

RESPONSES TO PUBLIC COMMENTS
to the
**INITIAL STUDY/
MITIGATED NEGATIVE DECLARATION**
for
644-675 Piercy Road
Industrial Development

File Nos. H22-035 & ER22-219



CITY OF SAN JOSE
CALIFORNIA

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Section 1. Summary of Comments

The project application is for a Site Development Permit and lot line adjustment to allow the construction of a new industrial building on a 15.92-acre single vacant parcel located at 644 and 675 Piercy Road in San José, California. The total square footage of the proposed industrial buildings would be 216,252 square feet, but was analyzed as 225,000 square feet to provide a conservative analysis. Additional improvements for site circulation, site access, drainage, and infrastructure are included in the proposed project.

An Initial Study/Mitigated Negative Declaration (IS/MND) was prepared to evaluate the environmental effects of the project in accordance with the California Environmental Quality Act (CEQA). The IS/MND was circulated for local public review from September 27, 2023 to October 17, 2023. In addition, a Notice of Intent was emailed to public and state agencies, nearby cities, school districts, and Native American tribes (as identified by California Native American Heritage Commission). The City of San José received four comment letters during the public review period and one additional comment letter after close of the public review period, as presented in Table-1 below.

| Table-1: List of Comments Received on IS/MND | | |
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| Comment | Name | Date Received |
| A | California Department of Fish and Wildlife | 10/13/2023 |
| B | Pacific Gas & Electric Company | 10/16/2023 |
| C | Law Firm of Mitchell M. Tsai (on Behalf of Carpenters Local 405) | 10/17/2023 |
| D | Santa Clara Valley Transportation Authority | 10/17/2023 |
| E | Valley Water* | 10/20/2023* |
| * Received after close of comment period. | | |

This document provides the responses to comments received on the IS/MND that address the contents of the environmental analysis. The specific comments have been excerpted from the letter and are presented as “Comment” with each response directly following as “Response.” Copies of the actual letters and emails submitted to the City of San José are provided in Attachment A.

In summary, the comments received on the IS/MND did not raise any new issues about the project’s environmental impacts or provide information indicating the project would result in new environmental impacts or impacts substantially greater in severity than disclosed in the IS/MND. CEQA does not require formal responses to comments on an IS/MND, only that the lead agency consider the comments received [CEQA Guidelines §15074(b)]. Nevertheless, responses to the comments are included in this document to provide a complete environmental record.

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Section 2. Responses to Comments

Where comments raise environmental issues that result in additions or deletions to the text, tables, or figures in the IS/MND, a brief description of the change is given and the reader is directed to Section 3, Revisions to the IS/MND. Where the same or similar related comments have been made more than once, a response may direct the reader to another numbered comment and response or to a topic response.

Some comments received do not raise environmental issues or do not comment on the analysis in the IS/MND and, thus, do not require a response. These comments generally express an opinion on whether the project should be approved. These comments are hereby part of the project record and will be available to decisionmakers in considering the project.

2.1 Individual Comment Responses

Following are the responses to individual comments received on the IS/MND.

Comment Letter A: California Department of Fish and Wildlife

Comment A-1: The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of San José (City) for the 644-675 Piercy Road Industrial Development (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.

Response A-1: The comment does not state any issues or concerns with the project or the CEQA analysis. Therefore, no further response to this comment is required.

Comment A-2: 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. 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 A-2: The comment describes CDFW’s role as it relates to the project, but does not state any issues or concerns with the project or the CEQA analysis. Therefore, no further response to this comment is required.

Comment A-3: Proponent: HUSPRF Investor SPV I LP (Hanns Lee)

Objective: Primary Project activities include construction of a 216,252 square-foot industrial building with associated surface parking lots and within-parcels roadways.

Location: 644 and 675 Piercy Road, City of San Jose, CA 95138. The coordinates for the approximate center of the Project are 37.25204° N latitude and -121.77087 W longitude (NAD 83 or WGS 84). The Assessor’s Parcel Numbers are 678-08-045 and 678-08-055.

Timeframe: The MND includes a construction period of October 2023 through July 2024

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.

Response A-3: The comment does not state any issues or concerns with the project or the CEQA analysis. Therefore, no further response to this comment is required.

Comment A-4: CDFW offers the comments and recommendations below 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 A-4: The comment does not state any issues or concerns with the project or the CEQA analysis. Therefore, no further response to this comment is required.

Comment A-5: Would the Project have 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 CDFW or U.S. Fish and Wildlife Service?

COMMENT 1: D. Biological Resources, page 55; Appendix C Biological Resources Memorandum, Appendix D Special-status Species Table, page 72

Issue: Crotch's bumble bee (*Bombus crotchii*) is currently a Candidate Endangered species under CESA. Recent (2019 and 2020) Crotch's bumble bee occurrences have been documented less than 3.4 miles from the Project site and historic observations occur elsewhere in Santa Clara County (CDFW 2023). Appendix D Special-Status Species Table states that there is marginal habitat on-site, and that floral resources are not sufficient to support feeding during the nesting season. The table states that habitat assessments were conducted in December 2022 on the Project site. A habitat assessment was conducted on the property immediately to the northeast; however, the timing of the surveys is not specified. Only one of the habitat assessments was conducted on the Project site and none of the habitat assessments, either on the Project site or adjacent property, were conducted during the appropriate season or during the peak bloom period. These habitat assessments and surveys are therefore not sufficient to confirm absence of Crotch's bumble bee within the Project area or on the adjacent property. Additionally, habitat assessments did not include all of Crotch's bumble bee life cycle (i.e., nesting such as rodent burrows and overwintering such as leaf litter).

Why impact would occur: Implementation of the Project includes construction of buildings, parking lots, and roads.

Specific impact: Direct mortality through crushing or filling of active bee colonies and hibernating bee cavities, reduced reproductive success, loss of suitable breeding and foraging habitats, loss of native vegetation that may support essential foraging habitat.

Evidence impact would be significant: Bumblebees are critically important because they pollinate a wide range of plants over the lifecycles of their colonies, which typically live longer than most native solitary bee species. Crotch's bumble bees are candidate species under CESA (CEQA Guidelines, §15380, subds. (c)(1)). Unauthorized take of this species pursuant to CESA is a violation of California Fish and Game Code section 2080 et seq.

Recommended Potentially Feasible Mitigation Measures to minimize significant impacts:

The MND should be revised to include the following measures:

Mitigation Measure 1: Habitat Assessment

A habitat assessment shall be conducted by a qualified entomologist knowledgeable with the life history and ecological requirements of Crotch's bumblebee. The habitat assessment shall include all suitable nesting, overwintering, and foraging habitats within the Project area and surrounding areas. Potential nest habitat (February through October) could include that of other *Bombus* species such as bare ground, thatched grasses, abandoned rodent burrows or bird nests, brush piles, rock piles, and fallen logs. Overwintering habitat (November through January) could include that of other *Bombus* species such as soft and disturbed soil or under leaf litter or other debris. The habitat assessment shall be conducted during peak bloom period for floral resources on which Crotch's bumble bees feed. Further guidance on habitat surveys can be found within *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species* (<https://wildlife.ca.gov/Conservation/CESA>).

Mitigation Measure 2: Survey Plan

If Crotch's bumble bee habitat is present within the Project area, a pre-construction survey plan shall be developed and be submitted to CDFW for review and approval. Surveys shall be conducted by a qualified entomologist familiar with the behavior and life history of Crotch's bumble bees. If CESA candidate bumble bees will be captured or handled, surveyors should obtain a 2081(a) Memorandum of Understanding from CDFW.

Surveys shall be conducted during the colony active period (i.e., April through August) and when floral resources are in peak bloom. Bumble bees move nests sites each year; therefore, surveys shall be conducted each year that Project work activities will occur. Further guidance on presence surveys can be found within *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species* (<https://wildlife.ca.gov/Conservation/CESA>).

Mitigation Measure 3: Crotch's Bumble Bee Avoidance or Take Authorization.

If Crotch's bumble bees are detected during pre-construction surveys, a Crotch's bumble bee avoidance plan shall be developed and provided to CDFW for review prior to work activities involving ground disturbance or vegetation removal.

If full take avoidance is not feasible, CDFW strongly recommends that the Project proponent apply to CDFW for take authorization under an Incidental Take Permit (ITP).

Response A-5: The analysis in the Appendix C – Biological Resources Memorandum (Page 67/72) of the IS/MND determined that Crotch's Bumble Bee has a low potential to occur within the survey area or be impacted by the project because only marginal habitat is present and sufficient blooming plants were determined not to be present for the duration of this species' life cycle. However, in response to CDFW's concerns that ground-disturbing activities from the project may impact the Crotch's Bumble Bee, the avoidance and minimization measures identified by CDFW will be incorporated into the project as conditions of approval. Updated text and the conditions of approval are added to the IS/MND, as presented in Section 3 of this document.

