread impacts on human and natural systems.” (IPCC 2014, p. 2) These findings were echoed in the United States’ own 2014 Third National Climate Assessment and 2017 Climate Science Special Report, prepared by scientific experts and reviewed by the National Academy of Sciences and multiple federal agencies. The Third National Climate Assessment concluded that “[m]ultiple lines of independent evidence confirm that human activities are the primary cause of the global warming of the past 50 years” (Melillo et al. 2014, p. 7) and “[i]mpacts related to climate change are already evident in many regions and are expected to become increasingly disruptive across the nation throughout this century and beyond.” (Id. at 10.) The 2017 Climate Science Special Report similarly concluded:

[B]ased on extensive evidence, ... it is extremely likely that human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th century. For the warming over the last century, there is no convincing alternative explanation supported by the extent of the observational evidence.

In addition to warming, many other aspects of global climate are changing, primarily in response to human activities. Thousands of studies conducted by researchers around the world have documented changes in surface, atmospheric, and oceanic temperatures; melting glaciers; diminishing snow cover; shrinking sea ice; rising sea levels; ocean acidification; and increasing atmospheric water vapor.

(USGCRP 2017, p. 10.)

The U.S. National Research Council determined that “[c]limate change is occurring, is caused largely by human activities, and poses significant risks for—and in many cases is already affecting—a broad range of human and natural systems.” (NRC 2010, p. 2.) Based on observed and expected harms from climate change, in 2009 the U.S. Environmental Protection Agency found that greenhouse gas pollution endangers the health and welfare of current and future generations. (74 Fed. Reg. 66496 (Dec. 15, 2009) [U.S. EPA, Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule].)

These authoritative climate assessments decisively establish the dominant role of anthropogenic GHG emissions in driving climate change. As the Third National Climate Assessment explains: “observations unequivocally show that climate is changing and that the warming of the past 50 years is primarily due to human-induced emissions of heat-trapping gases.” (Melillo et al. 2014, p. 2; see also id. at 15 [Finding 1: “The global warming of the past 50 years is primarily due to human activities, predominantly the burning of fossil fuels.”].) The Assessment makes clear that “reduc[ing] the risks of some of the worst impacts of climate change” will require “aggressive and sustained greenhouse gas emission reductions” over the course of this century. (Id. at 13-14, 649; see also id. at 15 [Finding 3: “Human-induced climate change is projected to continue, and it will accelerate significantly if global emissions of heat-trapping gases continue to increase.”].)

The impacts of climate change will be felt by humans and wildlife. Climate change is increasing stress on species and ecosystems—causing changes in distribution, phenology, physiology, vital rates, genetics, ecosystem structure and processes—in addition to increasing species extinction risk. (Warren et al. 2011.) Climate-change-related local extinctions are already widespread and have occurred in hundreds of species. (Weins 2016.) Catastrophic numbers of species extinctions are projected to occur during this century if climate change continues unabated. (Thomas, et al. 2004; Maclean et al. 2011; Urban 2015.) In California, climate change will transform our climate, resulting in impacts including, but not limited to, increased temperatures and wildfires and a reduction in snowpack and precipitation levels and water availability.

Therefore, immediate and aggressive GHG emission reductions are necessary to keep warming well below 2°C above pre-industrial levels. The IPCC Fifth Assessment Report and other expert assessments have established global carbon budgets, or the total amount of carbon that can be burned while maintaining some probability of staying below a given temperature target. According to the IPCC, total cumulative anthropogenic emissions of CO₂ must remain below about 1,000 GtCO₂ from 2011 onward for a 66 percent probability of limiting warming to 2°C above pre-industrial levels, and to 400 GtCO₂ from 2011 onward for a 66 percent probability of limiting warming to 1.5°C. (IPCC 2013, p. 25; IPCC 2014, pp. 63-64, Table 2.2.) These carbon budgets have been reduced to 850 GtCO₂ and 240 GtCO₂, respectively, from 2015 onward. (Rogeli et al. 2016, Table 2.) Given that global CO₂ emissions in 2016 alone totaled 36 GtCO₂ (Le Quéré et al. 2017), humanity is rapidly consuming the remaining carbon budget needed to avoid the worst impacts of climate change. As of early 2018, climate policies by the world's countries would lead to an estimated 3.4°C of warming, and possibly up to 4.7°C of warming, well above the level needed to avoid the worst dangers of climate change. (Climate Action Tracker 2017.)

The United States has contributed more to climate change than any other country. The U.S. is the world's biggest cumulative emitter of GHGs, responsible for 27 percent of cumulative global CO₂ emissions since 1850, and the U.S. is the world's second highest emitter on an annual and per capita basis. (World Resources Institute 2014.) Nonetheless, U.S. climate policy is wholly inadequate to meet the international climate target to hold global average temperature rise to well below 2°C above pre-industrial levels to avoid the worst dangers of climate change.

In its 2018 Special Report on Global Warming of 1.5°C, the IPCC—the leading international scientific body for the assessment of climate change—describes the devastating harms that would occur at 2°C warming. The report highlights the necessity of limiting warming to 1.5°C to avoid catastrophic impacts to people and life on Earth. (IPCC 2018.) The report also provides overwhelming evidence that climate hazards are more urgent and more severe than previously thought, and that aggressive reductions in emissions within the next decade are essential to avoid the most devastating climate change harms.

In response to inadequate action on the national level, California has taken steps through legislation and regulation to fight climate change and reduce statewide GHG emissions. Enforcement of and compliance with these measures is essential to help stabilize the climate and avoid catastrophic impacts to our environment. AB 32 mandates that California reach 1990 levels of GHG emissions by the year 2020, equivalent to approximately a 15 percent reduction from a business-as-usual projection. (Health & Saf. Code § 38550.) Based on the warning of the IPCC and leading climate scientists, Governor Brown issued an executive order in April 2015 requiring GHG emissions reductions to 40 percent below 1990 levels by 2030. (Executive Order B-30-15 (2015).) The Executive Order is in line with a previous Executive Order mandating the state reduce emission levels to 80 percent below 1990 levels by 2050 in order to minimize significant climate change impacts. (Executive Order S-3-05 (2005).) In enacting SB 375, the legislature has also recognized the critical role that land use planning plays in achieving greenhouse gas emission reductions in California.

The Legislature has found that failure to achieve GHG emissions reductions would be “detrimental” to California’s economy. (Health & Saf. Code § 38501(b).) In his 2015 Inaugural Address, Governor Brown reiterated his commitment to reduce greenhouse gas emissions with three new goals for the next fifteen years:

- *To increase electricity derived from renewable sources to 50 percent;*
- *To reduce petroleum use in cars and trucks by 50 percent;*
- *To double the efficiency of existing buildings and make heating fuels cleaner.*

(Brown 2015.)

In 2018, Governor Brown issued Executive Order B-55-18, in which he declared it to be a statewide goal to “achieve carbon neutrality as soon as possible, and no later than 2045, and achieve and maintain net negative emissions thereafter.”

Although some sources of GHG emissions may appear insignificant in isolation, climate change is a problem with cumulative impacts and effects. (Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin. (9th Cir. 2008) 538 F.3d 1172, 1217 [“the impact of greenhouse gas

emissions on climate change is precisely the kind of cumulative impacts analysis” that agencies must conduct].) One source or one small project may not appear to have a significant effect on climate change, but the combined impacts of many sources can drastically damage California’s climate as a whole. Therefore, project-specific GHG emissions disclosure, analysis and mitigation is vital to California meeting its climate goals and maintaining our climate.

The impacts of climate change are already being felt by humans and wildlife. Thousands of studies conducted by researchers around the world have documented changes in surface, atmospheric, and oceanic temperatures; melting glaciers; diminishing snow cover; shrinking sea ice; rising sea levels; ocean acidification; and increasing atmospheric water vapor. (USGCRP 2017.) In California, climate change will result in impacts including, but not limited to, increased temperatures and wildfires and a reduction in snowpack and precipitation levels and water availability.

Given the increasingly urgent need for drastic action to reduce GHG emissions, the DEIR’s failure to fully disclose, analyze, mitigate, or consider alternatives to reduce the Project’s significant climate change effects is all the more alarming.

The Project would result in significant amounts of GHG emissions during construction and operation, yet the DEIR does not properly analyze the significance of, or attempt to mitigate, all the significant GHG impacts. (See CEQA Guidelines § 15126.2; Pub. Res. Code § 21002.) The DEIR’s analysis of the proposed Project’s greenhouse gas (“GHG”) emissions (DEIR Section 4.4) is also deeply flawed.

Response CBD-13

CBD provides an overview of the adverse effects of GHG emissions. The DEIR and Project GHG Analysis recognize and disclose sources and adverse effects of GHG emissions (DEIR, pp. 4.4-4 – 4.4-12, pp. 4.4-36 – 4.4-44; DEIR Appendix D, *Greenhouse Gas Analysis*, pp. 9 – 14, pp. 16 – 18).

The Lead Agency disagrees with CBD statements regarding the significance of Project GHG emissions. CBD incorrectly states that the DEIR analysis of Project GHG emissions

is deeply flawed. CBD incorrectly states that the Project would result in “significant amounts” of GHG emissions during Project construction and operations.

As substantiated in the DEIR and the following Responses, CBD’s basis for determining GHG impact significance and related conclusory statements are deeply flawed. The DEIR substantiates and correctly concludes that the Project would not generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment; or GHG emissions that would conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases (DEIR, pp. 4.4-36 – 4.4-44; DEIR Appendix D, *Greenhouse Gas Analysis*, pp. 50 – 56). Project GHG emissions impacts are therefore less-than-significant. Findings and conclusions of the DEIR are not affected.

Comment CBD-14

B. The EIR’s Use of a 100,000 MTCO₂e Annual Emissions Threshold of Significance for GHG Emissions Drastically Downplays the Project’s Significant Impacts and Is Not Supported by Substantial Evidence.

The DEIR estimates the Project’s GHG emissions, (including the applicable regulatory requirements), to be between 6,498.12 and 8,383.61 MTCO₂e³ annually during the life of the Project. (DEIR at 4.4-36, 4.4-37.)⁴ The DEIR then purports to evaluate this enormous emissions impact against the first of the CEQA Guidelines Appendix G thresholds, asking whether the project would “generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment?” (DEIR at 4.4-36 [citing CEQA Guidelines Appendix G]; see also DEIR Appendix D [Greenhouse Gas Analysis Report] at p. 43.) In applying the threshold, however, the DEIR substitutes a numeric threshold of an astounding 100,000 MTCO₂e annually, finding that the proposed Project would not exceed 100,000 MTCO₂e annually and thus that the Project’s GHG impacts are less than significant, requiring no mitigation. (DEIR at 4.3-37 to -38.)

A lead agency’s selection of a threshold of significance must be supported with substantial evidence. Moreover, a determination that an environmental impact complies with a particular threshold of significance does not relieve a lead agency of its obligation to consider evidence that

indicates the impact may be significant despite compliance with the threshold. (CEQA Guidelines § 15064(b)(2).) If evidence shows that an environmental impact might be significant despite the significance standard used in the EIR, the agency must address that evidence. (Protect the Historic Amador Waterways v. Amador Water Agency (2004) 116 Cal.App.4th 1099, 1111.)

The DEIR's use of 100,000 MTCO_{2e} annual emissions as a threshold of significance is not supported by substantial evidence and drastically downplays the Project's significant GHG emissions impacts. The DEIR states:

On May 13, 2010 EPA finalized the GHG Tailoring Rule (75 FR 31514, June 3, 2010). The Tailoring Rule sets major source emissions thresholds that define when federal operating permits under Prevention Significant Deterioration (PSD) or Title V are required. The Tailoring Rule establishes a threshold of 100,000 tons per year or 90,719 MT per year of GHGs from new sources above which sources are considered major sources requiring a federal operating permit.

As such, the MDAQMD has adopted a significance threshold for GHGs of 100,000 tons per year and is thus applied to this Project. More specifically, 100,000 tons per year of GHG emissions from a single facility constitutes major sources that require a federal operating permit. Similarly, the MDAQMDs NOX significance threshold of 25 tons per year is equal to the major source threshold applicable to areas designated severe non-attainment for ozone. As such, use of the EPAs determination of whether a Project is a major source and consequently establishing a threshold based on that is supported by substantial evidence.

(DEIR Appendix D [Greenhouse Gas Analysis Report] at pp. 40-41.)

Neither justification for its attempted use of this threshold is valid.

The EIR determines that the threshold is justified because the EPA’s prior “Tailoring Rule” established that new sources emitting GHGs in excess of 100,000 tons per year are considered “major sources” under the federal Clean Air Act and require a federal operating permit under that statute. (DEIR Appendix D [Greenhouse Gas Analysis Report] at p. 40-41.) But this is an attempt to compare apples and oranges, and the DEIR’s logic does not hold. In developing its “Tailoring Rule” in 2010, the EPA was interpreting a federal statute and using its discretion to determine which U.S. stationary sources (as defined by federal law) of GHG emissions would be required to obtain a federal Title V operating permit. This determination has no bearing on whether this land use Project’s GHG emissions may have a significant impact on the environment under CEQA and the CEQA guidelines. In any event, the EPA’s “Tailoring Rule” was overturned by the U.S. Supreme Court in 2014 in Util. Air Regulatory Group v. EPA (2014) 573 U.S. 302.

The DEIR makes a second attempt at justifying its astounding 100,000 threshold by offering that “the MDAQMD has adopted a significance threshold for GHGs of 100,000 tons per year and is thus applied to this Project [sic].” (DEIR Appendix D [Greenhouse Gas Analysis Report] at p. 40.) As an initial matter, this statement is factually untrue. The DEIR appears to be referring to a guidance document entitled “MDAQMD California Environmental Quality Act (CEQA) And Federal Conformity Guidelines” that was issued by MDAQMD staff in 2016. (MDAQMD 2016.) The document was issued informally by staff and never approved, let alone “adopted” by the MDAQMD Board, nor was it subject to any notice and comment rulemaking process.⁵ As such, it does not qualify for use as a CEQA threshold of significance of general applicability. (See Golden Door Props. v County of San Diego (2018) 27 Cal.App.5th 892, 901 [rejecting local GHG analysis guidance document as improperly adopted threshold of significance and because it applied state standards without justifying their application to local conditions].)

What’s more, the MDAQMD guidance document invokes a 100,000 ton “threshold” only once, in passing, in a table that makes no reference to CEQA, and the document does not make any other reference to a 100,000-ton annual “significance threshold” for GHG emissions. (MDAQMD 2016 at p. 9, Table 6.) In fact, the document contains no discussion at all of how the 100,000 ton/yr number was derived, why it might be suitable for measuring projects’ impacts under CEQA, or how it should be applied by local agencies considering land use proposals. (Id.) The document simply supplies no evidence to support the City’s use and application of the 100,000-ton number

as a threshold of significance for evaluating individual projects under CEQA. Nor has the MDAQMD separately provided any such evidence: the document was issued without a staff report or any supporting materials.⁶ The City's use of a 100,000 MTCO_{2e} annual GHG emissions threshold is therefore not supported by substantial evidence and violates CEQA; the EIR should be revised to include an adequate threshold of significance that does not obscure the Project's GHG impacts.

Response CBD-14

CBD erroneously states that the DEIR GHG impact significance conclusions rely on compliance with the MDAQMD GHG Emissions impact threshold (100,000 MT CO_{2e}/yr). This is not the case. The determination of the significance of the Project GHG emissions impacts is based on conformance with the City of Hesperia Climate Action Plan (CAP). Per the California Air Resources Board (CARB) 2017 Scoping Plan, local governments are recognized as essential partners in achieving the State's long-term GHG reduction goals and identifies local actions to reduce GHG emissions.⁴ For CEQA projects, CARB states that lead agencies may develop evidenced-based bright-line numeric thresholds—consistent with the Scoping Plan and the State's long-term GHG goals—and projects with emissions over that amount may be required to incorporate onsite design features and mitigation measures that avoid or minimize project emissions to the extent feasible. Alternatively, a lead agency may employ performance-based metric using a climate action plan or other plan to reduce GHG emissions. The City CAP provides a framework for reducing GHG emissions and managing resources to best prepare for a changing climate. Because the City's CAP addresses GHG emissions reduction, is in concert with AB 32 and international efforts to address global climate change, and includes specific local requirements that will substantially lessen the cumulative problem, compliance with the CAP fulfills the description of mitigation found in *CEQA Guidelines* §15130(a)(3) and §15183.5. Projects that comply with the City CAP are considered to have a less-than-significant GHG emissions impact. Compliance with the CAP is substantiated in the DEIR (DEIR, pp. 4.4-36, 4.4-37) and supporting Project GHG Analysis (DEIR Appendix

⁴ California Air Resources Board. (2017, November). California's 2017 Climate Change Scoping Plan. Retrieved from https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping_plan_2017.pdf

D, pp. 48 – 50). Here, the DEIR is amended as follows to correctly reflect information in the Project GHG Analysis:

Project annual GHG emissions are summarized at Table 4.4-5. As indicated, Project GHG emissions would total approximately ~~6,498.12~~ **7,044.60** MTCO₂e per year. The Project GHG emissions estimates presented at Table 4.4-5 reflect contemporary GHG emissions regulatory actions enacted subsequent to adoption of the City’s 2010 CAP. These regulatory actions (notably implementation of the 2019 CalGreen building standards for water and energy efficiency) would yield an approximate ~~13~~ **12%** reduction in Project GHG emissions from sources other than vehicles. An additional ~~5~~ **4%** reduction in GHG emissions (primarily from vehicular/mobile sources) would be achieved through ongoing implementation of the Pavley Fuel Efficiency Standards. These measures, which are not reflected in the CAP, would reduce Project GHG emissions by approximately ~~18~~ **16%**. The Project therefore complies with the City CAP GHG emissions reduction target of a **12% without accounting for regulations discussed in the CAP.** Based on compliance with the City CAP GHG emissions reduction target, the potential for the Project to generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment is considered less-than-significant.