Comment A-6: COMMENT 2: D. Biological Resources, Mitigation Measure BIO-1b, page 63

Issue: American badger (*Taxidea taxus*) is a CDFW Species of Special Concern (SSC). The MND states that a habitat assessment and den survey was conducted. The MND states that dens were not detected, but denning habitat is present within the Project area. The MND proposes measures for conducting badger den surveys and den excavation. However, CDFW does not consider these measures as effective avoidance techniques. Badgers can dig a new burrow nightly; therefore, surveys two weeks prior would not identify newly dug dens. Exclusion by increasingly blocking openings with soil, sticks, and debris may increase the chances of entrapment due to the unknown structure of the underground den burrow complex. It is unclear how entrapment will be avoided. The mitigation measure does not differentiate between natal dens and non-natal dens. Hand excavation of dens should not occur when young may be present.

Why impact would occur: Implementation of the Project includes construction of buildings, parking lots, and roads.

Specific impact: Loss of suitable breeding habitat, loss of dens, den abandonment, and direct mortality through crushing of adults or young within dens.

Evidence impact would be significant: The American badger is a rare species under CEQA (CEQA Guidelines, §15380 subds. (b)(2)) because it is designated by CDFW as a California SCC.

Recommended Potentially Feasible Mitigation Measures to reduce impacts to less-than-significant:

The MND should be revised to include the following measures:

Mitigation Measure 1: Focused Den Surveys

A qualified biologist shall conduct focused den surveys (e.g., walking line transect surveys) within the Project area and 250-foot radii surrounding the work area at least 14 days prior to the start of work as well as daily prior to beginning the ground-disturbing work for the day.

Mitigation Measure 2: Establish a Buffer around Natal Den

If badger dens are found and Project work is to occur during the gestation and pup-rearing period (i.e., February 15 through July 1), a buffer of 250 feet around the den complex shall be established, and Project work shall not occur within the buffer. A qualified biologist shall monitor the den to detect when young are nearing independence (e.g., can be observed emerging from den opening or are located outside of the den) and disperse.

Mitigation Measure 3: Den Activity Surveys and Habitat Compensation

After the gestation and pup-rearing period, the qualified biologist shall conduct focused surveys to determine if the den is active (e.g., burrow scoping, camera stations, track plates, observation of new signs such as tracks, claw marks, or fur). If it is determined that the den is active, and establishing an avoidance buffer surrounding the active den is not feasible, a Badger Mitigation Plan shall be developed and submitted to CDFW. Any badger habitat permanently lost shall be compensated at a suitable off-site location at a minimum 1:1 replacement ratio with the same or greater quality habitat.

Response A-6: The IS/MND includes MM BIO-1b which provides mitigation for the protection of badgers. Mitigation Measure BIO-1b of the IS/MND has been updated to incorporate the recommended mitigation identified above, as presented in Section 3 of this document. Incorporation of the recommended mitigation does not require recirculation of the IS/MND per CEQA Guidelines Section 15073.5(c).

Comment A-7: 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 filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

Response A-7: Comment acknowledged. Qualified biologists are required to submit relevant data to the CNDDDB per Scientific Collecting Permits.

Comment A-8: The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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 A-8: The comment is in regard to filing fees and does not state any issues or concerns with the project or the CEQA analysis. The filing fee will be paid upon filing of the Notice of Determination as required.

Comment Letter B: Pacific Gas & Electric Company

Comment B-1: Thank you for giving us the opportunity to review the subject plans. The proposed 644-675 Percy Road [sic] Industrial Project is within the same vicinity of PG&E's existing facilities that impact this property.

Response B-1: The comment does not state any issues or concerns with the project or the CEQA analysis. Therefore, no further response to this comment is required.

Comment B-2: The 644-675 Percy [sic] Road plans show an existing fifty-four foot (54') wide PG&E easement to be vacated and a proposed fifty-four foot (54') wide PG&E easement. The applicant is showing an incorrect location of PG&E's existing easement to be vacated. PG&E's existing easement over APN: 678-08-055 is recorded at Book 1815 at Page 110 with Santa Clara Official Record. PG&E's existing easement over APN: 678-08-045 is recorded at Book 1815 at Page 277 with Santa Clara Official Record. PG&E operates and maintains an existing gas transmission pipeline in said easements cited above and will not be modifying their location or vacating them.

The applicant must ensure their project complies with the attached gas facilities construction guidelines and restrictions. Per the PG&E letter sent on 6-14-2023, PG&E's easements prohibit the erection or construction of any building or other structure, and the drilling or operation of any well within the easement area. This includes buildings, retaining walls, fences, decks, patios, carports, septic tanks, storage sheds, tanks, loading ramps, or any structure that could limit PG&E's ability to access its facilities. **The proposed 4-foot solid wooden fence and EV chargers are not permitted within the easement area.**

Response B-2: This comment does not pertain to the contents and findings of the IS/MND for the proposed project. To clarify, the existing PG&E easements have been revised to reflect the requests by PG&E. The project proposes to modify the easement to be centered over the existing gas transmission line. Additionally, the project has subsequently removed the EV chargers and screen wall from within the easement.

Comment B-3: Additionally, all utility crossings of a gas pipeline should be made as close to perpendicular as feasible ($90^\circ \pm 15^\circ$). All utility lines crossing the gas pipeline must have a minimum of 24 inches of separation from the gas pipeline. Parallel utilities, pole bases, water line 'kicker blocks', storm drain inlets, water meters, valves, back pressure devices or other utility substructures are not allowed in the PG&E gas pipeline easement. **All storm drain inlets, outfalls, manholes, and junction boxes must be located outside of PG&E's existing easements. All storm drainpipes must cross as close to perpendicular as feasible ($90^\circ \pm 15^\circ$).**

Response B-3: The utilities are proposed to cross perpendicular to the gas main with a minimum 24" vertical clearance at the crossing. Additionally, there are no structures within the easement. This comment does not pertain to the contents and findings of the IS/MND for the proposed project.

Comment B-4: As a reminder, before any digging or excavation occurs, please contact Underground Service Alert (USA) by dialing 811 a minimum of 2 working days prior to commencing any work. This free and independent service will ensure that all existing underground utilities are identified and marked on-site.

Please contact the Building and Renovation Center (BRSC) for facility map requests by calling 1-877-743-7782 and PG&E's Service Planning department at www.pge.com/cco for any modification or relocation requests, or for any additional services you may require.

Response B-4: The project contractor shall contact Underground Service Alert a minimum of 2 working days prior to commencing any digging or excavation work. In addition, the contractor shall contact PG&E's Building and Renovation Center for any modification or relocation requests or any additional services.

Comment Letter C: Law Firm of Mitchell M. Tsai (on Behalf of Carpenters Local 405)

Comment C-1: On behalf of Carpenters Local 405 (“**Local 405**”) our Office is submitting these comments on the Initial Study and Mitigated Negative Declaration (“**IS/MND**”) for the City of San Jose’s (“**City**”) 644-675 Piercy Road Industrial Development Project (“**Project**”).

The Project proposes to construct a 216,252 square foot industrial building for industrial distribution, manufacturing, and/or research and development activities and will include a 155-automobile space parking lot.

Response C-1: The above description accurately depicts the proposed project. The comment does not state any issues or concerns with the project or the CEQA analysis. Therefore, no further response to this comment is required.

Comment C-2: Local 405 represents thousands of union Carpenters in San Jose and has a strong interest in well-ordered land use planning and in addressing the environmental impacts of development projects. Individual members of Local 405 live, work, and recreate in the City and surrounding communities and would be directly affected by the Project’s environmental impacts.

Local 405 expressly reserves the right to supplement these comments at or prior to hearings on the Project, and at any later hearing and proceeding related to this Project. Gov. Code, § 65009, subd. (b); Pub. Res. Code, § 21177, subd. (a); see *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1199-1203; see also *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109, 1121.

Local 405 incorporates by reference all comments related to the Project or its CEQA review, including the Initial Study/Mitigated Negative Declaration. See *Citizens for Clean Energy v. City of Woodland* (2014) 225 Cal.App.4th 173, 191 (finding that any party who has objected to the project’s environmental documentation may assert any issue timely raised by other parties).

Moreover, Local 405 requests that the City provide notice for any and all notices referring or related to the Project issued under the California Environmental Quality Act (**CEQA**) (Pub. Res. Code, § 21000 *et seq.*), and the California Planning and Zoning Law (“**Planning and Zoning Law**”) (Gov. Code, §§ 65000–65010). California Public Resources Code Sections 21092.2, and 21167(f) and California Government Code Section 65092 require 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.

Response C-2: The City will include the Local 405 to the public interest list for this project and continue to provide notification (by mail and email) of any subsequent environmental documents, public notices, public hearings, and notices of determination per the commenter’s request. Responses to specific concerns identified in this comment are addressed below. Comments that do not pertain to the contents and findings of the IS/MND do not require further response.

Comment C-3: The City should require the Project to be built by contractors who participate in a Joint Labor-Management Apprenticeship Program approved by the State of California and make a commitment to hiring a local workforce.

Community benefits such as local hire can also be helpful to reduce environmental impacts and improve the positive economic impact of the Project. Local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project site can reduce the length of vendor trips, reduce greenhouse gas emissions, and provide localized economic benefits. As environmental consultants Matt Hagemann and Paul E. Rosenfeld note:

[A]ny local hire requirement that results in a decreased worker trip length from the default value has the potential to result in a reduction of construction-related GHG emissions, though the significance of the reduction would vary based on the location and urbanization level of the project site.

March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling.

Workforce requirements promote the development of skilled trades that yield sustainable economic development. As the California Workforce Development Board and the University of California, Berkeley Center for Labor Research and Education concluded:

[L]abor should be considered an investment rather than a cost—and investments in growing, diversifying, and upskilling California’s workforce can positively affect returns on climate mitigation efforts. In other words, well-trained workers are key to delivering emissions reductions and moving California closer to its climate targets.²

Furthermore, workforce policies have significant environmental benefits given that they improve an area’s jobs-housing balance, decreasing the amount and length of job commutes and the associated greenhouse gas (GHG) emissions. In fact, on May 7, 2021, the South Coast Air Quality Management District found that that the “[u]se of a local state-certified apprenticeship program” can result in air pollutant reductions.³

Response C-3: This comment expresses that the project applicant shall select and hire local workforce for construction of the project. The comment does not state any issues or concerns with the project or the CEQA analysis. Therefore, no further response to this comment is required.

Comment C-4: Locating jobs closer to residential areas can have significant environmental benefits. As the California Planning Roundtable noted in 2008:

People who live and work in the same jurisdiction would be more likely to take transit, walk, or bicycle to work than residents of less balanced communities and their vehicle trips would be shorter. Benefits would include potential reductions in both vehicle miles traveled and vehicle hours traveled.⁴

² California Workforce Development Board (2020) Putting California on the High Road: A Jobs and Climate Action Plan for 2030 at p. ii, available at <https://laborcenter.berkeley.edu/wp-content/uploads/2020/09/Putting-California-on-the-High-Road.pdf>.

³ South Coast Air Quality Management District (May 7, 2021) Certify Final Environmental Assessment and Adopt Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions Program, and Proposed Rule 316 – Fees for Rule 2305, Submit Rule 2305 for Inclusion Into the SIP, and Approve Supporting Budget Actions, available at <http://www.aqmd.gov/docs/defaultsource/Agendas/Governing-Board/2021/2021-May7-027.pdf?sfvrsn=10>.

⁴ California Planning Roundtable (2008) Deconstructing Jobs-Housing Balance at p. 6, available at <https://cprroundtable.org/static/media/uploads/publications/cpr-jobshousing.pdf>

Moreover, local hire mandates and skill-training are critical facets of a strategy to reduce vehicle miles traveled (VMT). As planning experts Robert Cervero and Michael Duncan have noted, simply placing jobs near housing stock is insufficient to achieve VMT reductions given that the skill requirements of available local jobs must match those held by local residents.⁵ Some municipalities have even tied local hire and other workforce policies to local development permits to address transportation issues. Cervero and Duncan note that:

In nearly built-out Berkeley, CA, the approach to balancing jobs and housing is to create local jobs rather than to develop new housing. The city's First Source program encourages businesses to hire local residents, especially for entry- and intermediate-level jobs, and sponsors vocational training to ensure residents are employment-ready. While the program is voluntary, some 300 businesses have used it to date, placing more than 3,000 city residents in local jobs since it was launched in 1986. When needed, these carrots are matched by sticks, since the city is not shy about negotiating corporate participation in First Source as a condition of approval for development permits.

Recently, the State of California verified its commitment towards workforce development through the Affordable Housing and High Road Jobs Act of 2022, otherwise known as Assembly Bill No. 2011 (“**AB2011**”). AB2011 amended the Planning and Zoning Law to allow ministerial, by-right approval for projects being built alongside commercial corridors that meet affordability and labor requirements.

The City should consider utilizing local workforce policies and requirements to benefit the local area economically and to mitigate greenhouse gas, improve air quality, and reduce transportation impacts.

Response C-4: As described on pages 174-177 of the IS/MND, the transportation analysis for the project used the VMT metric to evaluate the project's transportation impact by comparing against the VMT thresholds of significance established in the Transportation Analysis Policy, in accordance with CEQA. The evaluation concluded that the project would not result in a significant impact in VMT with mitigation measures MM TR-1 and TR-2. The other issues raised in this comment express that the project applicant shall select and hire local workforce for construction of the project. The City does not require or have programs that require projects to be constructed utilizing only local workforce, nor does the City have the ability to independently verify the address of each individual involved in a given project. These comments do not pertain to the contents and findings of the IS/MND for the proposed project. Additionally, construction workers represent a small fraction of the total workforce that will eventually work on site as a result of the project. The GHGRS focuses on operation, and combined with the mitigation to reduce VMT will result in a less than significant impact related to GHGs.

Comment C-5: CEQA is a California statute designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 California Code of Regulations (“**CEQA Guidelines**”) § 15002(a)(1).⁶ At its core, “[i]ts purpose is to inform the public and its

⁵ Cervero, Robert and Duncan, Michael (2006) Which Reduces Vehicle Travel More: Jobs-Housing Balance or Retail-Housing Mixing? *Journal of the American Planning Association* 72 (4), 475-490, 482, *available at* <http://reconnectingamerica.org/assets/Uploads/UTCT-825.pdf>.

⁶ The CEQA Guidelines, codified in Title 14 of the California Code of Regulations, section 15000 *et seq.*, are regulatory guidelines promulgated by the state Natural Resources Agency for the implementation of CEQA. (Cal. Pub. Res. Code § 21083.) The CEQA Guidelines are given “great weight in interpreting CEQA except when . . . clearly unauthorized or erroneous.” *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal. 4th 204, 217.

responsible officials of the environmental consequences of their decisions *before* they are made.” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

To achieve this purpose, CEQA mandates preparation of an Environmental Impact Report (“EIR”) for projects so that the foreseeable impacts of pursuing the project can be understood and weighed. *Communities for a Better Environment v. Richmond* (2010) 184 Cal. App. 4th 70, 80. The EIR requirement “is the heart of CEQA.” CEQA Guidelines, § 15003(a).

A strong presumption in favor of requiring preparation of an EIR is built into CEQA. This presumption is reflected in what is known as the “fair argument” standard, under which an agency must prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal. App. 4th 1597, 1602; *Friends of “B” St. v. City of Hayward* (1980) 106 Cal. 3d 988, 1002.

The fair argument test stems from the statutory mandate that an EIR be prepared for any project that “may have a significant effect on the environment.” PRC § 21151; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. App. 3d 68, 75; *Jensen v. City of Santa Rosa* (2018) 23 Cal. App. 5th 877, 884. Under this test, if a proposed project is not exempt and may cause a significant effect on the environment, the lead agency must prepare an EIR. PRC §§ 21100(a), 21151; CEQA Guidelines § 15064(a)(1), (f)(1). An EIR may be dispensed with only if the lead agency finds no substantial evidence in the initial study or elsewhere in the record that the project may have a significant effect on the environment. *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal. App. 4th 768, 785. In such a situation, the agency must adopt a negative declaration. PRC § 21080(c)(1); CEQA Guidelines §§ 15063(b)(2), 15064(f)(3).

“Significant effect upon the environment” is defined as “a substantial or potentially substantial adverse change in the environment.” PRC § 21068; CEQA Guidelines § 15382. A project “may” have a significant effect on the environment if there is a “reasonable probability” that it will result in a significant impact. *No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d at 83 fn. 16; *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 309. If any aspect of the project may result in a significant impact on the environment, an EIR must be prepared even if the overall effect of the project is beneficial. CEQA Guidelines § 15063(b)(1). See *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal. App. 4th 1544, 1580.

This standard sets a “low threshold” for preparation of an EIR. *Consolidated Irrig. Dist. v. City of Selma* (2012) 204 Cal. App. 4th 187, 207; *Nelson v. County of Kern* (2010) 190 Cal. App. 4th 252; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4th 903, 928; *Bowman v. City of Berkeley* (2004) 122 Cal. App. 4th 572, 580; *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal. App. 3d 748, 754; *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 310. If substantial evidence in the record supports a fair argument that the project may have a significant environmental effect, the lead agency must prepare an EIR even if other substantial evidence before it indicates the project will have no significant effect. See *Jensen v. City of Santa Rosa* (2018) 23 Cal. App. 5th 877, 886; *Clews Land & Livestock v. City of San Diego* (2017) 19 Cal. App. 5th 161, 183; *Stanislaus Audubon Soc’y, Inc. v. County of Stanislaus* (1995) 33 Cal. App. 4th 144, 150; *Brentwood Ass’n for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal. App. 3d 491; *Friends of “B” St. v. City of Hayward* (1980) 106 Cal. App. 3d 988; CEQA Guidelines § 15064(f)(1).

As explained below, the IS/MND fails to make certain essential findings. Further, for a number of findings which the IS/MND does make, it fails to support the findings with sufficient analysis and

substantial evidence or incorporate adequate mitigation measures. Therefore, there is a fair argument that the Project will have a significant effect on the environment, triggering the “low threshold” standard for preparation of an EIR.

Response C-5: This comment questions the adequacy of the IS/MND and call for requiring an EIR. None of the assertions presented in this comment provides substantial evidence supporting a fair argument of applicable CEQA thresholds for determining significance. The assumptions and conclusions made in the IS/MND are supported by substantial evidence, and the assertions presented in this comment does not provide substantial evidence supporting a fair argument that the project would result in a new significant environmental impact or a substantial increase in the severity of an environmental impact than determined in the IS/MND. This comment does not present new information that has not been previously analyzed nor does it provide substantial evidence supporting a fair argument that the project would result in significant unavoidable impacts requiring preparation of an EIR. Therefore, the City has determined that the conclusions in the IS/MND are valid and preparation of an EIR is not warranted.