**Table 4.4-5
Annual Project GHG Emissions**

Emission Source	Emissions (metric tons per year)			
	CO ₂	CH ₄	N ₂ O	Total CO ₂ E
Annual construction-related emissions amortized over 30 years	95.58	0.01	0.01	98.27
Area Source	0.03	7.00E-05	0.00	0.03
Energy Source	1,867.27 1,157.53	0.07 0.08	0.02	1,874.61 1,163.72
Mobile Source	4,768.04	0.17 0.18	0.52 0.53	4,928.42 4,616.94
On-Site Equipment Source	101.54	0.03	0.00	102.36
TRU Source	---	---	---	77.76

**Table 4.4-5
Annual Project GHG Emissions**

Emission Source	Emissions (metric tons per year)			
	CO ₂	CH ₄	N ₂ O	Total CO ₂ E
Solid Waste Management	142.00	8.39	0.00	351.80
Water Supply, Treatment, and Distribution	452.01	5.64	0.14	<u>633.72</u> 950.36
Total CO₂E (All Sources)	<u>7,044.60</u> 8,383.61			

Source: Hesperia Industrial Center, Greenhouse Gas Analysis, City of Hesperia (Urban Crossroads, Inc.) May 6, 2022.

Note: Totals obtained from CalEEMod™ and may not total 100% due to rounding.

It is also nonetheless true that the Project GHG emissions (approximately 8,383.61 MT CO₂e/yr without accounting for current regulatory requirements; approximately 7,044.60 MT CO₂e/yr with implementation of current regulatory requirements) would not exceed the MDAQMD GHG emissions threshold (100,000 MT CO₂e/yr). The MDAQMD CEQA thresholds can be accessed at: <https://www.mdaqmd.ca.gov/home/showdocument?id=192>. CBD statements regarding establishments of MDAQMD thresholds are beyond the scope of this DEIR.

For clarity, the discussion of MDQMD thresholds presented in the DEIR at pp 4.4-37, 4.4-48 has been deleted, as presented below. Related discussions such as may appear elsewhere in the DEIR and supporting technical analyses are amended accordingly by reference. Findings and conclusions of the DEIR are not affected.

~~MDAQMD GHG Emissions Threshold Compliance~~

~~The MDAQMD has established a GHG emissions significance threshold of 100,000 tons (90,718.5 metric tons) per year. Project emissions that do not exceed the MDAQMD GHG Emissions Threshold would not have a significant impact on the environment.~~

~~As presented at Table 4.4-5, Project GHG emissions would total 8,383.61 metric tons per year, and would not exceed the MDAQMD GHG emissions significance threshold of 90,718.5 metric tons per year.~~

~~Based on compliance with the MDAQMD GHG Emissions Threshold, the potential for the Project to generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment is considered less than significant.~~

~~**Level of Significance: Less Than Significant.**~~

Comment CBD-15

C. The DEIR Fails to Adequately Disclose and Underestimates the Project's Already Significant GHG Impacts.

As discussed in section I, infra, a “conclusory discussion” of a significant environmental impact makes an EIR “inadequate as an informational document” as a matter of law. (Sierra Club, supra, 6 Cal.5th at p. 514.) An EIR must provide information regarding the project’s significant environmental impacts that is sufficient to allow decision-makers and the public to understand the environmental consequences of the project. (Id. at p. 520; Laurel Heights Improvement Ass’n v Regents of Univ. of Cal. (1988) 47 Cal.3d 376, 404; See CEQA Guidelines § 15151.) The document must include enough detail to enable the public “to understand and to consider meaningfully the issues raised by the proposed project.” (Id. at 516 (citation omitted).)

The EIR’s analysis of greenhouse gas impacts offers the public little information to allow the public and decisionmakers to understand Project activities that will generate GHG emissions. In the impact analysis section, the City presents a single table with the Project’s projected GHG emissions. (DEIR at 4.4-37.) While the DEIR expends dozens of pages identifying the global sources of GHG emissions, the DEIR nowhere discloses the Project’s sources of emissions underlying these totals, such as the Project activities that would generate emissions. The DEIR should analyze and disclose the construction activities that would result in GHG emissions, primarily associated with use of off-road construction equipment, on-road hauling and vendor (material delivery) trucks, and worker vehicles. The DEIR must also analyze and disclose the long-term operations of the Project that would result in GHG emissions, such as through mobile sources and on-site equipment, area sources (landscape maintenance equipment); energy use (natural gas

and generation of electricity consumed by the Project); generation of electricity associated with wastewater treatment and with water supply, treatment, and distribution; and solid waste disposal. Instead, the majority, if not all, of the EIR's substantive disclosures and analyses of the Project's potential greenhouse gas impacts are contained in appendices, rather than in those portions of the EIR that purport to address those impacts. The California Supreme Court has repeatedly cautioned that readers should not be forced to sift through appendices to detect the EIR's environmental analysis. (Cleveland Nat. Forest Found. v. San Diego Assn. of Governments (2017) 3 Cal.5th 497, 516; Cal. Oak Found. v. City of Santa Clarita (2005) 133 Cal.App.4th 1219, 1239 ["[I]nformation scattered here and there in EIR appendices, or a report buried in an appendix, is not a substitute for good faith reasoned analysis."], internal quotations omitted.) From the sole table provided, and without any basic explanation, the public and decisionmakers have no way to understand and independently evaluate the environmental consequences of the Project. (See DEIR Sec. 4.3 and Appendix C.)

Given the information gleaned from elsewhere in the EIR, however, there is ample evidence to suggest that the Project would have significant GHG impacts. This Project proposes to construct up to 750,000 square feet (sf) of high-cube logistics warehousing, with approximately 10 percent of the footprint dedicated to refrigerated uses. Refrigerated goods must be kept in cold environments to maintain quality, which requires that cold storage warehouses "continually consume[] energy, contrary to other type of warehouses." (Dimitrov 2022.) This drives up energy consumption, resulting in increased greenhouse gas emissions. (Wu 2013; Tassou 2009.) Food transport refrigeration is so energy-intensive that it consumes 15% of world fossil fuel energy. (Adekomaya 2016.) The DEIR elsewhere estimates that the Project could generate up to 1,718 vehicle trips per day, the main driver of greenhouse gas emissions for the Project. (DEIR, Appendix B at 41.)⁷ The Project proposes to utilize gasoline-powered on-site equipment and rely primarily on natural gas – an anthropogenic source of carbon – for energy generation. The Project identifies not a single project design feature or mitigation measures aimed to lessen these GHG emissions.

Consequently, because of the deficiencies of the impact analysis for the proposed Project, the DEIR fails to adequately disclose and properly estimate the Project's GHG emissions. The DEIR should be revised to fully describe and disclose these impacts, and that information must be used against a proper threshold of significance to evaluate the impacts of the proposed Project.

Response CBD-15

CBD erroneously states “[t]he DEIR Fails to Adequately Disclose and Underestimates the Project’s Already Significant GHG Impacts.” Among other inaccurate statements, CBD claims . . . “the DEIR nowhere discloses the Project’s sources of emissions underlying these totals, such as the Project activities that would generate emissions.” This is patently and demonstrably incorrect. CBD conclusions based on such faulty premises are similarly faulty.

Specifically, Project GHG emissions impacts are substantiated at DEIR Section 4.4, *Greenhouse Gas Emissions*; and discussed and quantified in detail in the Project Greenhouse Gas Analysis, DEIR Appendix D. Contrary to CBD assertions otherwise, the DEIR and Project GHG Analysis do indeed analyze and disclose the construction activities that would result in GHG emissions, on-road hauling and vendor (material delivery) trucks, and worker vehicles. The DEIR also analyzes and discloses the long-term operations of the Project that would result in GHG emissions, such as through mobile sources and on-site equipment, area sources (landscape maintenance equipment); energy use (natural gas and generation of electricity consumed by the Project); generation of electricity associated with wastewater treatment and with water supply, treatment, and distribution; and solid waste disposal. The DEIR appropriately summarizes and presents information regarding Project GHG emissions and Project GHG emissions impacts in a manner that is readily understandable to the public, commenting agencies, and other interested parties. Detailed information presented in the Project GHG Analysis appropriately summarized and presented in the body text of the DEIR. The Project GHG Analysis in total is incorporated in the DEIR by reference (DEIR, p. 2-10). Relevant DEIR discussions are excerpted in pertinent part here:

4.4.4.1 Construction-Source GHG Emissions

Project construction activities would generate emissions of CO₂ and CH₄. Project construction-source emissions are quantified and amortized over the life of the Project. To amortize the emissions over the life of the Project, the SCAQMD recommends calculating the total greenhouse gas emissions for the construction activities, dividing it by a 30-year project life, then

adding that number to the annual operational GHG emissions. Accordingly, Project construction-source GHG emissions were amortized over a 30-year period and added to the annual operational-source GHG emissions of the Project.

4.4.4.2 Operational-Source GHG Emissions

Project operations would result in emissions of CO₂, CH₄, and N₂O from the following primary sources:

- Area Source Emissions
- Energy Source Emissions
- Mobile Source Emissions
- On-Site Cargo Handling Equipment Emissions
- Transportation Refrigeration Units (TRU) Emissions
- Water Supply, Treatment, and Distribution
- Solid Waste Management

Area Source Emissions

Landscape and site maintenance equipment would generate emissions from fuel combustion and evaporation of unburned fuel. Equipment in this category would include lawnmowers, shredders/grinders, blowers, trimmers, chain saws, and hedge trimmers used to maintain the landscaping of the Project.

Energy Source Emissions

GHGs are emitted from buildings as a result of activities for which electricity and natural gas are typically used as energy sources. Combustion of any type of fuel emits CO₂ and other GHGs directly into the atmosphere; these emissions are considered direct emissions associated with a building. GHGs are also emitted during the generation of electricity from fossil fuels; these emissions are considered to be indirect emissions.

Mobile Source Emissions

GHG emissions will also result from mobile sources associated with the Project. Trip characteristics available from the Project VMT Analysis were utilized in this analysis.

On-Site Cargo Handling Equipment Emissions

It is common for warehouse buildings to require the operation of exterior cargo handling equipment in the building's truck court areas. For the Project, on-site modeled cargo handling equipment operational equipment includes up to one (1) 200 horsepower (hp), compressed natural gas or gasoline-powered tractors/loaders/backhoes operating at 4 hours per day, 365 days per year.

TRU Emissions

To account for the possibility of refrigerated uses, a portion of the trucks accessing the Project are assumed to comprise Transportation Refrigeration Units. The TRU emissions calculations are based on the 2017 Off-road Emissions model, version 1.0.1 (Orion), developed by the CARB.

Water Supply, Treatment and Distribution Emissions

Indirect GHG emissions result from the production of electricity used to convey, treat and distribute water and wastewater. The amount of electricity required depends on the volume of water as well as the sources of the water.

Solid Waste Management Emissions

The Project land uses would result in the generation and disposal of solid waste. A large percentage of solid waste generated by the Project would be diverted and recycled consistent with requirements of AB 39. The remainder of the waste not diverted would be disposed of at area landfills. GHG emissions would be generated by collection and transport of GHG

emissions. GHG emissions would also result from anaerobic breakdown of landfilled materials.

[DEIR pp. 4.4-33 – 4.4 – 45]

Quantified Project GHG emissions by source are summarized at DEIR Table 4.4-5 (see previous Response CBD-14). See also DEIR Appendix D, *Greenhouse Gas Analysis*, pp. 43 – 49, and GHG Emissions Modeling at Greenhouse Gas Analysis Appendix 3.1, Appendix 3.2. In this latter regard, the modeled Project GHG emissions fully and accurately quantify all Project construction-source and operational-source GHG emissions. All modeling of Project GHG emissions has been performed consistent with California Air Pollution Control Officers Association (CAPCOA) and MDAQMD standards and protocols.

Consistent with *CEQA Guidelines* Section 15147, *Technical Detail*, placement of highly technical and specialized analysis and data in the DEIR have been avoided through inclusion of supporting information and analyses as appendices to the main body of the DEIR. Per *CEQA Guidelines* 15151, *Standards for Adequacy of an EIR*, the evaluation of the environmental effects of the Project need not be exhaustive. The DEIR analysis nonetheless is sufficient to provide decision-makers with information which enables them to make a decision which intelligently takes account of the Project environmental consequences. In the case of GHG emissions, the DEIR and supporting technical analysis support the conclusion that the Project GHG emissions impacts would be less-than-significant. Findings and conclusions of the DEIR are not affected.

All DEIR Appendices and supporting technical studies are readily available for public examination and have been submitted to the State Clearinghouse to assist in public review. The DEIR and supporting documents are available through the City of Hesperia Planning Department or can be accessed at the City's website: <http://ca-hesperia.civicplus.com/312/Planning>.

As substantiated in the DEIR, the Project GHG Analysis, and within these Responses, the Project is consistent with the City CAP, and therefore would not result in significant GHG emissions impacts. Per *CEQA Guidelines* Section 15126.4 (a) (3) “Mitigation measures are not required for effects which are not found to be significant.”

Comment CBD-16

D. Because the DEIR Improperly Found that the Project’s GHG Emissions Were Less Than Significant, It Failed to Consider, Much Less Adopt, Feasible Mitigation Measures to Reduce or Avoid the Project’s GHG Impacts.

As the DEIR readily admits, it does not consider or adopt any mitigation measures to reduce, avoid or mitigate the Project’s more than 8,000 MTCO_{2e} annual GHG emissions. (DEIR at 1-33, Table 1.12-1.) Because, as described above, the Project’s GHG emissions impacts are significant, the EIR’s failure to consider and adopt all feasible mitigation to reduce or avoid the Project’s significant impacts violates CEQA. (See Pub. Res. Code § 21002 [It is the “policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which will avoid or substantially lessen the significant environmental effects of such projects.”], CEQA Guidelines §§ 15092(b), 15043, 15126.4(a)(1).) The DEIR should be revised to adequately analyze the Project’s GHG impacts, acknowledge their significance, and consider and adopt feasible mitigation to reduce those impacts, and it should be recirculated for public review and comment. Section IV.C. suggests feasible mitigation measures for the City’s consideration.

Response CBD-16

As substantiated in the DEIR, the Project GHG Analysis, and within these Responses, the Project is consistent with the City CAP and therefore would not result in significant GHG emissions impacts. Per *CEQA Guidelines* Section 15126.4 (a) (3) “Mitigation measures are not required for effects which are not found to be significant.” Please refer also to preceding Responses to CBD comments. Findings and conclusions of the DEIR are not affected. Recirculation of the DEIR is not required.

Comment CBD-17

IV. THE DEIR'S ANALYSIS OF AND MITIGATION FOR THE PROJECT'S IMPACTS TO AIR QUALITY IS INADEQUATE.

Air quality is a significant environmental and public health concern in California. Unhealthy, polluted air contributes to and exacerbates many diseases and increases mortality rates. The U.S. government estimates that between 10-12 percent of total health costs can be attributed to air pollution. (VCAPCD 2003.) Many plants and trees, including agricultural crops, are also injured by air pollutants. This damage ranges from decreases in productivity, a weakened ability to survive drought and pests, to direct mortality. (Id.) Terrestrial wildlife is also affected by air pollution as the plants and trees that constitute their habitats are weakened or killed. Aquatic species and habitats are also affected by air pollution through the formation of acid rain that raises the pH level in oceans, rivers and lakes. (EPA 2016b.) Greenhouse gases, such as the air pollutant carbon dioxide which is released by fossil fuel combustion, contribute directly to human-induced climate change (EPA 2016a), and in a positive feedback loop, poor air quality that contributes to climate change will in turn worsen the impacts of climate change and attendant air pollution. (BAAQMD 2016.)

Air pollution and its impacts are felt most heavily by young children, the elderly, pregnant women and people with existing heart and lung disease. People living in poverty are also more susceptible to air pollution as they are less able to relocate to less polluted areas, and their homes and places of work are more likely to be located near sources of pollution, such as freeways or ports, as those areas are more affordable. (BAAQMD 2016; ALA 2022.) Some of the nation's most polluted counties are in Southern California, and San Bernardino County continually tops the list. (ALA 2022.) According to the American Lung Association's 2022 "State of the Air" report, San Bernardino is the ninth-worst ranked county in the nation for both year-round ozone and particulate matter (PM2.5) pollution, with a "Fail" grade from the report. (Id.) Even more disturbing, the same report found that San Bernardino County is the worst-ranked county in the nation for ozone pollution, with an "F" grade and an average number of 180 days per year with ozone levels in the unhealthy range. (Id.)

Although there are many different types of air pollution, Ozone, PM_{2.5}, and Toxic Air Contaminants are of greatest concern in San Bernardino County. These three air pollutants have been linked to an increased incidence and risk of cancer, birth defects, low birth weights and premature death, in addition to a variety of cardiac and lung diseases such as asthma, COPD, stroke and heart attack. (Laurent 2016; ALA 2022.) Ozone (commonly referred to as smog) is created by the atmospheric mixing of gases from fossil fuel combustion and other volatile organic compounds and sunlight. Although it is invisible, ozone poses one of the greatest health risks, prompting the EPA to strengthen its National Ambient Air Quality Standard for Ozone in 2015. (ALA 2022.) PM_{2.5} is a common component of vehicle exhaust emissions, and contribute to visible air pollution. These tiny particulates are dangerous because they are small enough to escape our body's natural defenses and enter the blood stream. Fugitive dust is a term used for fine particulate matter that results from disturbance by human activity such as construction and road-building operations. (VCAPCD 2003.) Toxic Air Contaminants are released from vehicle fuels, especially diesel, which accounts for over 50% of the cancer risk from TACs. (BAAQMD 2016) This is especially relevant for Southern California with its abundance of diesel shipping traffic. (Bailey; Betancourt 2012.)