Comment C-6: Section 15073.5 of the CEQA Guidelines provides that a negative declaration must be recirculated whenever the document must be substantially revised. A substantial revision includes the identification of new, avoidable significant effects requiring mitigation measures or project revisions to be added to reduce the effect to less than significant levels or upon the agency determining that a proposed mitigation measure or project change would not reduce a potential impact to insignificance. *Id.*

Additionally, when new information is brought to light showing that an impact previously discussed in an IS/MND and found to be insignificant with or without mitigation in the IS/MND’s analysis has the potential for a significant environmental impact supported by substantial evidence, the IS/MND must consider and resolve the conflict in the evidence. See *Visalia Retail, L.P. v. City of Visalia* (2018) 20 Cal. App. 5th 1, 13, 17; see also *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109.

In light of the IS/MND’s failure to substantiate all of its findings, provide adequate mitigation measures, and fully assess all relevant factors, the Project requires significant revisions and resolution of conflicts in evidence. Therefore, at a minimum, the City must revise and recirculate the IS/MND if it does not prepare an EIR for the Project.

Response C-6: See Responses C-5 and C-13 regarding the adequacy of the IS/MND. In summary, the assumptions and conclusions made in the IS/MND are supported by substantial evidence, and the assertions presented in this comment does not provide substantial evidence supporting a fair argument that the project would result in a new significant environmental impact or a substantial increase in the severity of an environmental impact than determined in the IS/MND. This comment does not present new information that has not been previously analyzed nor does it provide substantial evidence supporting a fair argument that the project would result in significant unavoidable impacts requiring preparation of an EIR. Therefore, the City has determined that the conclusions in the IS/MND are valid and preparation of an EIR is not warranted.

Comment C-7: “[A]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient” environmental document. *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 200. “A curtailed or distorted project description may stultify the objectives of the reporting process” as an accurate, stable and finite project description is necessary to allow “affected outsiders and public decisionmakers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal. *Id.* at 192 – 93.

Here, as a preliminary matter, the IS/MND is insufficient, requiring revising, because it fails to specify the Project’s objective and intended usage. Rather, the IS/MND provides that “the exact usage of the proposed building is yet to be determined, but would likely be utilized for industrial distribution, manufacturing, and/or research & development activities.” IS/MND at 1. Such lack of specification does not provide the public or City with a meaningful understanding of the intent of the Project and why it is warranted. The IS/MND must be revised to conclusively establish why the Project is needed and what exactly it intends to achieve before the City blanketly signs off on an unspecified industrial development.

Response C-7: As described on page 5 of the IS/MND, the applicant proposes a Site Development Permit to allow construction of a new industrial development consisting of a new single-story industrial/research & development concrete shell building, consistent with the existing General Plan land use designation and zoning for the project site. As disclosed in the IS/MND, although the exact industrial use of the proposed buildings is yet to be determined the industrial building would be utilized for industrial distribution, manufacturing, and/or research & development activities, which represent a range of specific industrial uses that are evaluated accordingly in the analysis in the IS/MND. The comment does not raise concerns with the adequacy of the CEQA analysis or IS/MND.

Comment C-8: If a project has a significant effect on the environment, an agency may approve the project only upon finding that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns”. CEQA Guidelines § 15092(b)(2)(A–B).

CEQA mitigation measures proposed and adopted are required to describe what actions will be taken to reduce or avoid an environmental impact. CEQA Guidelines § 15126.4(a)(1)(B) (providing “[f]ormulation of mitigation measures should not be deferred until some future time”.) While the same Guidelines section 15126.5(a)(1)(B) acknowledges an exception to the rule against deferrals, such exception is narrowly proscribed to situations where it is impractical or infeasible to include those details during the project's environmental review.

Here, the IS/MND finds that the Project will result in numerous significant impacts. However, in order to mitigate such impacts, the IS/MND imposes mitigation measures which have not been fully formulated or completed, rendering the mitigation measure improperly deferred and fail to in fact mitigate the Project’s significant impacts.

Response C-8: The IS/MND does not include deferred mitigation. The mitigation measures presented in the IS/MND identify specific performance standards required for mitigation and identify the action(s) that can feasibly achieve these performance standards. These mechanisms, such as approval of contingency plans or measures by appropriate agencies prior to issuance of permits, will assure that the impacts of the project will be reduced to less than significant.

Comment C-9: The IS/MND finds that the “Project construction would result in an infant cancer risk of 16.52 in one million at the maximally exposed individual (MEI), which exceeds the BAAQMD’s cancer risk significance threshold of 10 in one million.” IS/MND at 2. Thus, in order to mitigate such impacts, the IS/MND imposes mitigation measure MM c, which requires that “[p]rior to the issuance of any demolition, grading, or building permits (whichever occurs first), the project applicant shall prepare a construction operations plan”. *Id.* Such language indicates that the plan has not yet been formulated, indicating deferred mitigation. Further, the mitigation measure fails to establish what exactly must be provided in the plan. Rather, the measure notes that the plan can allow an array of different construction equipment, without in fact requiring that any particular construction equipment be utilized/avoided. *Id.* Thus, the mitigation measure fails to in fact mitigate the Project’s significant air quality impacts and must be revised to so that a construction plan, which identifies exactly what equipment is permitted, has already been prepared or provide an in-depth explanation why it is infeasible to do so at this time.

Response C-9: As described on page 54 of the IS/MND, mitigation measure MM AQ-1 calls for the project applicant to prepare a construction operations plan with equipment verified by a qualified air quality specialist “prior to the issuance of any demolition, grading, or building permits (whichever occurs first).” As further described in the mitigation measure, the construction operations plan shall be reviewed and approved by the Director of Planning, Building and Code Enforcement or the Director’s designee prior to the issuance of any demolition, grading, or building permits. These mechanisms will assure that the appropriate construction equipment will be used during construction. The construction operations plan would reduce the infant cancer risk by approximately 60 percent, decreasing the project’s construction cancer risk below the BAAQMD’s single-source threshold for increased cancer risk of 10 in one million.

Comment C-10: The IS/MND also finds that the Project has the potential to impact listed or special concern species such as the American Badger, Raptors, and the Burrowing Owl. IS/MND at 2. Therefore, to mitigate such impact, the IS/MND imposes numerous mitigation measures labeled MM-BIO-1 – MM-BIO-3. However, each of these measures is improperly deferred or fails to adequately mitigate the Project’s impact.

MM-BIO-1 requires that construction workers undergo an education program and that pre-construction surveys be conducted. However, this mitigation language allows a single individual to make subjective decisions, outside the public’s view, to determine whether a potential badger burrow is to be blocked with soil or excavated, thereby risking take of American badgers. It also allows a single individual to determine the buffer area around active natal dens. Nor is there any guidance or criteria on an appropriate buffer, such as whether and how it should be adjusted based on the type of construction activity underway nearby. Thus, the measure will not reduce the project’s significant impacts on the species.

Similarly, MM-BIO-2 requires that certain construction activities be avoided during the nesting season to mitigate impacts to raptors, which it identifies as “February 1st through August 31st”. IS/MND at 3. However, as noted by the California Department of Fish and Wildlife (“CDFW”), “the nesting may

commence before and/or after this timeframe. For example, some species of raptors (e.g. owls, hawks, etc.) may commence nesting activities in January, and passerines may nest later than August 31.”⁷

Finally, MM-BIO-3 seeks to mitigate impacts to burrowing owls and includes a requirement that should a pre-construction survey indicate evidence of a burrowing owl, a 250-foot non-disturbance buffer zone must be established. However, the CDFW recommends at least a 300-foot buffer zone.

The IS/MND must be revised to ensure the Project meets CDFW standards and in fact mitigates its biological resource impacts.

Response C-10: The mitigation measures provided in the IS/MND are industry standard and are required to be implemented by biologists who are qualified to determine how to appropriately implement the mitigation to avoid or reduce impacts to special-status species. Measures for raptors and protection of other avian species and western borrowing owl are consistent with standard City of San José avoidance and minimization measures and measures in the approved Santa Clara Valley Habitat Conservation Plan, respectively. CDFW provided no comments regarding the suitability of these measures in their comment letter; however, they recommended revisions to mitigation measure MM BIO-1b to avoid or reduce impacts to American Badger, which have been incorporated into the IS/MND, as presented in Section 3 of this document (refer also to the responses to comment Letter A above).

Comment C-11: For hazards and hazardous material impacts, the IS/MND finds that “[s]oils at the project site were determined to show trace elements of asbestos. Release of asbestos dust during ground disturbing activities could result in the exposure hazardous materials to the public or the environment.” IS/MND at 7. Accordingly, the IS/MND imposes mitigation measure MM-HAZ-1 to require that “[p]rior to issuance of any demolition or grading permits, the project applicant shall prepare an Asbestos Dust Mitigation Plan (ADMP) for submittal to the Bay Area Air Quality Management District (BAAQMD) for approval.” However, as noted above, the IS/MND’s indication that such plan has not yet been prepared absent any indication why doing so is infeasible at this time constitutes deferred mitigation, which must be addressed.

Response C-11: MM HAZ-1 is not deferred mitigation. Specifically, MM HAZ-1 as presented on page 113 of the IS/MND states that “prior to issuance of any demolition or grading permits, the project applicant shall prepare an Asbestos Dust Mitigation Plan (ADMP) for submittal to the Bay Area Air Quality Management District (BAAQMD) for approval.” Therefore, the requirement to submit and receive approval for the ADMP prior to issuance of demolition or grading permits will ensure that mitigation is not deferred and that the project cannot proceed with development until this measure is complied with.

Comment C-12: Finally, the IS/MND finds that [t]he project daily Vehicle Miles Travelled (VMT) generated by the project would be 14.89 per worker, which exceeds the industrial threshold of 14.37 daily VMT per worker.” IS/MND at 8. Thus, the IS/MND imposes two mitigation measures, MM-TR-1 and MM-TR-2. However, both measures have not yet been satisfied since they indicate that both the design plans and market campaign which the measure require have not yet been prepared. As with the other measures, the IS/MND must either satisfy its transportation measures prior to approval of the

⁷ November 18, 2021 CDFW letter, available at <https://files.ceqanet.opr.ca.gov/273819-1/attachment/zo76RgD7dUdj5BLJTEhEMdf74g6f100RrKiWBQSquhFFe5I0X53rLsbLSGMPRXgXM4AaYnJSTfZB6JpY0>

IS/MND or provide an explanation why doing so is infeasible at this time to ensure that the IS/MND is CEQA compliant and adequately mitigates the Project's significant impacts.

Response C-12: The methodology and findings of the Transportation Analysis and VMT evaluation presented in the Transportation section of the IS/MND and within Appendix I are consistent with the requirements of the City of San José Transportation Analysis Handbook. Documentation confirming compliance with mitigation measures MM-TR-1 and MM-TR-2 shall be submitted and reviewed as part of the Public Improvement Plan provided to the City of San José Department of Public Works and Department of Planning, Building, and Code Enforcement for approval prior to the issuance of development permits for the proposed project.

Comment C-13: CEQA requires that an environmental document identify and discuss the significant effects of a Project, alternatives and how those significant effects can be mitigated or avoided. CEQA Guidelines § 15126.2; PRC §§ 21100(b)(1), 21002.1(a). An environmental document's discussion of potentially significant effects must "provide an adequate analysis to inform the public how its bare numbers translate to create potential adverse impacts or it must adequately explain what the agency does know and why, given existing scientific constraints, it cannot translate potential [environmental] impacts further." *Sierra Club v. County of Fresno* (2018) 6 Cal. 5th 502, 521; *see also* citing *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 405; *see also* PRC §§ 21002.1(e), 21003(b). Here, the IS/MND fails to comply with this requirement because it fails to provide sufficient information and assess all relevant factors for several of its findings to ensure that the public has adequate information.

Response C-13: The IS/MND identifies the significant impacts of the project and presents mitigation for these impacts. The assertions in this comment do not provide substantial evidence supporting a fair argument of applicable CEQA thresholds for determining significance. The assumptions and conclusions made in the IS/MND are supported by substantial evidence, and the assertions presented in this comment does not provide substantial evidence supporting a fair argument that the project would result in a new significant environmental impact or a substantial increase in the severity of an environmental impact than determined in the IS/MND.

Comment C-14: First, the IS/MND's greenhouse gas analysis fails to quantify whatsoever the Project's estimated greenhouse gas emissions. IS/MND at 96-104. Instead, the IS/MND relies solely on regulatory compliance to conclude that the impacts will be less than significant. *Id.* However, it is well established that determinations that regulatory compliance will be sufficient to prevent significant adverse impacts must be based on a project-specific analysis of potential impacts and the effect of regulatory compliance. *See Californians for Alternatives to Toxics v. Department of Food & Agric.* (2005) 136 Cal. App. 4th 1; *Ebbetts Pass Forest Watch v Department of Forestry & Fire Protection* (2008) 43 Cal. App. 4th 936, 956. Thus, absent any Project-specific analysis quantifying the Project's estimated greenhouse gas emissions, the IS/MND's less than significant findings is merely speculative.

Response C-14: As described in *Section H. Greenhouse Gas* (pages 103-104) of the IS/MND, the project would have a less than significant GHG impact based on methodologies and evidence provided in the analysis. As stated in the IS/MND, "GHG emissions associated with development of the project would occur over the short-term from construction activities, consisting primarily of emissions from equipment exhaust and worker and vendor trips. Per Appendix A, the metric tons of carbon dioxide equivalent (MTCO₂e) from construction is estimated to be 172 MTCO₂e for 2023 and 129 MTCO₂e for 2024."

The City of San José has prepared an updated Greenhouse Gas Reduction Strategy (GHGRS) in response to Senate Bill 32 that establishes an interim GHG reduction goal for 2030 and proposes strategies designed to reduce the City's greenhouse gas emissions levels to 40 percent below 1990 levels by the year 2030 to meet the long-term target of carbon neutrality by 2045 [Executive Order B-55-18]. The 2030 GHGRS serves as a Qualified Climate Action Plan for purposes of tiering and streamlining under the CEQA. The Development Compliance Checklist developed to apply the relevant General Plan policies and the 2030 GHGRS provides for a streamlined review process for proposed new development projects subject to discretionary review and that trigger the environmental review under CEQA. Operational GHG emissions are based on conformance with the GHGRS. For project-level GHGs, BAAQMD no longer specifies a numeric threshold and relies on conformance with CAP (or GHGRS) or specific measures in the latest BAAQMD CEQA Guidelines.

As described on page 103 of the IS/MND, the following GHG Reduction Strategies would be incorporated into the proposed project. The IS/MND concluded that with implementation of these GHG reduction strategies, the project would have a less than significant impact related to GHG emissions.

- Implementation of green building measures through construction techniques and architectural design
- Incorporation of energy conservation measures
- Enrollment into the San José Clean Energy program at the GreenSource level
- Incorporation of bicycle storage and related facilities
- Incorporation of water-efficient landscaping
- Incorporation of appropriate landscaping species
- Providing an area for future installation of solar panels and/or solar ready facilities

Comment C-15: Second, the IS/MND's hydrology and water quality analysis is troubling. The IS/MND notes that Coyote Creek is located only approx. 450 feet from the Project site and that the Project will involve extensive grading and excavation activities and use materials which harm local waterways. Nevertheless, the IS/MND finds less than significant impacts because the Project will be required to adhere to regulatory compliance. However, as noted above, regulatory compliance cannot alleviate the need for Project-specific analysis quantifying the Project's water quality impacts stemming from its construction and operation.

Response C-15: The nearest waterway to the project site is Coyote Creek, located about 450 feet from the southern boundary of the site across Hellyer Avenue. The potential impacts of the project on hydrology and water quality are described in the IS/MND on pages 119-123. Implementation of regulatory compliance measures, required as conditions of approval, are adequate to avoid or minimize the hydrology and water quality impacts of the project during construction and operation. Specifically, the project would construct new storm drain laterals within the site to direct stormwater flows resulting to bio-retention areas. Additionally, the project would implement best management practices, which include site design measures, source controls, and numerically-sized Low Impact Development stormwater treatment measures to minimize stormwater pollutant discharges.

Therefore, with conformance with the requirements of City Council Policy 6-29 and 8-14, the State's Construction Stormwater Permit, and the City's Grading Ordinance, runoff from the proposed project would be captured, treated, and diverted, resulting in a less than significant impact related to hydrology and water quality.

Comment C-16: Finally, the IS/MND fails to consider the Project's lot line adjustment in its land use analysis and whether such adjustment is consistent with the City's General Plan. Accordingly, the IS/MND findings are not supported by substantial evidence and must be revised before speculating that the impacts will be less than significant.

Response C-16: This comment regarding the lot line adjustment does not state any issues or concerns with the project or the CEQA analysis. Therefore, no further response to this comment is required.

Comment C-17: Based on the foregoing, the City should prepare an Environmental Impact Report for the Project since there is a fair argument that the Project will result in significant environmental impacts. However, at the very least, the City must revise the IS/MND for the Project to address the aforementioned concerns. Should you have any questions, please do not hesitate to be in touch.

Response C-17: Refer to Responses C-4 through C-21. Responses C-5 and C-13 specifically address the adequacy of the IS/MND.

Comment C-18: Soil Water Air Protection Enterprise ("SWAPE") is pleased to provide the following draft technical report explaining the significance of worker trips required for construction of land use development projects with respect to the estimation of greenhouse gas ("GHG") emissions. The report will also discuss the potential for local hire requirements to reduce the length of worker trips, and consequently, reduced or mitigate the potential GHG impacts.

Response C-18: Refer to Responses C-14 and C-21.