Warehouse projects in particular are well-documented sources of air quality degradation that can create serious, negative health outcomes for surrounding communities and can have a profound negative impact on regional air quality. (Betancourt 2012 at 4-5.) With the rapid increase in global trade, the Ports of LA and Long Beach have become a primary entryway for goods, processing over 40 percent of all imports into the United States, and accounting for 20 percent of diesel particulate pollutants in southern California—more than from any other source. (Minkler, et al. 2012.) These goods are often 'transloaded' before leaving Southern California, meaning that they spend some time in warehouse storage facilities before they reach their final destination. (Betancourt 2012, p. 2.) This has resulted in a massive expansion of warehouse development in Southern California.

Nowhere has the expansion of the warehouse and logistics industry been more drastic than in San Bernadino and Riverside counties. (Betancourt 2012.) The number of warehouses in these two counties alone has grown from 162 in 1975 to 4,299 in 2021, according to a recent mapping project from the Robert Redford Conservancy for Southern California Sustainability at Pitzer College. (Rode 2022.) There were 970 warehouses by 2000, which almost doubled to 1,574 in 2005, then

2,089 in 2010 and to 2,757 in 2015. (Ibid.) From 2020 to 2021, the number rose again from 3,727 to 4,299. (Ibid.) The approximately 840 million square feet of new warehouse facilities—and the roads and railyards that serve them – has permanently altered the landscape of the region, creating a logistics hub so massive that it is now visible from space. (Pitzer 2022.)

This Project proposes to construct up to 750,000 square feet (sf) of high-cube logistics warehousing, with approximately 10 percent of the footprint dedicated to refrigerated uses, and up to 1,718 vehicle trips per day. (DEIR, Appendix B at 41.) Particulate emissions from diesel vehicles that carry freight to and from warehouses contribute to “cardiovascular problems, cancer, asthma, decreased lung function and capacity, reproductive health problems, and premature death.” (Id. at 5.) For warehouses with refrigeration, called “cold storage” warehouses, trucks and trailers visiting the Project site are typically equipped with transport refrigeration units (TRU), internal refrigeration systems powered by diesel internal combustion engines. (CARB 2022.) TRUs on trucks and trailers exacerbate air quality impacts by emitting large quantities of diesel exhaust while operating within the Project site. (Fennell 2020.)

In light of these facts, one would expect the DEIR to have objectively evaluated whether the Project would result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in non-attainment under applicable federal or state ambient air quality standards. (CEQA Guidelines, Appendix G, III. Air Quality.) Instead, the DEIR concludes without analysis that the Project would result in less-than-significant impacts under all CEQA Guidelines Appendix G thresholds of significance. (DEIR at 4.3-1.) As discussed below, the DEIR relied on improper thresholds of significance and underestimated air quality impacts. The DEIR must be revised to adequately analyze the Project’s GHG impacts, acknowledge their significance, and consider and adopt feasible mitigation to reduce those impacts, and it should be recirculated for public review and comment.

Response CBD-17

CBD generalizations regarding sources of air pollutant emissions and air quality conditions are noted. The DEIR at pp. 4.3-10 through 4.3-11 accurately and appropriately presents existing air quality conditions relevant to the Project, and the Project’s potential air quality impacts. The CBD erroneously states . . . “the DEIR concludes without analysis

that the Project would result in less-than-significant impacts under *all* CEQA Guidelines Appendix G thresholds of significance.” Extensive analysis and substantiation of all Project air quality impacts is presented at DEIR Section 4.3, *Air Quality*; and DEIR Appendix C, *Air Quality Impact Analysis*. Thresholds applied are those employed by the City (the Lead Agency) and/or MDAQMD (the CEQA Responsible Agency for regulating stationary sources of air pollution located within its jurisdictional boundaries). As substantiated in the DEIR, none of the Project air quality impacts would not be significant. Mitigation is not required for impacts that are not significant. Please refer also to preceding Responses to CBD comments. Findings and conclusions of the DEIR are not affected. Recirculation of the DEIR is not required.

Comment CBD-18

A. The DEIR Relies on Inappropriate Thresholds of Significance and Therefore Erroneously Concludes the Project Would Not Have Significant Impacts Relating to Air Quality.

The City’s failure to adequately analyze, support, and disclose air quality risks and related impacts stems, at least in part, from the DEIR’s failure to establish appropriate thresholds of significance for this topic. The DEIR estimates the Project daily will emit 26.04 pounds of VOC, 44.34 pounds of NOx, 46.89 pounds of CO, and 15.33 pounds of PM10. (DEIR at 4.3-28.)

The DEIR then claims to evaluate these air quality impacts against three thresholds, only one of which is relevant to the amounts of criteria pollutants produced by the Project: whether the Project will “[r]esult in a cumulatively considerable net increase of any criteria pollutant for which the Project region is in non-attainment under an applicable federal [national] or state ambient air quality standard.” (DEIR at 4.3-23 [citing CEQA Guidelines Appendix G]; see also DEIR Appendix C [Air Quality Analysis Report] at p. 26.) In applying the threshold, however, the DEIR swaps in massive numeric thresholds—137 pounds per day of VOC, 137 pounds per day of NOx, 548 pounds per day of CO, and 82 pounds per day of PM10—finding that the proposed Project would not exceed any of these numeric thresholds and thus that the Project’s air quality impacts are less than significant, requiring no mitigation. (DEIR at 4.3-27.)

As discussed above, a lead agency's selection of a threshold of significance must be supported with substantial evidence. (CEQA Guidelines § 15064(b)(2); Protect the Historic Amador Waterways v. Amador Water Agency (2004) 116 Cal.App.4th 1099, 1111.) The DEIR's use of these daily emissions as a threshold of significance is not supported by substantial evidence and drastically downplays the Project's significant air quality impacts. The DEIR fails to justify these thresholds.

The DEIR attempts to justify these exorbitant thresholds by offering that "MDAQMD has developed regional significance thresholds for regulated pollutants" and "[t]he MDAQMD's Guidelines indicate that any projects in the MDAB with daily regional emissions that exceed any of the indicated thresholds should be considered as having an individually and cumulatively significant air quality impact." (DEIR Appendix C at p. 26.) Both statements are factually untrue. The DEIR appears to be referring to the same guidance document entitled "MDAQMD California Environmental Quality Act (CEQA) And Federal Conformity Guidelines" that was issued by MDAQMD staff in 2016. (MDAQMD 2016.) But this document was issued informally by staff and never adopted by the MDAQMD Board (nor subject to any notice and comment rulemaking process).⁸ And again, the MDAQMD guidance document invokes these numerical "thresholds" only once, in passing, in a table that makes no reference to CEQA, and the document does not make any other reference to these "significance thresholds" for air quality. (MDAQMD 2016 at p. 9-10, Table 6.) No evidence supports its use as a CEQA threshold of significance of general applicability or for this Project. (See Golden Door Props. v. County of San Diego (2018) 27 Cal.App.5th 892, 901.)

The EIR's reliance on these numerical emissions thresholds is therefore not supported by substantial evidence and violates CEQA; the EIR should be revised to include an adequate threshold of significance that does not obscure the Project's air quality impacts.

Response CBD-18

CBD reiterates previous erroneous and inaccurate statements. CBD speculates on some undefined air quality impact threshold(s) it considers appropriate. Extensive analysis and substantiation of all Project air quality impacts is presented at DEIR Section 4.3, *Air Quality*; and DEIR Appendix C, *Air Quality Impact Analysis*. The Project is located in the City of Hesperia and within the jurisdiction of the MDAQMD.

Thresholds applied are those established by MDAQMD (the expert CEQA Responsible Agency for regulating stationary sources of air pollution located within its jurisdictional boundaries). The Mojave Desert Air Quality Management District's thresholds are outlined in their document *California Environmental Quality Act (CEQA) and Federal Conformity Guidelines* (August 2016). These thresholds have been used extensively for certified CEQA analyses for projects within MDAQMD's jurisdiction, including projects within the City of Hesperia. Accordingly, the Lead Agency (City of Hesperia) relies on MDAQMD as the expert agency and appropriately relies on the MDAQMD air quality impact significance thresholds.

As substantiated in the DEIR, none of the Project air quality impacts would exceed applicable thresholds. Therefore, none of the Project air quality impacts would be significant. Mitigation is not required for impacts that are not significant. Please refer also to preceding Responses to CBD comments. Findings and conclusions of the DEIR are not affected. Recirculation of the DEIR is not required.

Comment CBD-19

B. The DEIR Underestimates the Project's Already Significant Air Quality.

The DEIR's analysis of air quality impacts gives the public and decisionmakers no understanding of the Project activities that generate emissions of the various criteria pollutants. In the impact analysis section, the City presents two charts to the public – one detailing the total construction criteria pollutant emissions, and another detailing the operational emissions. (DEIR at 4.3-27 to 4.3-28.) The DEIR fails to describe the Project activities that could generate emissions of criteria air pollutants, such as area sources – consumer products, on-site equipment, architectural coating, and landscaping – and operational sources, such as the Project's electricity and natural gas use, off-road cargo handling equipment, transport refrigeration units, backup generators, and mobile sources, including cars and heavy-duty trucks. The air quality analysis does not even disclose the estimated vehicle trips associated with the Project, which under the DEIR's own admission is the primary driver of air quality impacts. (DEIR at 4.3-27 to 4.3-28.) All the relevant information is buried in a technical appendix. This fails to fulfill CEQA's core information purpose.

Without these fundamental disclosures, the public and decisionmakers have no way to understand and independently evaluate the environmental consequences of the Project. (See DEIR Sec. 4.3 and Appendix C.) There is ample evidence that a project that would attract thousands of vehicles daily to a location in non-attainment for multiple criteria pollutants would significantly compound poor air quality in the region and expose sensitive receptors to substantial pollution concentrations. Yet the air quality analysis includes nothing about the estimated truck trips, the information upon which these estimations are based, or modelling assumptions. Again, the majority, if not all, of the EIR's substantive disclosures and analyses of the Project's potential environmental impacts are contained in appendices, rather than in those portions of the EIR that purport to address those impacts. Because the DEIR fails to even consider –let alone disclose – the potential emission sources of the Project, the DEIR incorrectly concludes that the Project's impacts relating to air quality would be less than significant.

From the little information provided, it is readily apparent that the DEIR here grossly underestimates the vehicle trips associated with the Project, the main driver of the Project's NOx, CO, and PM10 (and greenhouse gas) impacts. (DEIR at 4.3-28.) It estimates that the Project will generate 1,718 daily vehicle trips, which it calculates using the Institute of Transportation Engineers (ITE) Common Trip Generation Rates. (DEIR, Appendix C at 40.) The ITE estimates trip generations based on the type of facility and square footage of the facility. (ITE 2017; DEIR, Appendix C at 40.) The DEIR relies on two facility types: Land Use 154: High-Cube Short-Term Storage and ITE Land Use 157: High-Cube Cold Storage, which have generation rates of .1 and .12 trips per unit respectively (ITE 2017.) Other types of warehouse projects identified by ITE, such as High-Cube Fulfillment Center Warehouses and High-Cube Parcel Hub Warehouses, have significantly higher vehicle trip estimates, 1.37 and .64 trips per unit, respectively.

The DEIR provides no information or evidence justifying its selection of high-cube short-term storage and warehousing when other types of high cube warehouse centers result in truck trip estimates orders of magnitude higher. The DEIR provides no information describing why this facility should be categorized as a high-cube short-term storage or high-cube cold storage, nor any limits that would prevent the Project applicant from constructing a high-cube fulfillment center or high-cube parcel hub warehouse onsite. The Project objectives, at their most specific, aim to “provide industrial uses response to current and anticipated market demands” and to “establish

new development providing construction and long-term employment opportunities.” (DEIR at 1-8.) Otherwise, the public is left in the dark about the type of warehousing facility proposed. The DEIR places no limits on the type of e-commerce facility that could operate on the site. Absent additional information, it appears that any tenant could operate a high-cube center or parcel hub warehouse on the site, which would generate significantly more truck trips than the DEIR disclosed, analyzed, or mitigated. The DEIR’s approach violates CEQA’s requirement that an EIR fully analyze and attempt to mitigate all significant direct and indirect impacts of a project. (CEQA Guidelines, § 15126.2; Pub. Resources Code, § 21002.)

The City must support its choice to rely upon these lower estimates, or select an estimate that more conservatively and accurately accounts for the Project’s potential to generate truck trips. Should the City ultimately rely on these lower estimates, the City must condition any project approval on a lease provision that guarantees a Project tenant could not operate a high-cube fulfillment center or parcel hub warehouse on the site, absent additional environmental review and mitigation.

The DEIR then compounds its error by relying on an average truck trip length that is not supported by substantial evidence in the record, significantly downplaying the diesel pollution that would be generated by each truck trip. In calculating vehicles miles travelled, the DEIR assumes that, on average, trucks will travel 40 miles one way. (DEIR, Appendix 3 at 31.) It selected this number based on the assumed average trip length for heavy trucks identified by South Coast Air Quality Management District (SCAQMD) in its calculations for the Warehouse Indirect Source Rule, which are based upon average distances travelled within the basin from the Port of Los Angeles and Long Beach. (DEIR, Appendix 3 at 31.) While an agency may use an environmental standard adopted by another public agency in determining the significance of an impact, the lead agency must explain why the standard is relevant to the analysis of the project’s impacts. (CEQA Guidelines §15064.7(d)(3)–(4).) Hesperia offers no such explanation here.

All available evidence indicates that this standard is wholly inappropriate for an inland City such as Hesperia. Hesperia is not in the South Coast Air Quality Management District. It is approximately 100 miles from the Ports of LA and Long Beach. In guidance issued by the California Air Resources Board (CARB) to estimate average truck miles travelled from the Ports of LA and Long Beach, CARB concludes that trucks within the South Coast basin travel 33.2 miles

on average, whereas trucks travelling from the boundary of the South Coast basin to the Mojave Basin travel between 82 and 164 miles on average. (CARB 2007, pp. B22-B23.)⁹ There is simply no logical basis for Hesperia to assume that trucks to the Mojave basin will travel 40 miles on average. The City's use and application of the SCAQMD 40-mile standard is not supported by substantial evidence and thus violates CEQA.

Response CBD-19

CBD erroneously states that the DEIR does not disclose or substantiate estimated Project vehicle trips, vehicle trip lengths, and related mobile-source criteria pollutant emissions. The commenter does not provide any evidence to support their claim that the truck trip length used in the DEIR is inappropriate. In fact, the trip length for trucks utilized in the DEIR is almost 5 times higher than the default trip length assumed in CalEEMod. Furthermore, the 40-mile trip length is consistent with industry standards and also consistent with the average trip length for trucks that is utilized by South Coast Air Quality Management District (SCAQMD) as part of their rulemaking activity for Rule 2305. It would be inappropriate and speculative to presume that all the trucks accessing the Project site are coming to/from the Port of LA. Rather, it is more appropriate to rely on the substantiated average trip length utilized in the DEIR. This avoids pure speculation such as is reflected in CBD comments.

Mobile-source criteria pollutant emissions are summarized at DEIR Table 4.3-6 (DEIR, p. 4.3-28). Mobile source emissions, quantified vehicle trips by vehicle type accessing the Project, and the basis for estimating vehicle trip lengths are discussed in detail within the Project Air Quality Impact Analysis (DEIR Appendix C, pp. 31, 32). Additionally, the Project Air Quality Impact Analysis points the reader to correlating discussions within *Hesperia Industrial Center VMT Analysis*, presented at DEIR Appendix B. The *VMT Analysis* trip estimates are based on published survey data that has been collected for similar use types by the Institute of Transportation Engineers (ITE) and is supported by ITE underlying substantial evidence. The Project Air Quality Impact Analysis at Appendix 3.2 provides detailed CalEEMod outputs that appropriately incorporate Project vehicle trips by type and vehicle trip length in modeling of the Project mobile-source emissions. Please refer also to previous Responses to CBD comments. Findings and conclusions of the DEIR are not affected.

Comment CBD-20

C. Because the DEIR Improperly Found that the Project's Air Quality Emissions Were Less Than Significant, It Failed to Consider, Much Less Adopt, Feasible Mitigation Measures to Reduce or Avoid the Project's Air Quality Impacts.

As the DEIR readily admits, it does not consider or adopt any mitigation measures to reduce avoid or mitigate the Project's air quality emissions. (DEIR at 1-33, Table 1.12-1.) Because, as described above, the Project's air quality emissions impacts are significant, the EIR's failure to consider and adopt all feasible mitigation to reduce or avoid the Project's significant impacts violates CEQA. (See Pub. Res. Code § 21002 [It is the "policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which will avoid or substantially lessen the significant environmental effects of such projects."], CEQA Guidelines §§ 15092(b), 15043, 15126.4(a)(1).) "Even when a project's benefits outweigh its unmitigated effects, agencies are still required to implement all mitigation measures unless those measures are truly infeasible." (Sierra Club, supra, 6 Cal.5th at pp. 524–525.) The EIR should be revised to adequately analyze the Project's air quality impacts, acknowledge their significance, and consider and adopt feasible mitigation to reduce those impacts, and it should be recirculated for public review and comment.