Comment C-19: The California Emissions Estimator Model ("CalEEMod") is a "statewide land use emissions computer model designed to provide a uniform platform for government agencies, land use planners, and environmental professionals to quantify potential criteria pollutant and greenhouse gas (GHG) emissions associated with both construction and operations from a variety of land use projects."⁸ CalEEMod quantifies construction-related emissions associated with land use projects resulting from off-road construction equipment; on-road mobile equipment associated with workers, vendors, and hauling; fugitive dust associated with grading, demolition, truck loading, and on-road vehicles traveling along paved and unpaved roads; and architectural coating activities; and paving.⁹

The number, length, and vehicle class of worker trips are utilized by CalEEMod to calculate emissions associated with the on-road vehicle trips required to transport workers to and from the Project site during construction.¹⁰

⁸ "California Emissions Estimator Model." CAPCOA, 2017, available at: <http://www.aqmd.gov/calcemod/home>.

⁹ "California Emissions Estimator Model." CAPCOA, 2017, available at: <http://www.aqmd.gov/calcemod/home>.

¹⁰ "CalEEMod User's Guide." CAPCOA, November 2017, available at: http://www.aqmd.gov/docs/defaultsource/calcemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4, p. 34.

Specifically, the number and length of vehicle trips is utilized to estimate the vehicle miles travelled (“VMT”) associated with construction. Then, utilizing vehicle-class specific EMFAC 2014 emission factors, CalEEMod calculates the vehicle exhaust, evaporative, and dust emissions resulting from construction-related VMT, including personal vehicles for worker commuting.¹¹

Specifically, in order to calculate VMT, CalEEMod multiplies the average daily trip rate by the average overall trip length (see excerpt below):

$$\text{“VMT}_d = \Sigma(\text{Average Daily Trip Rate}_i * \text{Average Overall Trip Length}_i)_n$$

Where:

n = Number of land uses being modeled.”¹²

Furthermore, to calculate the on-road emissions associated with worker trips, CalEEMod utilizes the following equation (see excerpt below):

$$\text{“Emissions}_{\text{pollutant}} = \text{VMT} * \text{EF}_{\text{running,pollutant}}$$

Where:

$\text{Emissions}_{\text{pollutant}}$ = emissions from vehicle running for each pollutant

VMT = vehicle miles traveled

$\text{EF}_{\text{running,pollutant}}$ = emission factor for running emissions.”¹³

Thus, there is a direct relationship between trip length and VMT, as well as a direct relationship between VMT and vehicle running emissions. In other words, when the trip length is increased, the VMT and vehicle running emissions increase as a result. Thus, vehicle running emissions can be reduced by decreasing the average overall trip length, by way of a local hire requirement or otherwise.

Response C-19: Refer to Responses C-4, C-12, C-14, and C-21 with regards to VMT and GHG. Local hire requirements are not a CEQA issue as stated in Response C-4.

Comment C-20: As previously discussed, the number, length, and vehicle class of worker trips are utilized by CalEEMod to calculate emissions associated with the on-road vehicle trips required to transport workers to and from the Project site during construction.¹⁴ In order to understand how local hire requirements and associated worker trip length reductions impact GHG emissions calculations, it is important to consider the CalEEMod default worker trip parameters. CalEEMod provides recommended default values based on site-specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type. If more specific project information is known, the user can change the default values and input project-specific values, but the California Environmental Quality Act (“CEQA”) requires that such changes be justified by substantial evidence.¹⁵ The default number of construction-related worker trips is calculated by multiplying the number of pieces of equipment for all phases by 1.25, with the exception of worker

¹¹ “Appendix A Calculation Details for CalEEMod.” CAPCOA, October 2017, available at: http://www.aqmd.gov/docs/defaultsource/caleemod/02_appendix-a2016-3-2.pdf?sfvrsn=6, p. 14-15.

¹² “Appendix A Calculation Details for CalEEMod.” CAPCOA, October 2017, available at: http://www.aqmd.gov/docs/defaultsource/caleemod/02_appendix-a2016-3-2.pdf?sfvrsn=6, p. 23.

¹³ “Appendix A Calculation Details for CalEEMod.” CAPCOA, October 2017, available at: http://www.aqmd.gov/docs/defaultsource/caleemod/02_appendix-a2016-3-2.pdf?sfvrsn=6, p. 15.

¹⁴ “CalEEMod User’s Guide.” CAPCOA, November 2017, available at: http://www.aqmd.gov/docs/defaultsource/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4, p. 34.

¹⁵ CalEEMod User Guide, available at: <http://www.caleemod.com/>, p. 1, 9.

trips required for the building construction and architectural coating phases.¹⁶ Furthermore, the worker trip vehicle class is a 50/25/25 percent mix of light duty autos, light duty truck class 1 and light duty truck class 2, respectively.”¹⁷ Finally, the default worker trip length is consistent with the length of the operational home-to-work vehicle trips.¹⁸ The operational home-to-work vehicle trip lengths are:

“[B]ased on the *location* and *urbanization* selected on the project characteristic screen. These values were *supplied by the air districts or use a default average for the state*. Each district (or county) also assigns trip lengths for urban and rural settings” (emphasis added).¹⁹

Thus, the default worker trip length is based on the location and urbanization level selected by the User when modeling emissions. The below table shows the CalEEMod default rural and urban worker trip lengths by air basin (see excerpt below and Attachment A).²⁰

| Worker Trip Length by Air Basin | | |
|--|----------------------|----------------------|
| Air Basin | Rural (miles) | Urban (miles) |
| Great Basin Valleys | 16.8 | 10.8 |
| Lake County | 16.8 | 10.8 |
| Lake Tahoe | 16.8 | 10.8 |
| Mojave Desert | 16.8 | 10.8 |
| Mountain Counties | 16.8 | 10.8 |
| North Central Coast | 17.1 | 12.3 |
| North Coast | 16.8 | 10.8 |
| Northeast Plateau | 16.8 | 10.8 |
| Sacramento Valley | 16.8 | 10.8 |
| Salton Sea | 14.6 | 11 |
| San Diego | 16.8 | 10.8 |
| San Francisco Bay Area | 10.8 | 10.8 |
| San Joaquin Valley | 16.8 | 10.8 |
| South Central Coast | 16.8 | 10.8 |
| South Coast | 19.8 | 14.7 |
| Average | 16.47 | 11.17 |
| Minimum | 10.80 | 10.80 |
| Maximum | 19.80 | 14.70 |
| Range | 9.00 | 3.90 |

As demonstrated above, default rural worker trip lengths for air basins in California vary from 10.8- to 19.8-miles, with an average of 16.47 miles. Furthermore, default urban worker trip lengths vary from

¹⁶ “CalEEMod User’s Guide.” CAPCOA, November 2017, available at:

http://www.aqmd.gov/docs/defaultsource/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4 p. 34.

¹⁷ “Appendix A Calculation Details for CalEEMod.” CAPCOA, October 2017, available at: http://www.aqmd.gov/docs/default-source/caleemod/02_appendix-a2016-3-2.pdf?sfvrsn=6, p. 15.

¹⁸ “Appendix A Calculation Details for CalEEMod.” CAPCOA, October 2017, available at: http://www.aqmd.gov/docs/default-source/caleemod/02_appendix-a2016-3-2.pdf?sfvrsn=6, p. 14.

¹⁹ “Appendix A Calculation Details for CalEEMod.” CAPCOA, October 2017, available at: http://www.aqmd.gov/docs/default-source/caleemod/02_appendix-a2016-3-2.pdf?sfvrsn=6, p. 21.

²⁰ “Appendix D Default Data Tables.” CAPCOA, October 2017, available at: http://www.aqmd.gov/docs/defaultsource/caleemod/05_appendix-d2016-3-2.pdf?sfvrsn=4, p. D-84 – D-86.

10.8- to 14.7-miles, with an average of 11.17 miles. Thus, while default worker trip lengths vary by location, default urban worker trip lengths tend to be shorter in length. Based on these trends evident in the CalEEMod default worker trip lengths, we can reasonably assume that the efficacy of a local hire requirement is especially dependent upon the urbanization of the project site, as well as the project location.

Response C-20: This comment expresses that the project applicant shall select and hire local workforce for construction of the project. Local hire requirements are not a CEQA issue. In addition, the City does not have authority to require the use of certain Unions or the location of construction workers and employees for private development projects. This comment does not pertain to the contents and findings of the IS/MND for the proposed project and no further response is required.

Comment C-21: To provide an example of the potential impact of a local hire provision on construction-related GHG emissions, we estimated the significance of a local hire provision for the Village South Specific Plan (“Project”) located in the City of Claremont (“City”). The Project proposed to construct 1,000 residential units, 100,000-SF of retail space, 45,000-SF of office space, as well as a 50-room hotel, on the 24-acre site. The Project location is classified as Urban and lies within the Los Angeles-South Coast County. As a result, the Project has a default worker trip length of 14.7 miles.²¹ In an effort to evaluate the potential for a local hire provision to reduce the Project’s construction-related GHG emissions, we prepared an updated model, reducing all worker trip lengths to 10 miles (see Attachment B). Our analysis estimates that if a local hire provision with a 10-mile radius were to be implemented, the GHG emissions associated with Project construction would decrease by approximately 17% (see table below and Attachment C).

| Local Hire Provision Net Change | |
|--|------------|
| Without Local Hire Provision | |
| Total Construction GHG Emissions (MT CO ₂ e) | 3,623 |
| Amortized Construction GHG Emissions (MT CO ₂ e/year) | 120.77 |
| With Local Hire Provision | |
| Total Construction GHG Emissions (MT CO ₂ e) | 3,024 |
| Amortized Construction GHG Emissions (MT CO ₂ e/year) | 100.80 |
| % Decrease in Construction-related GHG Emissions | 17% |

As demonstrated above, by implementing a local hire provision requiring 10 mile worker trip lengths, the Project could reduce potential GHG emissions associated with construction worker trips. More broadly, any local hire requirement that results in a decreased worker trip length from the default value has the potential to result in a reduction of construction-related GHG emissions, though the significance of the reduction would vary based on the location and urbanization level of the project site.