For example, the South Coast Air Quality Management District ("SCAQMD") has recently prepared and published Draft Proposed Rule 2305 - Warehouse Indirect Source Rule— Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program) (SCAQMD 2020). The rule will apply to individual warehouses and distribution facility projects and is intended to reduce air quality emissions from mobile sources associated with the projects. The draft rule contains a host of mitigation measures that warehouse facilities an adopt, which include, but are not limited to:

- Acquiring and using Zero Emissions yard trucks onsite.*
- Requiring that a certain percentage of trucks in warehouse operators' fleet(s) be Zero Emissions or Near Zero Emissions.*
- Installing and using onsite Zero Emissions vehicle charging stations beyond the minimum required by applicable laws, rules, or regulations.*

- *Installing and using onsite solar panels.*
- *Installing high-efficiency air filters or filtering systems in residences, schools, daycares, hospitals, or community centers.*

Additionally, the California Air Resources Board (“CARB”) has compiled a list of “Recommended Air Pollution Emission Reduction Measures for Warehouses and Distribution Centers.” (see CARB 2019, Attachment A.) These include:

Recommended Construction Measures

- 1. Ensure the cleanest possible construction practices and equipment are used. This includes eliminating the idling of diesel-powered equipment, and providing the necessary infrastructure (e.g., electrical hookups) to support zero and near-zero equipment and tools.*
- 2. Implement, and plan accordingly for, the necessary infrastructure to support the zero and near-zero emission technology vehicles and equipment that will be operating onsite. This includes the physical (e.g., needed footprint), energy, and fueling infrastructure for construction equipment, onsite vehicles and equipment, and medium-heavy and heavy-heavy duty trucks.*
- 3. In construction contracts, include language that requires all off-road diesel-powered equipment used during construction to be equipped with Tier 4 or cleaner engines, except for specialized construction equipment in which Tier 4 engines are not available. In lieu of Tier 4 engines, equipment can incorporate retrofits such that emission reductions achieved equal or exceed that of a Tier 4 engine.*
- 4. In construction contracts, include language that requires all off-road equipment with a power rating below 19 kilowatts (e.g., plate compactors, pressure washers, etc.) used during project construction be battery powered.*
- 5. In construction contracts, include language that requires all heavy-duty trucks entering the construction site, during either the grading or building construction phases be model year 2014 or later. Starting in the year 2022, all heavy-duty haul trucks should also meet CARB’s lowest optional low-NOx standard.*
- 6. In construction contracts, include language that requires all construction equipment and fleets to be in compliance with all current air quality regulations. CARB staff is available to provide assistance in implementing this recommendation.*

Recommended Operation Measures

1. *Include contractual language in tenant lease agreements that require tenants to use the cleanest technologies available, and to provide the necessary infrastructure to support zero-emission vehicles and equipment that will be operating onsite.*
2. *Include contractual language in tenant lease agreements that requires all loading/unloading docks and trailer spaces be equipped with electrical hookups for trucks with transport refrigeration units (TRU) or auxiliary power units (APU). This will eliminate the amount of time that a TRU powered by a fossil- fueled internal combustion engine can operate from within the project site. Use of zero-emission all-electric plug-in TRUs, hydrogen fuel cell transport refrigeration, and cryogenic transport refrigeration are encouraged and can also be included in lease agreements.*
3. *Include contractual language in tenant lease agreements that requires all service equipment (e.g., yard hostlers, yard equipment, forklifts, and pallet jacks) used within the site to be electric or powered by compressed natural gas.*
4. *Include contractual language in tenant lease agreements that requires all heavy- duty trucks entering the project site to be model year 2014 or later.*
5. *Starting in the year 2022, include contractual language in tenant lease agreements that requires all trucks entering the project site to meet CARB’s lowest optional low-NOx standard.*
6. *Include contractual language in tenant lease agreements that requires the tenant be in, and monitor compliance with, all current air quality regulations for on-road trucks including CARB’s Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation, Periodic Smoke Inspection Program (PSIP), and the Statewide Truck and Bus Regulation.*
7. *Include contractual language in tenant lease agreements restricting trucks and support equipment from idling longer than five minutes while onsite.*
8. *Include contractual language in tenant lease agreements that limits onsite TRU diesel engine runtime to no longer than 15 minutes. If no cold storage operations are planned, include contractual language and permit conditions that prohibit cold storage operations unless a health risk assessment is conducted and the health impacts mitigated.*
9. *To reduce indirect greenhouse gas (GHG) emissions, include rooftop solar panels for each proposed warehouse to the extent feasible, with a capacity that matches the maximum allowed for distributed solar connections to the grid.*

The California Office of the Attorney General also has published a document entitled “Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act” to help lead agencies comply with these requirements. (AGOa 2021.) Nearly all of the example mitigation measures in this document have been adopted in a warehouse project in California, demonstrating their feasibility. (Ibid.) At minimum, the City should consider the following mitigation measures:

- Requiring all off-road construction equipment to be zero-emission, where available, and all diesel-fueled off-road construction equipment, to be equipped with CARB Tier IV-compliant engines or better, and including this requirement in applicable bid documents, purchase orders, and contracts, with successful contractors demonstrating the ability to supply the compliant construction equipment for use prior to any ground-disturbing and construction activities.*
- Prohibiting off-road diesel-powered equipment from being in the “on” position for more than 10 hours per day.*
- Providing electrical hook ups to the power grid, rather than use of diesel fueled generators, for electric construction tools, such as saws, drills, and compressors, and using electric tools whenever feasible.*
- Limiting the amount of daily grading disturbance area.*
- Prohibiting grading on days with an Air Quality Index forecast of greater than one hundred for particulates or ozone for the project area.*
- Forbidding idling of heavy equipment for more than two minutes.*
- Keeping onsite and furnishing to the lead agency or other regulators upon request, all equipment maintenance records and data sheets, including design specifications and emission control tier classifications.*
- Conducting an on-site inspection to verify compliance with construction mitigation and to identify other opportunities to further reduce construction impacts.*
- Using paints, architectural coatings, and industrial maintenance coatings that have volatile organic compound levels of less than 10 g/L.*
- Requiring that all facility-owned and operated fleet equipment with a gross vehicle weight rating greater than 14,000 pounds accessing the site meet or exceed 2010 model-year emissions equivalent engine standards as currently defined in California Code of Regulations Title 13, Division 3, Chapter 1, Article 4.5, Section 2025.*

- *Requiring all heavy-duty vehicles entering or operated on the project site to be zero- emission beginning in 2030.*
- *Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations.*
- *Forbidding trucks from idling for more than two minutes and requiring operators to turn off engines when not in use.*
- *Posting both interior- and exterior-facing signs, including signs directed at all eight dock and delivery areas, identifying idling restrictions and contact information to report violations to CARB, the air district, and the building manager.*
- *Installing and maintaining, at the manufacturer's recommended maintenance intervals, air filtration systems at sensitive receptors within a certain radius of facility for the life of the project.*
- *Installing and maintaining, at the manufacturer's recommended maintenance intervals, an air monitoring station proximate to sensitive receptors and the facility for the life of the project and making the resulting data publicly available in real time. While air monitoring does not mitigate the air quality or greenhouse gas impacts of a facility, it nonetheless benefits the affected community by providing information that can be used to improve air quality or avoid exposure to unhealthy air.*
- *Constructing electric truck charging stations proportional to the number of dock doors at the project.*
- *Constructing electric light-duty vehicle charging stations proportional to the number of parking spaces at the project.*
- *Requiring all stand-by emergency generators to be powered by a non-diesel fuel.*
- *Requiring operators to establish and promote a rideshare program that discourages single-occupancy vehicle trips and provides financial incentives for alternate modes of transportation, including carpooling, public transit, and biking.*
- *Providing meal options onsite or shuttles between the facility and nearby meal destinations.*
- *Planting trees and vegetation near structures to shade buildings and reduce energy requirements for heating/cooling.*
- *Preserving or replacing onsite trees (that are removed due to development) as a means of providing carbon storage.*

- *Replacing traffic lights, streetlights, and other electrical uses to energy efficient bulbs and appliances.*
- *Retrofitting municipal water and wastewater systems with energy efficient motors, pumps, and other equipment, and recover wastewater treatment methane for energy production.*

Additionally, the California Air Resources Board (“CARB”) has compiled a list of “Recommended Air Pollution Emission Reduction Measures for Warehouses and Distribution Centers.” (CARB 2019). These include:

Recommended Construction Measures

- *In construction contracts, including language that requires all off-road diesel- powered equipment used during construction to be equipped with Tier 4 or cleaner engines, except for specialized construction equipment in which Tier 4 engines are not available. In lieu of Tier 4 engines, equipment can incorporate retrofits such that emission reductions achieved equal or exceed that of a Tier 4 engine.*
- *In construction contracts, including language that requires all off-road equipment with a power rating below 19 kilowatts (e.g., plate compactors, pressure washers, etc.) used during project construction be battery powered.*
- *In construction contracts, including language that requires all heavy-duty trucks entering the construction site, during either the grading or building construction phases be model year 2014 or later. Starting in the year 2022, all heavy-duty haul trucks should also meet CARB’s lowest optional low-NOx standard.*

Recommended Operation Measures

- *Including contractual language in tenant lease agreements that require tenants to use the cleanest technologies available, and to provide the necessary infrastructure to support zero-emission vehicles and equipment that will be operating onsite.*
- *Including contractual language in tenant lease agreements that requires all loading/unloading docks and trailer spaces be equipped with electrical hookups for trucks with transport refrigeration units (TRU) or auxiliary power units (APU). This will eliminate the amount of time that a TRU powered by a fossil-fueled internal combustion engine can operate from within the project site. Use of zero-emission all-electric plug-in TRUs, hydrogen fuel cell transport*

refrigeration, and cryogenic transport refrigeration are encouraged and can also be included in lease agreements.

- *Including contractual language in tenant lease agreements that requires the tenant be in, and monitor compliance with, all current air quality regulations for on-road trucks including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation, Periodic Smoke Inspection Program (PSIP), and the Statewide Truck and Bus Regulation.*
- *Covering rooftops with rooftop solar panels, with a capacity that matches the maximum allowed for distributed solar connections to the grid.*

Because the DEIR improperly failed to consider these and other feasible mitigation measures, the City cannot make the requisite CEQA findings prior to approving the Project. The DEIR should be revised to include these and other measures to reduce, avoid, or minimize the Project's admittedly significant impacts to air quality and recirculated for public review and comment. As a reminder, should the City decide that one of the suggested mitigation measures is not feasible, it must explain in the record why it concluded that specific mitigation measure was not feasible, supported by substantial evidence. (Los Angeles Unified Sch. Dist. v. City of Los Angeles (1997) 58 Cal.App.4th 1019, 1029.)

Response CBD-20

CBD reiterates speculative and erroneous statements regarding the significance of Project-source GHG emissions impacts and Project-source criteria pollutant emissions impacts. The Lead Agency disagrees with these CBD statements in total. The Project DEIR and supporting technical analyses fully and accurately substantiate that Project-source GHG emissions impacts and Project-source criteria pollutant emissions impacts would not be significant. Per *CEQA Guidelines* Section 15126.4 (a) (3) "Mitigation measures are not required for effects which are not found to be significant." Various emissions control/reduction measures listed by CBD are noted. Please refer also to previous Responses to CBD comments. Findings and conclusions of the DEIR are not affected. Recirculation of the DEIR is not required.

Comment CBD-21

V. CUMULATIVE IMPACTS

The CEQA Guidelines define cumulative impacts as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” (CEQA Guidelines §15355.) Sections 15130 and 15065 elaborate that a project has a significant cumulative impact when a project’s incremental addition to environmental impacts from past, current, and reasonably probable future projects is cumulatively considerable. Significant cumulative impacts can result from the incremental effects of many projects that do not individually have a significant environmental impact.

As a threshold matter, the DEIR failed to disclose other past, present, or reasonable foreseeable future projects in the vicinity. As a result, the DEIR could not consider whether, in the context of the many other pollution sources near the Project, the Project would add a cumulatively considerable contribution to the existing significant cumulative air pollution faced by the community, as required by CEQA. Therefore, the DEIR’s subsequent conclusions that the Project will not create significant cumulative environmental impacts are unsupported.

The DEIR based its less-than-significant cumulative impact finding on “no known or probable related projects that would interact with the less-than-significant effects of the Project and thereby result in cumulatively significant impacts.” (DEIR at pp. 5-11, 5-12 to 5-13.) While the City possesses the most current information on future developments planned for the community, the Center is aware of numerous other warehouse projects in the vicinity that the City either recently approved or is currently considering:

- *United States Cold Storage Hesperia Project (SCH No.: 2020069036)*
- *Poplar 18 Project (Notice of Preparation issued on August 11, 2022)*
- *I-15 Industrial Park Project (SCH No.: No. 2021060397)*
- *Hesperia Commerce Center II Project (SCH No.: 2019110418)*

There are likely far more projects to disclose, since the “primary intent” of the Hesperia Main Street and Freeway Corridor Specific Plan area—within which this Project is located— is “to

promote industrial development” with a “focus on distribution and warehousing uses.” (Hesperia 2021.)

The DEIR omits disclosure of the numerous warehouses and other development in the Project’s immediate vicinity that could impact air quality, GHG, and biological resources, including other developments that are being planned or have been approved but are not yet operating. As a result, the DEIR could not consider whether, in the context of the many other pollution sources near the Project, the Project would add a cumulatively considerable contribution to the existing significant cumulative air pollution faced by the community, as required by CEQA. Therefore, the DEIR’s subsequent conclusions that the Project will not create significant environmental impacts are unsupported.

For biological resources, for example, the DEIR concludes that – because the ITP will supposedly reduce any individual Project impacts to less-than-significant, and there are no other known projects in the vicinity that could result in cumulatively significant impacts to any of the biological resources, any cumulative effects are less-than-significant. (DEIR at 5-22.) The DEIR further dismisses the potential for cumulative impacts to occur because cumulative projects would each “require[] a discretionary action by a public agency” and through that process “will be assessed for its potential impacts” and be required to adopt “appropriate biological resources mitigation.” (DEIR at 5-22.) The DEIR cannot simply assume that applying laws and regulations to future projects obviates the potential for cumulative impacts. (Communities for a Better Environment v. California Resources Agency (2002) 103 Cal.App.4th 98, 111-14 (compliance with an environmental regulatory program cannot displace an agency’s separate obligation to consider whether a project’s environmental impacts are significant); Californians for Alternatives to Toxics, supra, 136 Cal.App.4th 1, 15-17 (same.)) Here, the DEIR provides no basis for assuming that unspecified regulatory compliance or future environmental review would ameliorate any potential cumulative impacts. The DEIR therefore fails to analyze the cumulative impacts on biological resources.

The DEIR relies on these faulty significance thresholds throughout its cumulative impacts analysis. It concluded the Project would have a less than significant cumulative air quality, biological resources, transportation, and greenhouse gas impact because the Project would have a

less than significant individual impact in these areas. This reasoning contravenes CEQA's core mandate for studying cumulative impacts in the first place – projects that do not have significant individual impacts may nonetheless create significant cumulative impacts. (See, e.g., Kings Cty. Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 720.)

To support its threshold of significance for cumulative impacts to air quality, for example, the DEIR cites Appendix D of an August 2003 white paper published by the South Coast Air Quality Management District (“SCAQMD”) entitled “White Paper on Potential Control Strategies to Address Cumulative Impacts from Air Pollution” (“2003 SCAQMD White Paper”). (DEIR at 4.23-4.24; SCAQMDa 2003.) To the extent that the 2003 SCAQMD White Paper asserts that any project with less than significant individual air quality impacts also necessarily has less than significant cumulative air quality impacts, it is inconsistent with CEQA for at least the reasons stated above.

Moreover, the DEIR fails to provide substantial evidence to support its reliance on the 2003 SCAQMD White Paper, Appendix D as “guidance.” (DEIR at 4.3-23.) This document was issued informally by staff, intended as a “policy document” and “starting point,” and never approved, let alone subject to any rulemaking process. (SCAQMDb 2003.)¹¹ Rather, the document was a “proposal” with a slew of options brought before the Board “just to get the Board’s approval to move forward to develop formal policies and rules, which would be brought back to the Board after having undergone a full public airing.” (SCAQMDb 2003.) Those rules have yet to be developed.

More recently, the California Attorney General’s Office sued the City of Fontana for its reliance on this “guidance” to inform a cumulative impacts analysis for a similar warehouse project. (AGOb 2021.) That lawsuit settled, and as a result, SCAQMD announced a process to revise its CEQA guidance for analyzing cumulative air quality impacts. (AGO 2022; SCAQMD 2022.) The City simply lacks a basis to rely upon this outdated and unlawful standard. (See Golden Door Props. v County of San Diego (2018) 27 Cal.App.5th 892, 901.)

Finally, even if the DEIR’s reliance on the 2003 SCAQMD White Paper were proper and supported by substantial evidence, the DEIR did not consider the other evidence—such as the existence of many other sources of pollution near the Project site—showing that the Project could

have a significant cumulative air quality impact. (CEQA Guidelines § 15064, subd. (b).) The 2003 SCAQMD White Paper lacks substantial evidence to support the City's contention that no cumulative impacts exist, and thus the DEIR's reliance on it violates CEQA. (CEQA Guidelines § 15064.7, subd. (c).)

Response CBD-21

CBD continues with erroneous assumptions and faulty conclusions, here regarding the significance of Project contributions to cumulative impacts. The commenter lists various projects in the City of Hesperia. CBD provides no evidence that these projects could interact with effects of the Project and thereby result in cumulatively considerable impacts. In contrast, the DEIR substantiates that the Project would not result in or cause cumulatively considerable impacts.

The Project biological resources impacts are substantiated to be less-than-significant as mitigated. Other projects within the cumulative impact area would be required to implement measures that would reduce their potential biological resources impacts. If those other projects cannot reduce their impacts to levels that would be less-than-significant, it is those other projects (not the Project considered here) that could contribute considerably to cumulative biological resources impacts.

With regard to cumulative air quality impacts, as discussed in the Project Air Quality Impact Analysis:

The MDAQMD relies on the SCAQMD guidance for determining cumulative impacts. The SCAQMD has recognized that there is typically insufficient information to quantitatively evaluate the cumulative contributions of multiple projects because each project applicant has no control over nearby projects. The SCAQMD published a report on how to address cumulative impacts from air pollution: White Paper on Potential Control Strategies to Address Cumulative Impacts from Air Pollution (26). In this report the SCAQMD clearly states (Page D-3):

“...the AQMD uses the same significance thresholds for project specific and cumulative impacts for all environmental topics analyzed in an Environmental Assessment or EIR. The only case where the significance thresholds for project specific and cumulative impacts differ is the Hazard Index (HI) significance threshold for toxic air contaminant (TAC) emissions. The project specific (project increment) significance threshold is $HI > 1.0$ while the cumulative (facility-wide) is $HI > 3.0$. It should be noted that the HI is only one of three TAC emission significance thresholds considered (when applicable) in a CEQA analysis. The other two are the maximum individual cancer risk (MICR) and the cancer burden, both of which use the same significance thresholds (MICR of 10 in 1 million and cancer burden of 0.5) for project specific and cumulative impacts.

Projects that exceed the project-specific significance thresholds are considered by the SCAQMD to be cumulatively considerable. This is the reason project-specific and cumulative significance thresholds are the same. Conversely, projects that do not exceed the project-specific thresholds are generally not considered to be cumulatively significant.”

As noted previously, thresholds applied in the DEIR are those established by MDAQMD (the expert CEQA Responsible Agency for regulating stationary sources of air pollution located within its jurisdictional boundaries). MDAQMD thresholds are outlined at *California Environmental Quality Act (CEQA) and Federal Conformity Guidelines* (August 2016). These thresholds (including cumulative impact thresholds) have been used extensively for certified CEQA analyses for projects within MDAQMD’s jurisdiction, including projects within the City of Hesperia. Accordingly, the Lead Agency (City of Hesperia) relies on MDAQMD as the expert agency and appropriately relies on the MDAQMD air quality impact significance thresholds.

CBD cites to a SCAQMD-announced process to revise SCAQMD CEQA guidance for analyzing cumulative air quality impacts. To date, SCAQMD has issued no formal updated guidance or requirements addressing methods or protocols for assessment of

potential cumulative air quality impacts. To assume the content or direction of such guidance or requirements is speculation on the part of CBD. In contrast, the DEIR appropriately employs cumulative impact thresholds in effect at the time the DEIR was prepared.

Findings and conclusions of the DEIR are not affected. Recirculation of the DEIR is required.

Comment CBD-22

VI. THE REIR [sic] MUST BE RECIRCULATED.

Under California law, this DEIR cannot properly form the basis of a final EIR. CEQA and the CEQA Guidelines describe the circumstances that require recirculation of a draft EIR. Such circumstances include: (1) the addition of significant new information to the EIR after public notice is given of the availability of the DEIR but before certification, or (2) the DEIR is so “fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” (CEQA Guidelines, § 15088.5.)

Here, both circumstances apply. Decisionmakers and the public cannot possibly assess the Project’s impacts through the present DEIR, which is riddled with error. Among other fundamental deficiencies, the DEIR repeatedly fails to disclose and underestimates the Project’s significant impacts, and assumes that compliance with existing regulatory programs will effectively reduce those impacts. In order to resolve these issues, the City must prepare a revised EIR that would necessarily include substantial new information.

Response CBD-22

The Lead Agency disagrees with CBD assertions that the DEIR is “fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” Rather, as supported by the Responses presented here and the information presented in the DEIR itself, the DEIR complies with all applicable CEQA Statutes and *CEQA Guidelines*. To these ends, the DEIR accurately and fully discloses the Project’s potential environmental impacts. Mitigation is provided for those impacts

substantiated to be potentially significant. As substantiated in the DEIR, all Project impacts would be less-than-significant or less-than-significant as mitigated. The DEIR Mitigation Measures are presented in their entirety at Final EIR Section 4.0, *Mitigation Monitoring Program*. Findings and conclusions of the DEIR are not affected. Recirculation of the DEIR is not required.

Comment CBD-23

VII. CONCLUSION

Thank you for the opportunity to submit comments on the Draft EIR for the Dara Industrial Project. Due to the shortcomings described above, the City should make corrections to the EIR and Project—including properly analyzing and mitigating for the Projects significant impacts to biological resources, GHG emissions, and air quality—and recirculate a revised and legally adequate EIR for public review and comment.

*Given the possibility that the Center will be required to pursue legal remedies in order to ensure that the City complies with its legal obligations including those arising under CEQA, we note the City's statutory duty to maintain and preserve all documents and communications that may constitute part of the "administrative record" of this proceeding. (§ 21167.6(e); *Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733.) The administrative record encompasses any and all documents and communications that relate to any and all actions taken by the City with respect to the Project, and includes "pretty much everything that ever came near a proposed [project] or [] the agency's compliance with CEQA..." (*County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 8.) The administrative record further includes all correspondence, emails, and text messages sent to or received by the City's representatives or employees that relate to the Project, including any correspondence, emails, and text messages sent between the City's representatives or employees and the Project applicant's representatives or employees. Maintenance and preservation of the administrative record requires that, inter alia, the City (1) suspend all data destruction policies; and (2) preserve all relevant hardware unless an exact replica of each file is made.*

Please add the Center to your notice list for all future updates to the Project and do not hesitate to contact the Center with any questions at the number or email listed below.

Response CBD-23

CBD comments on the DEIR and CBD assertions regarding inadequacy of the DEIR are noted. The Lead Agency disagrees with these assertions. Responses provided herein refute CBD assertions. The DEIR accurately and fully discloses the Project's potential environmental impacts. Mitigation is provided for those impacts substantiated to be potentially significant. As substantiated in the DEIR, all Project impacts would be less-than-significant or less-than-significant as mitigated.

The City will comply with all applicable legal obligations. CBD has been included on the City's notice list for future Project updates. CBD contact information is noted.

Findings and conclusions of the DEIR are not affected. Recirculation of the DEIR is not required.

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August 29, 2022

VIA EMAIL AND U.S. MAIL

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VIA EMAIL ONLY

Edgar Gonzalez, Associate Planner
Email: egonzalez@cityofhesperia.us

Re: Request for Mailed Notice of Actions and Hearings – Dara Industrial Project (CUP No. CUP22-00003; SCH No. 2022040060)

Dear Mr. Hearn, Ms. Heredia, and Mr. Gonzalez:

We are writing on behalf of Californians Allied for a Responsible Economy (“CARECA”) to request mailed notice of the availability of any environmental review document, prepared pursuant to the California Environmental Quality Act, related to the Dara Industrial Project (CUP No. CUP22-00003; SCH No. 2022040060) proposed by SRD Design Studio Inc. as well as a copy of the environmental review document when it is made available for public review.

The Project proposes the proposes development of a single 750,000-square-foot industrial building. Of this total, 15,000 square feet would be dedicated to office uses associated with the industrial uses. The approximately 43.28-acre Project site is located at the northwest corner of Highway 395 and Poplar Street, in the City of Hesperia, California. The Project site consists of Assessor’s Parcel Numbers (APNs) 3064-551-03, -04, -06, -07, and -08.

We also request mailed notice of any and all hearings and/or actions related to the Project. These requests are made pursuant to Public Resources Code Sections 21092.2, 21080.4, 21083.9, 21092, 21108, 21152, and 21167(f) and Government Code Section 65092, which require local agencies to

ABJC1-1

August 29, 2022

Page 2

mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body.

Please send the above requested items by email and U.S. Mail to our South San Francisco Office as follows:

U.S. Mail

Sheila M. Sannadan
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

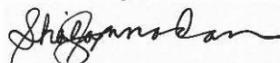
Email

ssannadan@adamsbroadwell.com

ABJC1-1
cont'd.

Please call me at (650) 589-1660 if you have any questions. Thank you for your assistance with this matter.

Sincerely,



Sheila M. Sannadan
Legal Assistant

SMS:acp

Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Letter #1 Dated August 29, 2022

Comment ABJC1-1

We are writing on behalf of Californians Allied for a Responsible Economy (“CARECA”) to request mailed notice of the availability of any environmental review document, prepared pursuant to the California Environmental Quality Act, related to the Dara Industrial Project (CUP No. CUP22-00003; SCH No. 2022040060) proposed by SRD Design Studio Inc. as well as a copy of the environmental review document when it is made available for public review.

The Project proposes the proposes [sic] development of a single 750,000-squarefoot industrial building. Of this total, 15,000 square feet would be dedicated to office uses associated with the industrial uses. The approximately 43.28-acre Project site is located at the northwest corner of Highway 395 and Poplar Street, in the City of Hesperia, California. The Project site consists of Assessor’s Parcel Numbers (APNs) 3064-551-03, -04, -06, -07, and -08.

We also request mailed notice of any and all hearings and/or actions related to the Project. These requests are made pursuant to Public Resources Code Sections 21092.2, 21080.4, 21083.9, 21092, 21108, 21152, and 21167(f) and Government Code Section 65092, which require local agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency’s governing body.

Please send the above requested items by email and U.S. Mail to our South San Francisco Office as follows:

U.S. Mail

*Sheila M. Sannadan
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037*

Email

ssannadan@adamsbroadwell.com

Please call me at (650) 589-1660 if you have any questions. Thank you for your assistance with this matter.

Response ABJC1-1

The commenter does not express specific concerns regarding the DEIR. The commenter has been added to the Lead Agency's notification list for Project environmental documents, public notices, public hearings, and notices of determination. Communications regarding the Project and associated environmental documents, public notices, public hearings, and notices of determination will be sent to the address(es) provided. No revisions to the DEIR are required. Results and conclusions of the DEIR are not affected.

ADAMS BROADWELL JOSEPH & CARDOZO

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August 29, 2022

VIA EMAIL AND U.S. MAIL

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Re: Request for Immediate Access to Public Records - Dara Industrial Project (CUP No. CUP22-00003; SCH No. 2022040060)

Dear Mr. Hearn, Ms. Heredia, and Mr. Gonzalez:

We are writing on behalf of Californians Allied for a Responsible Economy (“CARECA”) to request ***immediate access*** to any and all public records referring or related to Dara Industrial Project (CUP No. CUP22-00003; SCH No. 2022040060) proposed by SRD Design Studio Inc. This request includes, but is not limited to, any and all materials, applications, correspondence, resolutions, memos, notes, analyses, electronic mail messages, files, maps, charts, and/or any other documents related to the Project. This request ***does not include*** the Draft Environmental Impact Report (“DEIR”). This request also does not include documents referenced or relied upon in the DEIR, which we have requested in a separate letter pursuant to the California Environmental Quality Act.

ABJC2-1

August 29, 2022
Page 2

The Project proposes the proposes development of a single 750,000-square-foot industrial building. Of this total, 15,000 square feet would be dedicated to office uses associated with the industrial uses. The approximately 43.28-acre Project site is located at the northwest corner of Highway 395 and Poplar Street, in the City of Hesperia, California. The Project site consists of Assessor's Parcel Numbers (APNs) 3064-551-03, -04, -06, -07, and -08.

We request ***immediate access*** to review the above documents pursuant to section 6253(a) of the Public Records Act, 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." Gov. Code § 6253(a). Therefore, the 10-day response period applicable to a "request for a copy of records" under Section 6253(c) does not apply to this request.

ABJC2-1
cont'd.

My contact information is:

U.S. Mail

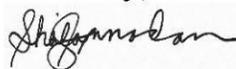
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ssannadan@adamsbroadwell.com

Please call me at (650) 589-1660 if you have any questions. Thank you for your assistance with this matter.

Sincerely,



Sheila M. Sannadan
Legal Assistant

SMS:acp

6265-002acp

Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Letter #2 Dated August 29, 2022

Comment ABJC2-1

We are writing on behalf of Californians Allied for a Responsible Economy (“CARECA”) to request immediate access to any and all public records referring or related to Dara Industrial Project (CUP No. CUP22-00003; SCH No. 2022040060) proposed by SRD Design Studio Inc. This request includes, but is not limited to, any and all materials, applications, correspondence, resolutions, memos, notes, analyses, electronic mail messages, files, maps, charts, and/or any other documents related to the Project. This request does not include the Draft Environmental Impact Report (“DEIR”). This request also does not include documents referenced or relied upon in the DEIR, which we have requested in a separate letter pursuant to the California Environmental Quality Act.

The Project proposes the proposes [sic] development of a single 750,000-squarefoot industrial building. Of this total, 15,000 square feet would be dedicated to office uses associated with the industrial uses. The approximately 43.28-acre Project site is located at the northwest corner of Highway 395 and Poplar Street, in the City of Hesperia, California. The Project site consists of Assessor’s Parcel Numbers (APNs) 3064-551-03, -04, -06, -07, and -08.

We request immediate access to review the above documents pursuant to section 6253(a) of the Public Records Act, 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.” Gov. Code § 6253(a). Therefore, the 10-day response period applicable to a “request for a copy of records” under Section 6253(c) does not apply to this request.

My contact information is:

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Sheila Sannadan

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Email

ssannadan@adamsbroadwell.com

Please call me at (650) 589-1660 if you have any questions. Thank you for your assistance with this matter.

Response ABJC2-1

The commenter does not express specific concerns regarding the DEIR. No revisions to the DEIR are required. Results and conclusions of the DEIR are not affected. Point of contact is noted.

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MARC D. JOSEPH
DANIEL L. CARDOZO

August 29, 2022

VIA EMAIL AND U.S. MAIL

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City of Hesperia
9700 Seventh Ave.
Hesperia, CA 92345

Email: developmentsservices@cityofhesperia.us

Jessica Heredia
Deputy City Clerk
City of Hesperia
9700 Seventh Ave.
Hesperia, CA 92345

Email: cityclerk@cityofhesperia.us

VIA EMAIL ONLY

Edgar Gonzalez, Associate Planner

Email: egonzalez@cityofhesperia.us

Re: Request for Immediate Access to Documents Referenced in the Draft Environmental Impact Report – Dara Industrial Project (CUP No. CUP22-00003; SCH No. 2022040060)

Dear Mr. Hearn, Ms. Heredia, and Mr. Gonzalez:

We are writing on behalf of Californians Allied for a Responsible Economy (“CARECA”) to request ***immediate access*** to any and all documents referenced, incorporated by reference, and relied upon in the Draft Environmental Impact Report (“DEIR”) prepared for the Dara Industrial Project (CUP No. CUP22-00003; SCH No. 2022040060), proposed by SRD Design Studio Inc. ***This request excludes a copy of the DEIR and its appendices. This request also excludes any documents that are currently available on the City of Hesperia Planning webpage, as of today’s date.***¹

ABJC3-1

The Project proposes the proposes development of a single 750,000-square-foot industrial building. Of this total, 15,000 square feet would be dedicated to office uses associated with the industrial uses. The approximately 43.28-acre Project site is located at the northwest corner of Highway 395 and Poplar Street, in the City of

¹ Accessed <http://ca-hesperia.civicplus.com/312/Planning> on August 29, 2022.

August 29, 2022
Page 2

Hesperia, California. The Project site consists of Assessor's Parcel Numbers (APNs) 3064-551-03, -04, -06, -07, and -08.

Our request for ***immediate access*** to all documents referenced in the DEIR is made pursuant to the California Environmental Quality Act ("CEQA"), which requires that all documents referenced, incorporated by reference, and relied upon in an environmental review document be made available to the public for the entire comment period.²

I will be contacting you to arrange for the review/duplication/transmission of the requested records soon. In the interim, if you have any questions or concerns regarding this request, my contact information is:

ABJC3-1
cont'd.

U.S. Mail

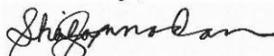
Sheila Sannadan
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

Email

ssannadan@adamsbroadwell.com

Please call me at (650) 589-1660 if you have any questions. Thank you for your assistance with this matter.

Sincerely,



Sheila M. Sannadan
Legal Assistant

SMS:acp

² See Public Resources Code § 21092(b)(1) (stating that "all documents referenced in the draft environmental impact report" shall be made "available for review"); 14 Cal. Code Reg. § 15087(c)(5) (stating that all documents incorporated by reference in the EIR . . . shall be readily accessible to the public"); see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442, as modified (Apr. 18, 2007) (EIR must transparently incorporate and describe the reference materials relied on in its analysis); *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 ("[W]hatever is required to be considered in an EIR must be in that formal report. . ."), internal citations omitted.

Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Letter #3 Dated August 29, 2022

Comment ABJC3-1

We are writing on behalf of Californians Allied for a Responsible Economy (“CARECA”) to request immediate access to any and all documents referenced, incorporated by reference, and relied upon in the Draft Environmental Impact Report (“DEIR”) prepared for the Dara Industrial Project (CUP No. CUP22-00003; SCH No. 2022040060), proposed by SRD Design Studio Inc. This request excludes a copy of the DEIR and its appendices. This request also excludes any documents that are currently available on the City of Hesperia Planning webpage, as of today’s date.

The Project proposes the proposes [sic] development of a single 750,000-squarefoot industrial building. Of this total, 15,000 square feet would be dedicated to office uses associated with the industrial uses. The approximately 43.28-acre Project site is located at the northwest corner of Highway 395 and Poplar Street, in the City of Hesperia, California. The Project site consists of Assessor’s Parcel Numbers (APNs) 3064-551-03, -04, -06, -07, and -08.

Our request for immediate access to all documents referenced in the DEIR is made pursuant to the California Environmental Quality Act (“CEQA”), which requires that all documents referenced, incorporated by reference, and relied upon in an environmental review document be made available to the public for the entire comment period.

I will be contacting you to arrange for the review/duplication/transmission of the requested records soon. In the interim, if you have any questions or concerns regarding this request, my contact information is:

U.S. Mail

Sheila Sannadan

Adams Broadwell Joseph & Cardozo

601 Gateway Boulevard, Suite 1000

South San Francisco, CA 94080-7037

Email

ssannadan@adamsbroadwell.com

Please call me at (650) 589-1660 if you have any questions. Thank you for your assistance with this matter.

Response ABJC3-1

The commenter does not express specific concerns regarding the DEIR. No revisions to the DEIR are required. Results and conclusions of the DEIR are not affected. Point of contact is noted.