This serves as an example of the potential impacts of local hire requirements on estimated project-level GHG emissions, though it does not indicate that local hire requirements would result in reduced construction-related GHG emission for all projects. As previously described, the significance of a local

²¹ “Appendix D Default Data Tables.” CAPCOA, October 2017, available at: http://www.aqmd.gov/docs/defaultsource/caleemod/05_appendix-d2016-3-2.pdf?sfvrsn=4, p. D-85.

hire requirement depends on the worker trip length enforced and the default worker trip length for the project's urbanization level and location.

Response C-21: This comment expresses that using a local workforce for construction of the project would potentially lead to a reduction in GHG emissions during construction of the project. Local hire requirements are not a CEQA issue and cannot be enforced by the City for private development projects. This comment does not pertain to the contents and findings of the IS/MND for the proposed project and no further response is required.

As described in *Section H. Greenhouse Gas* (pages 103-104) of the IS/MND, the project would have a less than significant impact on GHG based on methodologies and evidence provided in the analysis. The City of San José has prepared an updated Greenhouse Gas Reduction Strategy in response to Senate Bill 32 that establishes an interim GHG reduction goal for 2030 and proposes strategies designed to reduce the City's greenhouse gas emissions levels to 40 percent below 1990 levels by the year 2030 to meet the long-term target of carbon neutrality by 2045 [Executive Order B-55-18]. The 2030 GHGRS serves as a Qualified Climate Action Plan for purposes of tiering and streamlining under the CEQA. The Development Compliance Checklist developed to apply the relevant General Plan policies and the 2030 GHGRS provides for a streamlined review process for proposed new development projects subject to discretionary review and that trigger the environmental review under CEQA). MM TR-1 and MM TR-2 in the IS/MND include measures that would reduce the VMT below the threshold and thereby reduce air quality and greenhouse gas emissions.

Comment C-22: SWAPE has received limited discovery. Additional information may become available in the future; thus, we retain the right to revise or amend this report when additional information becomes available. Our professional services have been performed using that degree of care and skill ordinarily exercised, under similar circumstances, by reputable environmental consultants practicing in this or similar localities at the time of service. No other warranty, expressed or implied, is made as to the scope of work, work methodologies and protocols, site conditions, analytical testing results, and findings presented. This report reflects efforts which were limited to information that was reasonably accessible at the time of the work, and may contain informational gaps, inconsistencies, or otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.

Response C-22: Comment acknowledged. The comment does not state any issues or concerns with the project or the CEQA analysis. Therefore, no further response to this comment is required.

Comment Letter D: Santa Clara Valley Transportation Authority

Comment D-1: VTA appreciates the opportunity to comment on the IS/MND for the 644-675 Piercy Road Industrial Project. As the exact usage of the proposed building is yet to be determined, it is likely that we will have additional comments when the project is further developed. As usual, we would like the opportunity to review the site plans when it is further developed. VTA has reviewed the document and has the following comments:

Response D-1: This is an introductory statement. The comment does not state any issues or concerns with the project or the CEQA analysis. Therefore, no further response to this comment is required. See responses below for information on project development.

Comment D-2: VTA Route 42 serves this development and travels along Hellyer Avenue. With this project along with other potential projects nearby, demand for access to transit may increase. This project should widen the sidewalk along the Hellyer Road frontage and the slope of the sidewalk to be maintained at two percent max.

Response D-2: The project proposes to install a 10-foot wide sidewalk along the project frontage with maximum cross slopes of 2% per City standards. These are provided in the Street Improvement Plans currently under City review. This information will be included in the Site Development permit conditions of approval and is not a CEQA concern, therefore no additional response is required.

Comment D-3: VTA has been in conversations with San José staff about a new bus stop to be placed along this project frontage just past Tennant Avenue. VTA would like the opportunity to review updated site plans to ensure the placement of driveways, landscaping, and any other features do not conflict with bus operations. VTA's Transit Passenger Environment Plan provides design guidelines for bus stops. This document can be downloaded from our website [here](#). VTA has a Bus Stop Placement, Closures, and Relocations Policy [that can be viewed here](#). If this project is conditioned to install that new bus stop, VTA will work with the project team to make sure the stop is ADA compliant and meets our standards.

Response D-3: To date, the project has not been required by the City to install a new bus stop anywhere along the project frontage. Street improvement plans can be provided to VTA for coordination purposes. (Note that the original web link provided was not accessible.) Conditions for approval for the Site Development permit recommend coordination with VTA. This comment does not state a CEQA concern, therefore no additional response is required.

Comment Letter E: Valley Water

Comment E-1: The proposed project would result in a significant increase in impervious surfaces (approximately 471,961 square feet per page 120). Given the project's location within the Recharge Area of the Santa Clara Subbasin and plan to direct runoff to the City's stormwater system (via bioretention treatment areas), there is not adequate justification for the finding that impacts to groundwater recharge will be less than significant.

Response E-1: As described in the geotechnical report (Appendix E of the IS/MND), the existing soils consist of layers of very dense clayey sand with gravel and hard lean clay with variable amounts of sand limiting existing infiltration. Furthermore, the USDA's Web Soil Survey indicates an approximate infiltration rate of 0.082 inches per hour for this material. The proposed bioretention planters are sized to meet hydro-modification requirements based on the project size by retaining runoff and limiting the amount of runoff being discharged, thus promoting additional infiltration.

Comment E-2: Page 120 notes that "the project does not propose any wells or groundwater pumping. Thus, the project would have a less than significant impact with respect to decreasing groundwater supplies or interfering substantially with groundwater recharge." While the project would not pump groundwater directly through on-site wells, groundwater from City wells will serve the project. Additional supporting information is needed to support the finding.

Response E-2: As described in the geotechnical report, the existing soils consist of layers of very dense clayey sand with gravel and hard lean clay with variable amounts of sand, and the existing clay-like soils on the site provide minimal infiltration. Additionally, the project proposes bioretention planters sized to meet hydromodification requirements. Proposed drainage would be directed to the ponds and retained until the ponds infiltrate into the ground.

In addition, as described on Page 193 of the IS/MND, according to the Water Supply Assessments contained in the City's General Plan EIR, the City estimated industrial and commercial water use based on actual water use data as part of its General Plan update in 2010 and determined that in the Evergreen area, industrial and commercial water use was approximately 206 gallons per day (gpd) per employee (City of San José 2010). The ultimate number of employees at the site will depend on the user (but is conservatively estimated to be 90 employees). Based on this data, the project would generate an estimated 18,540 gpd of water demand. San Jose Municipal Water's projected total water supply for 2025 was 25,865 million gallons (79,377 acre-feet) per year, and thus, the project's incremental increase in water demand would represent only a nominal percentage of existing supplies and would not impact the City's groundwater supply.

Comment E-3: Valley Water recommends including the flood zone, map number, and effective date under the National Flood Insurance Program section. The following sentence should be added to this section, "According to the Federal Emergency Management Agency's (FEMA) current Flood Insurance Rate Map No. 06085C0269H dated May 18, 2009, the site is located in Zone D, which is areas in which flood hazards are undetermined, but possible."

Response E-3: As described on page 123 of the IS/MND, "the project site is located in a FEMA Zone D. Flood Zone D is characterized as an area in which flood hazards are undetermined. Flood events are still possible in Zone D as the areas have not been mapped by FEMA to

determine flood hazards.” The text of the IS/MND has been updated to incorporate additional information provided in this comment, as presented in Section 3.

Comment E-4: The initial study notes that groundwater from City wells serves the area and that the project would incrementally increase demands. The document estimates demands based on employee water use and finds that sufficient water supplies are available. Since the exact nature of the proposed project has not been determined (e.g., manufacturing, research and development, etc.), it is unclear how this finding can be supported, particularly since some industrial uses have large water demands.

Response E-4: According to the project applicant, the project is not anticipated to accommodate a large water user. When a user is determined that entity will apply for a water service based on projected demand. Under CEQA Section 15155(a)(1)(E) Water Supply Analysis, an industrial plant or park would be considered to be a water-demand project if it were planned to have more than 1,000 persons, occupy more than 40 acres of land, or be greater than 650,000 sq. ft. of floor area. The proposed project does not meet any of those thresholds and as such, is not considered a water-demand project.