From: A S <asalcido.07@gmail.com>
Sent: Tuesday, September 13, 2022 1:33 PM
To: Edgar Gonzalez <egonzalez@cityofhesperia.us>
Cc: Terrance Lucio <t.lucio57@gmail.com>; PATRICK HANINGER <phaninger1@gmail.com>;
Unknown <jbourg2271@aol.com>; jbourgeois029@gmail.com
Subject: Dara Industrial Project

Good Afternoon Mr. Gonzalez,

Please provide any updates to the above mentioned project.

I am requesting under Public Resource Code Section 21092.2 to add the email addresses and mailing address below to the notification list, regarding any subsequent environmental documents, public notices, public hearings, and notices of determination for this project.

t.lucio57@gmail.com

phaninger1@gmail.com

jbourg2271@aol.com

jbourgeois029@gmail.com

asalcido.07@gmail.com

Mailing Address:

P.O. Box 79222

Corona, CA 92877

Please confirm receipt of this email. Thank you for your assistance.

Thank You,

Adam Salcido

AS-1

Adam Salcido
P.O. Box 79222
Corona, CA 92877

Email Dated September 13, 2022

Comment AS-1

Please provide any updates to the above mentioned project.

I am requesting under Public Resource Code Section 21092.2 to add the email addresses and mailing address below to the notification list, regarding any subsequent environmental documents, public notices, public hearings, and notices of determination for this project.

t.lucio57@gmail.com

phaninger1@gmail.com

jbourg2271@aol.com

jbourgeois029@gmail.com

asalcido.07@gmail.com

Mailing Address:

P.O. Box 79222

Corona, CA 92877

Please confirm receipt of this email. Thank you for your assistance.

Response AS-1

The commenter does not express specific concerns regarding the DEIR. The commenter has been added to the Lead Agency's notification list for Project environmental documents, public notices, public hearings, and notices of determination. Communications regarding the Project and associated environmental documents, public notices, public hearings, and notices of determination will be sent to the address(es) provided. No revisions to the DEIR are required. Results and conclusions of the DEIR are not affected.

4.0 MITIGATION MONITORING PROGRAM

4.0 MITIGATION MONITORING PROGRAM

4.1 INTRODUCTION

To ensure that the mitigation measures contained in this EIR are properly implemented, a mitigation monitoring program has been developed pursuant to state law. This Mitigation Monitoring Program (MMP) identifies measures incorporated in the Project which reduce its potential environmental effects; the entities responsible for implementation and monitoring of mitigation measures; and timing for implementation of mitigation measures. As described in *CEQA Guidelines* §15097, this MMP employs both reporting on, and monitoring of, Project mitigation measures.

The objectives of the MMP are to:

- Assign responsibility for, and further proper implementation of mitigation measures;
- Assign responsibility for, and provide for monitoring and reporting of compliance with mitigation measures;
- Provide the mechanism to identify areas of noncompliance and need for enforcement action before irreversible environmental damage occurs.

Mitigation monitoring and reporting procedures incorporated in the Project are presented in the following Section 4.2. Specific mitigation measures incorporated in the Project, mitigation timing, and implementation and reporting/monitoring responsibilities are presented within this Section in Table 4.2-1.

4.2 MITIGATION MONITORING AND REPORTING

Mitigation Monitoring and Responsibilities

As the Lead Agency, the City of Hesperia is responsible for ensuring full compliance with the mitigation measures adopted for the Project. The City shall monitor and report on all mitigation activities. Mitigation measures shall be implemented at different stages of development throughout the Project area. In this regard, the responsibilities for implementation have been assigned to the Lead and Responsible Agencies, Applicant or successor(s) in interest, Contractors, On-Site Monitors, or combinations thereof.

If during the course of Project implementation, any of the mitigation measures identified herein cannot be successfully implemented, the City shall be immediately informed, and the City shall then inform any affected responsible agencies. The City, in conjunction with any affected responsible agencies, shall then determine if modification to the Project is required and/or whether alternative mitigation is appropriate.

Table 4.2-1: Mitigation Monitoring Program

General Note: To facilitate coordination and effective implementation of mitigation measures, the mitigation measures provided herein shall appear on all grading plans, construction specifications, and bid documents. Incorporation of required notations shall be verified by the City prior to issuance of first development permit. Implementation Entities shall comply with listed mitigation requirements.

Section / MM No.	Mitigation Measure	Mitigation Timing/Remarks	Implementation Entity	Monitoring/ Reporting Entity	Date of Completion/ Initials
4.7 Biological Resources					
4.7.1	<p><i>A State Incidental Take Permit (ITP) shall be obtained prior to any ground disturbing activities that would be expected to impact the western Joshua tree.</i></p> <p><i>If the Western Joshua Tree (WJT) is formally listed as a Threatened Species under the California Endangered Species Act (CESA), in accordance with Fish and Game Code Section 208, an Incidental Take Permit (ITP) shall be obtained from CDFW prior to any actions comprising "take" of WJT. California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."</i></p> <p><i>Pursuant to an ITP (if required) CDFW typically recommends acquisition of conservation credits through an existing Bank or through permanent species protection by the establishment of a conservation easement, the development of a long-term management plan, and the securement of sufficient funds to implement management plan tasks in perpetuity. If an ITP is required, ITP actions required by CDFW shall be completed, or financial security ensuring completion of CDFW-required actions shall be provided, prior to initiating Project activities. To execute an ITP, CDFW requires documentation of CEQA compliance. The City shall require such documentation as part of the ITP process. CEQA documentation shall include a State Clearing House number and proof of filing fees and document circulation.</i></p>	Prior to commencing ground- or vegetation-disturbing activities.	Project Proponent.	CDFW; Project biologist; City of Hesperia, Planning Department.	

Table 4.2-1: Mitigation Monitoring Program

General Note: To facilitate coordination and effective implementation of mitigation measures, the mitigation measures provided herein shall appear on all grading plans, construction specifications, and bid documents. Incorporation of required notations shall be verified by the City prior to issuance of first development permit. Implementation Entities shall comply with listed mitigation requirements.

Section / MM No.	Mitigation Measure	Mitigation Timing/Remarks	Implementation Entity	Monitoring/ Reporting Entity	Date of Completion/ Initials
4.7.2	<p><i>If construction occurs between February 1st and August 31st, a pre-construction clearance survey for nesting birds should be conducted within three (3) days of the start of any vegetation removal or ground-disturbing activities to ensure that no nesting birds will be disturbed during construction. The biologist conducting the clearance survey should document a negative survey with a brief letter report indicating that no impacts to active avian nests will occur. If an active avian nest is discovered during the pre-construction clearance survey, construction activities should stay outside of a no-disturbance buffer. The size of the no-disturbance buffer will be determined by the wildlife biologist and will depend on the level of noise and/or surrounding anthropogenic disturbances, line of sight between the nest and the construction activity, type and duration of construction activity, ambient noise, species habituation, and topographical barriers. These factors will be evaluated on a case-by-case basis when developing buffer distances. Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. A biological monitor should be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur.</i></p> <p><u>Regardless of the time of year, a pre-construction clearance survey for nesting birds shall be conducted onsite within 500 feet of the Project site within three (3) days of the start of any vegetation removal or ground-disturbing activities to ensure that no nesting birds will be disturbed during construction. Surveys</u></p>	Prior to commencing ground- or vegetation-disturbing activities.	Project Proponent.	CDFW; Project biologist; City of Hesperia, Planning Department.	

Table 4.2-1: Mitigation Monitoring Program

General Note: To facilitate coordination and effective implementation of mitigation measures, the mitigation measures provided herein shall appear on all grading plans, construction specifications, and bid documents. Incorporation of required notations shall be verified by the City prior to issuance of first development permit. Implementation Entities shall comply with listed mitigation requirements.

Section / MM No.	Mitigation Measure	Mitigation Timing/Remarks	Implementation Entity	Monitoring/ Reporting Entity	Date of Completion/ Initials
	<p><u>shall include any potential habitat (including trees, shrubs, the ground, or nearby structures) that may be impacted by Project activities. The biologist conducting the clearance survey shall document a negative survey with a brief letter report indicating that no impacts to active avian nests will occur.</u></p> <p><u>If an active avian nest is discovered during the pre-construction clearance survey, construction activities shall stay outside of a no-disturbance buffer. The extent of the 'no-disturbance buffer' shall be no less than 300 feet (500 feet for raptors) although a smaller buffer may be determined by a qualified biologist. Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. A biological monitor shall be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. If the qualified biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the 'no-disturbance buffer' shall be expanded. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur.</u></p>				
4.7.3	<p>A pre construction burrowing owl survey will be conducted within 30 days prior to construction to avoid any potential project related impacts to this species. If burrowing owls are documented on-site, the Applicant shall prepare and implement a plan for avoidance or passive exclusion, in coordination with CDFW. Methodology for surveys, impact analysis, and reporting shall follow the recommendations</p>	<p>Prior to commencing ground- or vegetation-disturbing activities.</p>	<p>Project Proponent.</p>	<p>CDFW; Project biologist; City of Hesperia, Planning Department.</p>	

Table 4.2-1: Mitigation Monitoring Program

General Note: To facilitate coordination and effective implementation of mitigation measures, the mitigation measures provided herein shall appear on all grading plans, construction specifications, and bid documents. Incorporation of required notations shall be verified by the City prior to issuance of first development permit. Implementation Entities shall comply with listed mitigation requirements.

Section / MM No.	Mitigation Measure	Mitigation Timing/Remarks	Implementation Entity	Monitoring/ Reporting Entity	Date of Completion/ Initials
	<p><i>and guidelines provided within the California Department of Fish and Game Staff Report on Burrowing Owl Mitigation (CDFW 2012 Staff Report).</i></p> <p><i>Prior to initiating Project activities, a qualified biologist shall conduct at least one survey covering the entire Project area and surrounding 15-meter buffer to identify the presence of suitable burrows and/or burrow surrogates (>11 cm in diameter [height and width] and >150 cm in depth) for burrowing owl and sign of burrowing owl (e.g., pellets, prey remains, whitewash, or decoration, etc.). If burrowing owls or suitable burrows and/or sign of burrowing owl are documented on-site, a breeding season survey for burrowing owl in accordance with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) shall be conducted by a qualified biologist prior to start of Project activities. If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no further action is necessary. If burrowing owl, active burrowing owl burrows, or sign thereof are found the qualified biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures to be approved by CDFW prior to commencing Project activities and propose mitigation for permanent loss of occupied burrow(s) and habitat. Methodology for surveys, impact analysis, and reporting shall follow the recommendations and guidelines provided within the California Department of Fish and Game Staff Report on Burrowing Owl Mitigation (CDFW 2012 Staff Report).</i></p>				
4.7.4	<p><i>If Oro Grande Wash will be impacted by Project development, the Project Applicant shall obtain the following regulatory approvals prior to impacts occurring</i></p>	<p>Prior to commencing ground- or vegetation-disturbing activities.</p>	<p>Project Proponent.</p>	<p>CDFW; Project biologist; City of Hesperia, Planning Department.</p>	

Table 4.2-1: Mitigation Monitoring Program

General Note: To facilitate coordination and effective implementation of mitigation measures, the mitigation measures provided herein shall appear on all grading plans, construction specifications, and bid documents. Incorporation of required notations shall be verified by the City prior to issuance of first development permit. Implementation Entities shall comply with listed mitigation requirements.

Section / MM No.	Mitigation Measure	Mitigation Timing/Remarks	Implementation Entity	Monitoring/ Reporting Entity	Date of Completion/ Initials
	<p>within the identified jurisdictional area: Corps CWA Section 404 Permit, Regional Board CWA Section 401 Water Quality Certification, and/or CDFW Section 1602 Streambed Alteration Agreement.</p> <p>If Oro Grande Wash will be impacted by Project activities, the Project Applicant shall obtain the following regulatory approvals prior to impacts occurring within the identified jurisdictional area: U.S. Army Corps CWA Section 404 Permit, Regional Board CWA Section 401 Water Quality Certification, and written correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project proponent shall obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p> <p><u>If Oro Grande Wash will be impacted by Project activities, the Project Applicant shall obtain the following regulatory approvals prior to impacts occurring within the identified jurisdictional area: U.S. Army Corps CWA Section 404 Permit, Regional Board CWA Section 401 Water Quality Certification, and written correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project proponent shall obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</u></p>				
4.7.5	<p><u>A qualified biologist shall conduct pre-construction surveys within the Project area and a 500-foot buffer surrounding these areas 14-21 days prior to initiating Project activities. The surveys shall be conducted to identify and map for avoidance of any special-status</u></p>	<p>Prior to commencing ground- or vegetation-disturbing activities.</p>	<p>Project Proponent.</p>	<p>CDFW; Project biologist; City of Hesperia, Planning Department.</p>	

Table 4.2-1: Mitigation Monitoring Program

General Note: To facilitate coordination and effective implementation of mitigation measures, the mitigation measures provided herein shall appear on all grading plans, construction specifications, and bid documents. Incorporation of required notations shall be verified by the City prior to issuance of first development permit. Implementation Entities shall comply with listed mitigation requirements.

Section / MM No.	Mitigation Measure	Mitigation Timing/Remarks	Implementation Entity	Monitoring/ Reporting Entity	Date of Completion/ Initials
	<p><i>species with the potential to occur on the site such as desert tortoise and Mohave ground squirrel. The qualified biologist shall ensure that the methods used to locate, identify, map, avoid, and buffer individuals or habitat are appropriate and effective, including the assurance that the surveyor has attained 100% visual coverage of the entirety of the potential impact areas, and an appropriate buffer surrounding those areas. Appropriate survey methods and timeframes shall be established, to ensure that chances of detecting the target species are maximized. In the event that listed species, such as the desert tortoise or Mohave ground squirrel, are detected and avoidance is infeasible, proper authorization (i.e., incidental take permitting) from the USFWS and CDFW must be obtained. If nesting birds are detected, avoidance measures shall be implemented to ensure that nests are not disturbed until after young have fledged.</i></p>				
4.7.6	<p><i>A qualified biologist shall conduct pre-construction sweeps within the Project area (including access routes) and a 500-foot buffer surrounding the Project areas, within 2 hours of initiating Project activities. The pre-construction sweeps shall confirm and mark/map for avoidance the location of any special-status species such as desert tortoise and Mohave ground squirrel and shall verify that no additional special-status species have occupied the Project areas or adjacent habitats. If any additional special-status species (or sign of presence) are identified within or adjacent to the project areas during the pre-construction sweep, the qualified biologist shall determine whether the proposed avoidance measures will be effective in fully avoiding impacts of the project on the identified resource(s) prior to initiating Project activities. If full avoidance cannot be</i></p>	<p>Prior to commencing ground- or vegetation-disturbing activities.</p>	<p>Project Proponent.</p>	<p>CDFW; Project biologist; City of Hesperia, Planning Department.</p>	

Table 4.2-1: Mitigation Monitoring Program

General Note: To facilitate coordination and effective implementation of mitigation measures, the mitigation measures provided herein shall appear on all grading plans, construction specifications, and bid documents. Incorporation of required notations shall be verified by the City prior to issuance of first development permit. Implementation Entities shall comply with listed mitigation requirements.

Section / MM No.	Mitigation Measure	Mitigation Timing/Remarks	Implementation Entity	Monitoring/ Reporting Entity	Date of Completion/ Initials
	<i>accomplished, Permittee shall postpone the Project, and contact CDFW to discuss an appropriate path forward.</i>				
4.7.7	<i>Prior to the initiation of Project activities, and during the appropriate season, a qualified biologist shall conduct botanical field surveys following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). If any special-status plants are identified, the Project proponent shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the Project proponent shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank or land acquisition and conservation, at a mitigation ratio determined by CDFW after Project analysis. If the Project has the potential to impact a state listed species, the Project proponent shall apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW.</i>	Prior to commencing ground- or vegetation- disturbing activities.	Project Proponent.	CDFW; Project biologist; City of Hesperia, Planning Department.	
4.7.5-	<i>No Joshua Trees shall be removed from the site without first obtaining a State Incidental Take Permit (ITP) from the CDFW. The removal/salvage of any Joshua Trees shall occur in compliance with Hesperia Municipal Code Section 16.24.</i>				
4.8 Cultural Resources					
4.8.1	<i>Prior to the initiation of ground-disturbing activities, field personnel shall be alerted to the possibility of buried prehistoric or historic cultural deposits. In the event that cultural resources are discovered during project activities,</i>	Prior to commencing ground-disturbing activities.	Project Proponent.	SMBMI; Project archaeologist; City of Hesperia, Planning Department.	

Table 4.2-1: Mitigation Monitoring Program

General Note: To facilitate coordination and effective implementation of mitigation measures, the mitigation measures provided herein shall appear on all grading plans, construction specifications, and bid documents. Incorporation of required notations shall be verified by the City prior to issuance of first development permit. Implementation Entities shall comply with listed mitigation requirements.

Section / MM No.	Mitigation Measure	Mitigation Timing/Remarks	Implementation Entity	Monitoring/ Reporting Entity	Date of Completion/ Initials
	<p><i>all work in the immediate vicinity of the find (within a 60-foot buffer) shall cease and a qualified archaeologist meeting Secretary of Interior standards shall be hired to assess the find. Work in the other portions of the Project site outside of the buffered area may continue during this assessment period. Additionally, the San Manuel Band of Mission Indians Cultural Resources Department (SMBMI) shall be contacted, as detailed at Mitigation Measure 4.8.5, regarding any pre-contact and/or historic-era finds. SMBMI shall be provided information after the archaeologist makes his/her initial assessment of the nature of the find, so as to provide Tribal input with regards to significance and treatment of the find(s).</i></p>				
<p>4.8.2</p>	<p><i>If significant pre-contact and/or historic-era cultural resources, as defined by CEQA (as amended, 2015), are discovered and avoidance cannot be assured, the archaeologist shall develop a Monitoring and Treatment Plan (Plan), a draft of which shall be provided to SMBMI for review and comment, as detailed at Mitigation Measure 4.8.5. The archaeologist shall monitor the remainder of the Project site disturbing activities and shall implement the Plan accordingly.</i></p>	<p>For the duration of ground- disturbing activities.</p>	<p>Project Proponent.</p>	<p>SMBMI; Project archaeologist; City of Hesperia, Planning Department.</p>	
<p>4.8.3</p>	<p><i>If human remains or funerary objects are encountered during any activities associated with the Project site disturbing activities, work in the immediate vicinity (within a 100-foot buffer of the find) shall cease and the County Coroner shall be contacted pursuant to State Health and Safety Code §7050.5 and that code enforced for the duration of Project site disturbing activities.</i></p>	<p>For the duration of ground- disturbing activities.</p>	<p>Project Proponent.</p>	<p>SMBMI; Project archaeologist; City of Hesperia Planning Department; SB County, County Coroner.</p>	
<p>4.8.4</p>	<p><i>A qualified paleontologist shall be retained to conduct a pre-construction meeting prior to ground disturbance to instruct workers on proper fossil identification and subsequent notification of a trained professional. If</i></p>	<p>Prior to commencing ground-disturbing activities and for the duration of ground- disturbing activities.</p>	<p>Project Proponent.</p>	<p>SMBMI; Project paleontologist, City of Hesperia, Planning Department.</p>	

Table 4.2-1: Mitigation Monitoring Program

General Note: To facilitate coordination and effective implementation of mitigation measures, the mitigation measures provided herein shall appear on all grading plans, construction specifications, and bid documents. Incorporation of required notations shall be verified by the City prior to issuance of first development permit. Implementation Entities shall comply with listed mitigation requirements.

Section / MM No.	Mitigation Measure	Mitigation Timing/Remarks	Implementation Entity	Monitoring/ Reporting Entity	Date of Completion/ Initials
	<p>paleontological resources (fossils) are discovered during Project site-disturbing activities, work shall be halted in that area until a qualified paleontologist can be retained to assess the significance of the find. The Project paleontologist shall monitor remaining site-disturbing activities at the Project site and shall be equipped to record and salvage fossil resources that may be unearthed during site-disturbing activities. The paleontologist shall be empowered to temporarily halt or divert site-disturbing activities to allow recording and removal of the unearthed resources. Any fossils found shall be evaluated in accordance with the CEQA Guidelines and offered for curation at an accredited facility approved by the City. Once site-disturbing activities have ceased or the paleontologist determines that monitoring is no longer necessary, monitoring activities may be discontinued.</p>				
4.8.5	<p>The San Manuel Band of Mission Indians Cultural Resources Department (SMBMI) shall be contacted, as detailed at Mitigation Measure 4.8.1, of any pre-contact and/or historic-era cultural resources discovered during Project site disturbing activities. SMBMI shall be provided information regarding the nature of the find, so as to provide Tribal input with regards to significance and treatment of the find(s). Should the find(s) be deemed significant, as defined by CEQA (as amended, 2015), a cultural resources Monitoring and Treatment Plan shall be created by the archaeologist, in coordination with SMBMI, and all subsequent finds shall be subject to provisions of this Plan. This Plan shall allow for a monitor to be present that represents SMBMI for the remainder of the Project site disturbing activities, should SMBMI elect to place a monitor on-site.</p>	<p>Prior to commencing ground-disturbing activities and for the duration of ground- disturbing activities.</p>	<p>Project Proponent.</p>	<p>SMBMI; Project archaeologist; City of Hesperia, Planning Department.</p>	
4.8.6	<p>Any and all archaeological/cultural documents created as a part of the Project (isolate records, site records, survey</p>	<p>Within 60-days of completion of ground- disturbing activities.</p>	<p>Project Proponent.</p>	<p>SMBMI; Project archaeologist; City of</p>	

Table 4.2-1: Mitigation Monitoring Program

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Section / MM No.	Mitigation Measure	Mitigation Timing/Remarks	Implementation Entity	Monitoring/ Reporting Entity	Date of Completion/ Initials
	reports, testing reports, etc.) shall be supplied to the Applicant and Lead Agency for dissemination to SMBMI. The Lead Agency and/or Applicant shall, in good faith, consult with SMBMI throughout the life of the Project.			Hesperia, Planning Department.	

ATTACHMENT A

SOUTHEAST CORNER OF LOS BANOS AVENUE & SULTANA STREET

CITY OF HESPERIA, SAN BERNARDINO COUNTY, CALIFORNIA

Section 2081 Incidental Take Permit Application

Prepared For:

SRD DESIGN STUDIO
10501 Wilshire Blvd., Suite 605
Los Angeles, California 90024
Contact: *David Golkar*

Prepared By:

ELMT Consulting, Inc.
2201 N. Grand Avenue #10098
Santa Ana, California 92711
Contact: *Thomas J. McGill, Ph.D.*

February 2022

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APPENDIX

Appendix A Site Plans
Appendix B Representative Photographs

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Section 1 Introduction

The permit application was prepared as part of SRD Design Studio (Applicant) application for an Incidental Take Permit (ITP) pursuant to Section 2081 (b) of California Endangered Species Act (CESA). This permit application describes proposed management actions, as required by the California Code of Regulations (CCR) Section 783.2, that will be implemented to mitigate the impacts of take or potential take of State-listed species known to occur or have a potential of occurring on the project site.

1.1 APPLICANT (CCR § 783.2(A)(1))

SRD DESIGN STUDIO

10501 Wilshire Blvd., Suite 605
Los Angeles, California 90024

Point of Contact: David Golkar
Phone number: 424-279-0909
E-mail: golkardavid@gmail.com

Permit Coverage Period. Permit coverage is requested for a period of 5 years.

1.2 SPECIES FOR WHICH COVERAGE IS REQUESTED (CCR § 783.2(A)(2))

Incidental take coverage is requested for the following species:

Table 1: Species Listed Under CESA

Common Name	Scientific Name	State Status
Western Joshua Tree	<i>Yucca brevifolia</i> var. <i>brevifolia</i>	State Candidate Endangered ¹

1.3 PROJECT LOCATION (CCR § 783.2(A)(4))

The 87.75-acre project site is located south of State Route 18, west of United States Route 395, north of Interstate 15, and east of State Route 138 in the City of Hesperia, San Bernardino County, California. The site is depicted on the Baldy Mesa quadrangle of the United States Geological Survey's (USGS) 7.5-minute map series within Section 21 of Township 4 North, Range 5 West. Specifically, the site spans the Oro Grande Wash and is located at the southeast corner of the intersection of Los Banos

¹ On September 22, 2020, the California Fish and Game Commission (FGC) voted to advance the western Joshua tree to candidate threatened species under CESA. Candidate species for listing receive full protection under CESA. On October 29, 2020, the State of California Office of Administrative Law approved the adoption of Section 749.10 Title 14, California Code of Regulations (CCR), entitled Special Order Relating to the Take of western Joshua tree (*Yucca brevifolia* var. *brevifolia*) during the Candidacy Period.

Avenue and Sultana Street within Assessor Parcel Number 306-455-101. Refer to Exhibits 1-3 in Attachment A.

The land surrounding the site is composed of a mosaic of undeveloped, vacant land and rural residential lots, and scattered commercial, and industrial development. The site is bounded immediately by undeveloped, vacant land to the north; United States Route 395 to the east with undeveloped, vacant land beyond; undeveloped, vacant land and a paved road to the south; and undeveloped, vacant land and residential development to the west. The Project Site is undeveloped but with some minor infrastructure developed scattered at the southern end of the site in support of an offroad vehicle racetrack in 2006.

This land is currently undeveloped and is routinely disked for weed abatement. Scattered remnant plants of a creosote bush scrub plant community are found on the site and include creosote bush (*Larrea tridentata*), burrobush (*Ambrosia dumosa*), rubber rabbit bush (*Eriogonum fasciculatum*), western Joshua tree (*Yucca brevifolia* var. *brevifolia*), winterfat (*Krascheniikovia lanata*) and spiny hopsage (*Grayia spinosa*).

These ongoing land uses (i.e., grading for storage and staging activities, fill dirt extraction, and long-standing use of the site by off-highway recreational vehicle access) have had a heavy impact on the native plant community.

1.4 PROJECT DESCRIPTION (CCR § 783.2(A)(3))

The project is the construction of a 745,000 square foot logistic building with associated parking spaces and water quality basins. The building will be a single use building. There will be two points of access off Poplar Street to the south. The City of Hesperia requires landscape around the perimeter of the site and building. The height of the building is 40 feet and will be constructed using concrete tilt up with concrete and glass finishing.

Development of the logistics building will include installation of a sewer line, water lines and other underground utilities within the site to support the operational use of the building. Development of the site will occur in two phases:

Phase 1: Site Preparation. Following the removal of the onsite western Joshua trees, development activities will include ground clearing using a brush hog to cut vegetation to a height of six inches above the ground to retain root structures and minimize impacts on native soil. Cut vegetations will be mulched onsite and dispersed locally. A stabilized staging area, approximately 1-acre in size, will be created in one corner of the Project Site and covered with gravel. The staging area will provide space to store materials, vehicles and construction waste (steel and palettes) and to provide for construction worker parking. Two stabilized construction site entrances will be provided off Poplar Street. All trash generated during construction activities will be placed in proper containers and properly disposed of as construction proceeds.

Phase 2: Construction and Installation: The concrete foundations will be poured for the 745,000 square foot logistics building. (see Exhibit 3). Pre-fabricated concrete tilt up walls. Underground trenching will be done to install utilities with trenches approximately 2 feet wide.

Timeframe: The timeframe for Phase 1 Site Preparation is anticipated to start in Fall 2023. The timeframe for Phase 2 Construction and Installation is anticipated to take approximately nine months with an anticipated completion data in the fourth quarter of 2024.

Topography and Soils

Elevation ranges from approximately 3,550 to 3,648 feet above mean sea level. On-site topography follows that of Oro Grande Wash; the eastern and western boundaries generally slope towards the center, and the site overall slopes south to north. Within the Oro Grande Wash, topography is highly variable due to an array of racetracks and flat areas that formerly supported spectating and other miscellaneous recreation. In areas that support large plant species, grading often resulted in hummocks being formed.

Based on the NRCS USDA Web Soil Survey, the project site is historically underlain by Cajon sand (9 to 15 percent slopes) and Hesperia loamy fine sand (2 to 5 percent slopes). Refer to Exhibit 4, *Soils*, in Attachment A. Soils on-site have been compacted by anthropogenic disturbances such as grading, fill dirt extraction, storage and staging activities, racetrack construction, and surrounding development.

Vegetation

Two (2) plant communities were observed on-site during the field investigation: rubber rabbitbrush scrub and creosote bush Joshua tree woodland. In addition, two land cover types were observed that would be classified as disturbed and developed (refer to Exhibit 5, *Vegetation*, in Attachment A).

A rubber rabbitbrush scrub plant community is the dominant plant community on the site. Rubber rabbitbrush (*Ericameria nauseosa*) is the primary plant species. Other common plant species observed in this plant community include Joshua tree (*Yucca brevifolia*), desert tea (*Ephedra nevadensis*), Mexican bladder sage (*Scutellaria mexicana*), spiny hop sage (*Grayia spinosa*), peach thorn (*Lycium cooperi*), rattlesnake sandmat (*Euphorbia albomarginata*), chia (*Salvia columbariae*), chaparral yucca (*Hesperoyucca whipplei*), California buckwheat (*Eriogonum fasciculatum*), narrowleaf goldenbush (*Ericameria linearifolia*), sticky lessingia (*Lessingia glandulifera*), desert croton (*Croton californicus*), Mediterranean mustard (*Hirschfeldia incana*), western ragweed (*Ambrosia psilostachya*), California juniper (*Juniperus californica*), and cottonwood (*Populus fremontii*).

Western Joshua trees are scattered throughout the project site. There are a total of 74 trees on-site. According to current USGS and CNPS guidelines, a Joshua tree woodland plant community is classified as having an overall vegetative cover of ≥ 1 percent of Joshua tree canopy. Visually, the density of the Joshua tree canopy is greater than 1 percent on the northwest corner of the project site, and, therefore, this area was determined to support a Joshua tree woodland. Decades of recreational use has had a detrimental impact on the Joshua tree population within the project site. However, the western Joshua tree was recently proposed for listing as an endangered species by CDFW. As a candidate species, western Joshua trees have the same protection as listed species. Joshua trees are also considered

a significant resource under the CEQA and are a covered species under the Desert Plant Protection Act. Removal of Joshua trees will require an Incidental Take Permit (ITP) from CDFW. The location of each Joshua tree was recorded using GPS (see Exhibit 5).

The project site supports disturbed areas throughout the racetrack in addition to along site boundaries and around parking, staging, and storage areas. These areas range in unvegetated density to densely vegetated with weedy/early successional species in addition to few large perennials. Common species observed in the disturbed areas supported by the project site include Mediterranean mustard, desert croton, rattlesnake sandmat, rubber rabbitbrush, Joshua tree, and juniper.

Wildlife

Plant communities provide foraging habitat, nesting/denning sites, and shelter from adverse weather or predation. This section provides a discussion of those wildlife species that were observed or are expected to occur within the project site. The discussion is to be used a general reference and is limited by the season, time of day, and weather conditions in which the field investigation was conducted. Wildlife detections were based on calls, songs, scat, tracks, burrows, and direct observation. The project site provides limited habitat for wildlife species except those adapted to a high degree of anthropogenic disturbances and development.

Fish

No fish or hydrogeomorphic features (e.g., perennial creeks, ponds, lakes, reservoirs) that would provide suitable habitat for fish were observed on or within the vicinity of the project site. Therefore, no fish are expected to occur and are presumed absent from the project site.

Amphibians

No amphibians or hydrogeomorphic features (e.g., perennial creeks, ponds, lakes, reservoirs) that would provide suitable habitat for amphibian species were observed on or within the vicinity of the project site. Therefore, no amphibians are expected to occur on the project site and are presumed absent.

Reptiles

The survey area provides suitable foraging and cover habitat for local reptile species adapted to conditions within the Mojave Desert. The only reptilian species observed was western side-blotched lizard (*Uta stansburiana elegans*). Common reptilian species that could be expected to occur include Great Basin fence lizard (*Sceloporus occidentalis longipes*), yellow-backed spiny lizard (*Sceloporus uniformis*), Great basin gopher snake (*Pituophis catenifer deserticola*), red racer (*Coluber flagellum piceus*), and southwestern speckled rattlesnake (*Crotalus mitchellii pyrrhus*).

Birds

The project site provides suitable foraging and nesting habitat for bird species adapted to conditions within the Mojave Desert. Bird species detected during the field investigation include house finch (*Haemorhous mexicanus*), common raven (*Corvus corax*), California quail (*Callipepla californica*), Costa's hummingbird (*Calypte costae*), red-tailed hawk (*Buteo jamaicensis*), mourning dove (*Zenaida macroura*), Say's phoebe (*Sayornis saya*), cactus wren (*Campulorhynchys brunneicapillus*), white-

crowned sparrow (*Zonotrichia leucophrys*), northern harrier (*Circus hudsonius*), European starling (*Sturnus vulgaris*), and American kestrel (*Falco sparverius*).

Mammals

The survey area provides suitable foraging and cover habitat for mammalian species adapted to conditions within the Mojave Desert. Mammalian species detected during the field investigation include California ground squirrel (*Otospermophilus beecheyi*), black-tailed jackrabbit (*Lepus californicus*), desert cottontail (*Sylvilagus audubonii*), feral domestic cat (*Felis catus*), pocket gopher (*Thomomys bottae*), and coyote (*Canis latrans*). Common mammalian species that could be expected to occur include canyon bat (*Parastrellus hesperus*) and big-eared woodrat (*Neotoma macrotis*).

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Exhibit 1: Regional Vicinity

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Exhibit 2: Site Vicinity

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Exhibit 3: Project Site

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Section 2 Project Impacts

The following section discusses the Project’s potential for take of western Joshua Tree, hereinafter referred to as a Covered Species, an analysis of the potential impacts that could occur to this species and whether the proposed impacts from the project to the species can be fully mitigated. Under California Fish and Game Code, “take” means to hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill. “Incidental Take,” such as that sought under this permit application, is take that is incidental to an otherwise lawful activity.

2.1 POTENTIAL FOR TAKE (CCR § 783.2(A)(5))

Project activities, as described above in Section 1.4 *Project Description*, Covered Activities, are expected to result in the incidental take of 74 individual western Joshua trees, associated seedbank and areas of suitable habitat for the Covered Species within a 84.75-acre site. Covered Activities include the removal of western Joshua trees; clearing of vegetation, grading of the entire site; staging of equipment; compacting dirt and pouring of concrete foundations; temporary fencing; and construction. Exhibit 4 *Distribution of Western Joshua Trees* and Table 2 *Western Joshua Tree Census Data* provide an inventory of Covered Species and their location within the project site.

Table 2: Hesperia (Racetrack) Joshua Tree Inventory

GPS No.	Height (m)	Diameter (cm)	Branches//Panicles	# Clones	Health	Location
1	4.5	40	44/16	11	G	34°24'57.95"N 117°24'6.31"W
2	4.5	33	17/12	N	G	34°24'56.21"N 117°24'5.98"W
3	4.1	37	32/14	N	G	34°24'56.12"N 117°24'6.03"W
4	4.0	50	38/21	N	G	34°24'54.04"N 117°24'6.29"W
5	4.5	30	13/8	1	G	34°24'52.10"N 117°24'7.55"W
6	4.5	33	26/4	N	P Broken Limbs	34°24'50.95"N 117°24'7.06"W
7	4.6	38	42/20	1	G	34°24'53.58"N 117°24'8.24"W
8	3.6	35	15/8	1	G	34°24'56.49"N 117°24'8.16"W
9	3.5	25	4/3	8	G	34°24'57.48"N 117°24'8.26"W
10	3.1	20	3/2	1	P Dead Main Trunk	34°24'57.72"N 117°24'8.09"W
11	5.0	43	44/11	10	G	34°24'57.96"N 117°24'6.29"W

12	5.2	61	106/64	N	G	34°25'0.90"N 117°24'7.00"W
13	3.5	18	8/5	N	F Loss of bark	34°25'2.69"N 117°24'7.55"W
14	6.5	53	57/30	N	F Loss of bark	34°25'2.66"N 117°24'7.96"W
15	4.0	30	14/7	2	F Leaning	34°25'4.52"N 117°24'6.88"W
16	5.3	63	71/19	2	F	34°25'3.95"N 117°24'6.30"W
17	4.1	35	64/42	4	F	34°25'3.81"N 117°24'4.63"W
18	5.7	54	76/46	N	G	34°25'7.93"N 117°24'7.62"W
19	4.8	51	38/24	N	P Broken limbs	34°25'8.38"N 117°24'7.43"W
20	6.2	52	70/32	2	P Broken limbs	34°25'8.67"N 117°24'6.97"W
21	6.4	53	110/84	3	F Broken Limbs	34°25'9.22"N 117°24'6.46"W
22	5.2	48	79/48	3	P Dead branches	34°25'7.88"N 117°24'6.75"W
23	5.0	51	72/58	16	P Severe leaning	34°25'8.88"N 117°24'5.51"W
24	4.8	48	34/28	12	P Dead branches	34°25'9.43"N 117°24'4.74"W
25	2.6	33	9/2	1	P Dead branches	34°25'9.92"N 117°24'3.38"W
26	3.2	30	12/4	N	F	34°25'9.80"N 117°23'58.81"W
27	5.6	62	120/42	N	P Loss of bark Broken limbs	34°25'6.14"N 117°23'58.79"W
28	4.6	43	18/8	1	F Loss of bark	34°25'8.03"N 117°24'4.42"W
29	5.1	45	16/11	N	F Leaning	34°25'7.23"N 117°24'4.57"W
30	3.1	31	9/2	3	F Leaning	34°25'1.57"N 117°24'10.90"W
31	4.0	33	22/16	1	F	34°25'1.02"N 117°24'10.68"W
32	3.9	50	15/10	N	F	34°25'0.68"N 117°24'10.80"W
33	4.4	37	40/32	1	F	34°24'58.75"N 117°24'11.49"W
34	3.2	23	8/4	4	P Broken limbs	34°25'9.98"N 117°24'12.53"W
35	4.4	34	14/6	1	G	34°25'9.88"N 117°24'12.83"W
36	4.5	37	9/6	1	F	34°25'9.87"N 117°24'13.27"W
37	4.9	38	37/8	1	F Leaning	34°25'9.91"N 117°24'15.35"W
38	4.5	38	23/11	N	G	34°25'9.91"N

						117°24'15.69"W
39	3.3	31	18/11	1	G	34°25'4.27"N 117°24'14.40"W
40	6.6	61	62/42	N	G	34°25'0.39"N 117°24'19.68"W
41	5.0	34	8/0	N	Dead On the ground No roots	34°24'57.48"N 117°24'20.47"W
42	4.7	30	23/20	N	G	34°24'57.59"N 117°24'19.88"W
43	4.3	35	16/10	2	G	34°24'59.21"N 117°24'27.85"W
44	4.1	33	18/9	3	G	34°25'0.29"N 117°24'29.59"W
45	4.0	30	24/16	4	F	34°25'1.81"N 117°24'29.24"W
46	5.1	65	112/64	N	G	34°25'2.92"N 117°24'29.16"W
47	4.6	35	26/14	3	P Broken limbs Down clones	34°25'3.15"N 117°24'28.71"W
48	2.4	25	13/12	3	G	34°25'3.66"N 117°24'27.66"W
49	6.0	68	62/28	1	F	34°25'4.38"N 117°24'27.86"W
50	5.5	53	48/21	5	P Broken limbs Down clones	34°25'4.50"N 117°24'28.77"W
51	4.0	35	24/10	3	P Broken Limbs Down clones	34°25'6.18"N 117°24'28.03"W
52	3.5	38	31/10	7	P Broken Limbs Down clones	34°25'6.59"N 117°24'28.54"W
53	4.5	35	17/6	1	P Broken Limbs Down clones	34°25'6.87"N 117°24'27.87"W
54	3.0	25	9/1	2	P Down clones	34°25'7.15"N 117°24'27.31"W
55	3.5	37	20/18	1	P Decaying main trunk	34°25'7.67"N 117°24'27.34"W
56	6.5	46	42/21	N	G	34°25'8.23"N 117°24'29.45"W
57	4.2	34	0/0	N	Dead On the ground No roots	34°25'8.38"N 117°24'29.67"W
58	5.2	61	49/26	1	F	34°25'9.71"N 117°24'28.29"W
59	7.1	62	36/26	1	F Downed clone	34°25'8.61"N 117°24'28.36"W
60	4.7	39	28/14	12	P	34°25'8.64"N 117°24'27.64"W

					Downed limbs and clones	
61	6.0	63	62/22	1	P Exposed roots	34°25'8.54"N 117°24'27.07"W
62	4.3	66	43/25	2	P Exposed roots	34°25'8.70"N 117°24'26.87"W
63	3.5	30	11/7	3	F Exposed roots	34°25'9.32"N 117°24'26.95"W
64	4.2	34	32/14	2	F Exposed roots	34°25'9.12"N 117°24'26.57"W
65	4.4	36	28/15	1	P Broken limbs Downed clones	34°25'8.99"N 117°24'26.66"W
66	5.1	55	41/21	N	P	34°25'7.91"N 117°24'25.83"W
67	5.8	63	51/24	N	F Exposed roots	34°25'7.75"N 117°24'25.57"W
68	3.5	46	32/23	1	F Exposed roots	34°25'9.47"N 117°24'26.02"W
69	4.7	43	21/14	N	F Exposed roots	34°25'9.61"N 117°24'25.55"W
70	5.8	60	36/8	N	P Broken limbs Downed clones	34°25'9.55"N 117°24'25.15"W
71	6.0	55	45/23	6	P Broken limbs Dead clones	34°25'9.85"N 117°24'24.34"W
72	2.4	31	3/0	2	G	34°25'9.18"N 117°24'22.04"W
73	2.9	33	14/9	N	G	34°25'9.09"N 117°24'22.24"W
74	3.5	35	16/6	N	P Heavy leaning	34°25'8.94"N 117°24'22.33"W

*Y-Yes, N-No

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Exhibit 4: Distribution of Western Joshua Trees

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2.2 ANALYSIS OF IMPACTS (CCR § 783.2(A)(6))

Incidental take of the Covered Species in the form of mortality (“kill”) will occur as a result of Covered Activities such as removing mature and emergent individuals; eliminating and modifying habitat; removing seedbank and crushing and/or burying live seeds in the soil, rendering living seeds inviable and/or causing them to be killed. The Project is expected to cause the removal of 74 individuals and the permanent loss of 3.29 acres of occupied habitat, based on the use of drawing a circle around each western Joshua tree depending on their size class: 12-foot radius circle for trees 1 meter to less than 5 meters and a 40-foot radius for trees equal to or greater than 5 meters. All areas within the circle are considered occupied habitat (see Exhibit 4 and Section 3.2.1 below).

Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project’s incremental contribution to cumulative impacts (indirect impacts). These impacts include increased competition from non-native invasive plants; increased fire risk; increased vulnerability to disease; and stress or damage to individuals of the Covered Species due to changes to habitat.

Additionally, impacts to western Joshua tree’s obligate pollinating moth (*Tegeticula synhetica*) could occur while it is dormant in the soil, or while it is in its flight phase, which could impact the ability of the species to sexually recruit new individuals. Destruction or modification of habitat would disrupt the seed dispersal behavior of rodents, the primary way Joshua tree seeds are buried at a soil depth suitable for successful germination. Destruction or modification of habitat may eliminate nurse plants that are critical for western Joshua tree seedling survival.

Potential indirect impacts to Joshua trees and their habitat would occur from the conversion of the open space to residential housing including activities such as noise, lighting, ground vibrations, and fugitive dust; introduction and spread of invasive species; habitat modification or changes to vegetative structure at the site’s southern and western boundaries. Potential indirect impacts will be minimized through the implementation of avoidance and minimization measures described in Section 3 below.

2.3 POTENTIAL FOR JEOPARDY (CCR § 783.2(A)(7))

The Project Site is located within the *Y. brevifolia* var. *brevifolia* south (YUBR South) population region which encompasses approximately 3,724,080 acres in California. The YUBR South population is the largest area of contiguous western Joshua tree habitat in California.

The Project footprint is 84.75 acres and is a small portion of the YUBR South population and has been routinely disked. The site no longer supports a viable native plant community. Residual native plants are sparsely scattered throughout the site and no longer represent native habitat. The southern portion of the site has been used for stockpiling of soils, further compromising available native habitat and longevity of the onsite western Joshua trees. The loss of this small and compromised population of Joshua trees would not jeopardize the existence of the western Joshua trees.

Reasonably foreseeable impacts from other projects and activities are expected to occur within the immediate area and surrounding region as this area of the high desert builds out. The number of

Covered Species that may be removed in association with other development projects is not known and cannot be estimated at the present time. However, impacts associated with these projects are expected to be similar to the Covered Activities by this ITP application and would be subject to same avoidance and minimization measures, as well as providing comparable compensatory mitigation to fully offset impacts to western Joshua trees.

Given the number of Covered Species which would be impacted and considered a take, the proposed Covered Activities are expected to have a minimal impact on the population of Joshua trees in the region and is not likely to jeopardize the continued existence of western Joshua trees.

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Section 3 Mitigation Plan

The proposed Mitigation Plan will fully mitigate any impacts from Covered Activities that may occur to the Covered Species with implementation of the Conditions of Approval listed below.

3.1 AVOIDANCE AND MINIMIZATION MEASURES (CCR § 783.2(A)(8))

3.1.1 Avoidance and Minimization Measures (Conditions of Approval)

The Applicant agrees to implement the following general avoidance and minimization measures to reduce impacts to Joshua Tree:

Designated Representative

Before ground disturbance, the Permittee shall designate a representative responsible for communications with CDFW and overseeing compliance with the ITP. Designation shall be in writing and will include Name; Business Address; and Contact Information.

Designated Biologist

The Permittee shall have at least one Designated Biologist who will be responsible for overseeing the monitoring of Covered Activities to help avoid the incidental take of the Covered Species and to minimize disturbance of Covered Species habitats in adjacent areas. Designation shall be in writing and will include: Name; Business Address; and Contact Information. The Designated Biologist shall have the authority to immediately stop any activity that does not comply with the ITP.

Biological Monitors

Biological monitors will be appointed, as needed, to assist the Designated Biologist in monitoring Covered Activities.

Workers Education and Awareness Program

Permittee shall conduct a Worker's Education and Awareness Program (WEAP) for all persons employed or otherwise working in the Project Area before performing any work. The program will educate the workers on the natural history of western Joshua trees, their function in the natural environment and the beneficial uses they provide to native wildlife species. Workers will also be informed on the legal protections now afforded Joshua trees and the associated penalties for causing harm of these trees.

Construction Monitoring Notebook

The Designated Biologist shall maintain a construction monitoring notebook onsite throughout the construction period. The notebook will include a copy of the ITP and a list of signatures of all personnel who have completed the education program.

Trash Abatement

Permittee shall initiate a trash abatement program before starting any Covered Activities and shall continue the program for the duration of the Project.

Firearms and Dogs

Permittee shall prohibit the presence of firearms and/or domestic dogs on the Project.

Dust Control

Permittee shall implement dust control measures during Covered Activities to control the release of dust into the surrounding areas of native habitats.

Erosion Control

Permittee shall prohibit use of erosion control materials potentially harmful to the Covered Species and other species.

Hazardous Waste

Permittee shall immediately stop and arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of the occurrence or as soon as it is safe to do so.

Herbicide Use

Although the limited use of herbicide will be allowed to control non-native weedy species, herbicide use during construction must be approved by CDFW prior to its use.

CDFW Site Access

Permittee shall provide CDFW staff with reasonable access to the Project site and mitigation lands under Permittee's control and will fully cooperate with CDFW's efforts to verify compliance or effectiveness of mitigation measures required by the ITP.

3.2 MITIGATION MEASURES (CCR § 783.2(A)(9))

In addition to the above avoidance and minimization measures, and adherence to Conditions of Approval issued by the City of Hesperia for the project, one of the following two mitigation measures is proposed to fully mitigate impacts from site development to Joshua Tree.

3.2.1 Compensatory Mitigation

Payment into the Western Joshua Tree Mitigation Fund Program. As part of Fish and Game Commission's review and evaluation of impacts to Joshua trees during its candidacy review, compensatory mitigation was preliminarily proposed by the CDFW as part of an ITP under Section 2084 for 17 Solar Projects, Special Order 739.10. Under this program, a functional assessment is conducted to determine the extent of occupied habitat for all western Joshua trees within a project site.

The functional evaluation determined the extent of available occupied habitat on a project site by assessing the size and reproductive class of trees within the impact area, using the following criteria:

- 40 feet for western Joshua trees five meters or greater in height
- 12 feet for western Joshua trees one meter or greater in height but less than five meters in height
- 6 feet for western Joshua trees less than meter in height

Project impacts included all areas around an individual Joshua tree within the above specified radii as measured from a single point at its trunk. The gathered data are compiled into a western Joshua tree census report. Under Special Order 739.10, CDFW proposed that a mitigation ratio of 1.5:1 be applied to permanent and temporary loss of functional Joshua tree habitat within an impact area.

The loss of the 74 western Joshua trees identified within the 20.10-acre Project Site using the above CDFW approved methodology would result in the loss of 3.29 acre of occupied western Joshua tree habitat and the payment of a mitigation fee into the western Joshua Tree Mitigation Fund to compensate for the loss of 4.94 acres of occupied habitat from the project site. Conservation credits were anticipated to be available at \$10,521.95 per acre or \$51,973.74 for this project site.

Purchase of Mitigation Credits from an Approved Conservation Bank. Wildlands is finalizing its Antelope Valley Conservation Bank and will be selling mitigation credits for the loss of western Joshua tree habitat at \$25,000.00 per acre. Given the general health of the trees, level of ongoing disturbances to the site and isolation of this small populations of Joshua trees from larger areas supporting larger undisturbed populations for western Joshua trees, impacts will be significant but can be fully mitigated by the purchased of mitigation credits from the Antelope Valley Conservation Bank, a CDFW-approved bank that is expected to be approved and operating in early 2022. Evidence of sexual reproduction was not observed within a 186-foot buffer around each of the flowering western Joshua trees or anywhere else within the project site. The extensive grading of the site for weed abatement activities has likely removed or severely reduced the viability of the seeds. However, asexual reproduction, or cloning, was observed at seven of the sixteen trees. Table 2 lists the individual western Joshua trees observed onsite. Based on an estimated 3.29 acres of occupied western Joshua tree habitat using the appropriate buffers around tree, as defined above, and at a 2:1 mitigation ratio, mitigation would be accomplished by the purchase of 6.58 acres conservation credits from the Antelope Valley Conservation Bank at a fee of \$25,000.00 per acre or \$164,500.00.

Purchase of Habitat Land Mitigation Acres from a Third-party Land Manager. A third alternative mitigation is currently under development. Rather than pay a mitigation fee into the western Joshua Mitigation Fund program or purchase credits from a CDFW approved conservation bank, the applicant should be able to purchase conservation credits from CDFW approved Third-party Land Managers. The applicant has already talked to Third-party Land Managers that are currently acquiring HM land that they will manage, including the preparation of all appropriate land management plans (Start-up, Interim Management and Long-term Management), ensuring that funding is available for the perpetual management of the site and encumbering the property with a Conservation Easement. As part of the acquisition and perpetual protection and management of HM lands, the Applicant would be required to:

- 1) Transfer fee title of the HM lands to CDFW or authorize an approved governmental entity, special district, non-profit organization or other CDFW-approved land manager.
- 2) In lieu of transferring fee title, CDFW may be a grantee for a conservation easement over the HM lands or approve a non-profit entity or public agency to act as the grantee for the conservation easement.
- 3) Obtain written approval of the HM lands from CDFW before acquisition by submitting documentation identifying the land to be purchased as mitigation for the Project's impact on western Joshua tree habitat.
- 4) Provide a preliminary title report and Phase I Environmental Site Assessment.
- 5) Designate both an interim and long-term land manager approved by CDFW. One entity can serve as both interim and long-term land manager.
- 6) Prepare management plans for both the start-up activities (interim management) and the long-term management of HM lands.
- 7) Provide funding to cover all interim management cost of HM lands.
- 8) Provide Security to CDFW for the 3 years of interim management through establish a Letter of Credit or creation of an endowment.
- 9) Provide long-term management funding for the perpetual management of HM lands by establishing a non-wasting endowment that provide an annual return sufficient to cover annual management of the site. The endowment will be held by an Endowment Manager, either CDFW or another qualified entity, approved by CDFW.

The purchase of 6.58 acres of conservation credits from an established conservation area(s) by a Third-party Land Manager is expected to range from \$61,194.00 to \$98,700.00.

3.3 FUNDING (CCR § 783.2(A)(10))

The purchase of conservation credits either through the payment of a mitigation fee of \$10,521.95 per acre into the Western Joshua Tree Mitigation Fund or a separate purchase of conservation credits from the Antelope Valley Conservation Bank or a Third-party Land Manager, TBD will fully fund the one of the three above mitigation requirements prior to the start of any clearing or construction within the project.

Section 4 Certification

4.1 CERTIFICATION (CCR § 783.2(A)(11))

I certify that the information submitted in this application is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to suspension or revocation of this permit and to civil and criminal penalties under the laws of the State of California.

Date: _____

Signed: _____

DRAFT

Appendix A Site Plans

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Appendix B Representative Photographs

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