Further, according to the Water Supply Assessments contained in the City’s General Plan EIR, the City estimated industrial and commercial water use in the Evergreen area for industrial and commercial water use was approximately 206 gallons per day (gpd) per employee. The ultimate number of employees at the site will depend on the user (but is conservatively estimated to be 90 employees). Based on this data, the project would generate an estimated 18,540 gpd of water demand. SJMWS’s projected total water supply for 2025 was 25,865 million gallons (79,377 acre-feet) per year (San José 2020), and thus, the project’s incremental increase in water demand would represent only a nominal percentage of SJMWS’s supplies.

Comment E-5: Although the site is not a part of, or adjacent to, a formal groundwater recharge facility, the project is in an area that supports natural groundwater recharge (see the *2021 Groundwater Management Plan for the Santa Clara and Llagas Subbasin*). Natural groundwater recharge is an important element of the county’s overall water supply, representing approximately 15% of the supply available. The cumulative effect of development throughout San Jose and the rest of the county over the last 50 years has substantially reduced natural groundwater recharge as naturally pervious surfaces have been developed with impervious surface. To avoid further cumulative considerable impacts of reduced natural groundwater recharge from new impervious surfaces on groundwater level and water supply the project should be designed to minimize impervious surface and the proposed bioretention basins and other elements of the stormwater management plan should be designed to allow as much infiltration as possible to maintain existing natural groundwater recharge. Most bioretention basins and other Low Impact Development features focus of stormwater quality rather than maintaining the infiltration rate.

Response E-5: The project site is within an area planned for commercial and industrial development in the General Plan and consists of both impervious and pervious surfaces. The stormwater runoff from the impervious areas will drain to the bio-retention planters. The planters are unlined and would enhance stormwater quality prior to facilitating infiltration. Also, see responses E-1 and E-4 and the IS/MND Section J for Hydrology and Water Quality for additional information.

Comment E-6: Due to the long agricultural history of the Santa Clara Valley, there are likely many abandoned or unregistered wells within the Santa Clara Subbasin. While some of these wells may have

been sealed prior to well permitting requirements, many have open casings and may be discovered during construction of the Project. If abandoned or unregistered wells or well-like structures are discovered or encountered during Project construction, Valley Water's Wells Hotline should be immediately contacted to assist in the identification of these wells or structures and help determine the appropriate means of addressing them, such as proper destruction by a C-57 licensed driller with related work permit and inspection by Valley Water Wells Unit.

Response E-6: The City's standard grading and drainage requirements will be implemented during construction. The contractor will contact Valley Water Well's Hotline if a well is discovered onsite during construction. See revisions to the text of the IS/MND presented in Section 3.

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Section 3. Text Changes to the IS/MND

The following section outlines changes to the text of the IS/MND based on the comments received during the circulation period. New additions to the text are shown in underline. Deleted text is shown in ~~strikethrough~~.

| Page Number | Description of Change |
|----------------|---|
| IS/MND Page 3 | <p><i>The name of the project applicant has been corrected.</i></p> <p>1. Project Owner & Applicant: HUSPRF INVESTOR SPV I LP <u>HUSPRF Piercy LP</u>, 2800 Post Oak Blvd, Suite 4800, Houston, TX 77056</p> |
| IS/MND Page 63 | <p><i>Mitigation Measure BIO-1b has been updated as follows:</i></p> <p>MM BIO-1b A qualified biologist shall conduct focused pre-construction surveys for badger dens (e.g., <u>walking line transect survey</u>) no more than two weeks prior to construction in all suitable habitat proposed for construction activity, ground disturbance, or staging, and accessible areas within 250 feet of those areas. <u>Pre-construction surveys shall also be conducted daily prior to the beginning of ground-disturbing work for the day while suitable habitat remains intact.</u> If no potential badger dens are present, no further mitigation is required. If potential dens are observed, the following measures are required to avoid potential significant impacts to the American badger; <u>qualified biologist shall conduct focused surveys to determine if the den is active.</u></p> <ul style="list-style-type: none"> • <u>If badger dens are found and project work is to occur during the gestation and pup-rearing period (i.e., February 15 through July 1) non-invasive survey methods shall be used (e.g., camera stations, track plates, observation of new signs such as tracks, claw marks, or fur) to determine if the den is active. If badger dens are found and project work is to occur after the gestation and pup-rearing period, invasive (e.g., scoping) and non-invasive methods may be used to determine if the den is active.</u> If the qualified biologist determines that potential dens are inactive, the biologist shall excavate these dens by hand with a shovel to prevent badgers from re-using them during construction. • <u>If the qualified biologist determines that the den is active during the gestation and pup-rearing period (i.e., February 15 through July 1), a buffer of 250 feet around the den complex must be established.</u>potential dens may be active, the entrances of the dens shall be blocked with soil, sticks, and debris for three to five days to discourage the use of these dens prior to project disturbance. The den entrances shall be blocked to an incrementally greater degree over the three to five day period. The qualified biologist shall monitor the den until the end of the gestation and pup-rearing period or until when the young are nearing have gained independence (e.g., can be observed emerging from den opening or are located outside of the den) and disperse. After the qualified biologist determines that badgers have stopped using active <u>natal</u> dens within the project boundary, the dens shall be hand-excavated with a shovel to prevent re-use during construction. |

| | |
|----------------|--|
| | <ul style="list-style-type: none"> • <u>If the qualified biologist determines that the den is active outside of the gestation and pup-rearing period, a buffer of 250 feet around the den complex shall be established if feasible. However, if establishing an avoidance buffer surrounding the active den is not feasible, a Badger Mitigation Plan shall be developed and submitted to CDFW. Any badger habitat permanently lost shall be compensated at a suitable off-site location at a minimum 1:1 replacement ratio with the same or greater quality habitat.</u> <p>Documentation and recommendations of the completed focused badger survey shall be provided to the Director of Planning, Building and Code Enforcement or Director's designee within 7 days of program completion.</p> |
| IS/MND Page 67 | <p><i>Impact a) text has been updated as follows:</i></p> <p><u>The biological assessment found that the Crotch's Bumble Bee has a low potential to occur within the survey area or be impacted by the project because only marginal habitat is present and sufficient blooming plants were determined not to be present for the duration of this species' life cycle. However, in order to provide a conservative analysis, the following conditions of approval shall be incorporated into the project.</u></p> <p><u>Conditions of Approval</u></p> <ul style="list-style-type: none"> • <u>A habitat assessment shall be conducted by a qualified entomologist knowledgeable with the life history and ecological requirements of Crotch's bumblebee. The habitat assessment shall include all suitable nesting, overwintering, and foraging habitats within the project area and surrounding areas. Potential nest habitat (February through October) could include that of other Bombus species such as bare ground, thatched grasses, abandoned rodent burrows or bird nests, brush piles, rock piles, and fallen logs. Overwintering habitat (November through January) could include that of other Bombus species such as soft and disturbed soil or under leaf litter or other debris. The habitat assessment shall be conducted during peak bloom period for floral resources on which Crotch's bumble bees feed. Surveys shall be conducted in accordance with the Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee or whatever the current CDFW recommendations/protocols are at the time of the survey. If no suitable habitat for Crotch's bumble bee is present, no further measures are required.</u> <p><u>If Crotch's bumble bee habitat is present within the project area, a pre-construction survey plan shall be developed and be submitted to CDFW for review and approval. Surveys shall be conducted by a qualified entomologist familiar with the behavior and life history of Crotch's bumble bees. If CESA candidate bumble bees will be captured or handled, surveyors should obtain a 2081(a) Memorandum of Understanding from CDFW. Surveys shall be conducted during the colony active period (i.e., April through August) and when floral resources are in peak bloom in accordance with the Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee or whatever the current CDFW recommendations/protocols are</u></p> |

| | |
|-----------------|--|
| | <p><u>at the time of the survey. If no Crotch's bumble bees are observed no further measures are necessary unless suitable habitat remains intact within the project area. Because bumble bees move nests sites each year, surveys shall be conducted each year that project work activities will occur if suitable habitat remains intact within the project area.</u></p> <p><u>If Crotch's bumble bees are detected during pre-construction surveys, a Crotch's bumble bee avoidance plan shall be developed to avoid take of the species. The avoidance plan shall be provided to CDFW for review prior to work activities involving ground disturbance or vegetation removal.</u></p> |
| IS/MND Page 120 | <p><i>Impact b) text has been updated as follows:</i></p> <p><u>In addition, given the agricultural history of the Santa Clara Valley it is possible that there may be abandoned or unregistered wells on the site. While some of these wells may have been sealed prior to well permitting requirements, many may have open casings and be discovered during construction of the project. If abandoned or unregistered wells or well-like structures are discovered or encountered during project construction, the project contractor will contact the Valley Water's Wells Hotline to assist in the identification of these wells or structures and determine the appropriate means of addressing them.</u></p> |
| IS/MND Page 123 | <p><i>Impact civ) text has been updated as follows:</i></p> <p><u>Less than Significant Impact. According to the Federal Emergency Management Agency's (FEMA's) current Flood Insurance Rate Map No. 06085C0269H dated May 18, 2009, the project site is located in a FEMA Zone D, which is an area which flood hazards are undetermined, but possible. However, these areas are considered to be outside of the 100-year floodplain. The City does not have any floodplain restrictions for development in Zone D. In addition, the proposed project includes the implementation of a stormwater control plan to manage changes in stormwater flows on the site resulting from development of the proposed project. Therefore, the project would substantially alter drainage patterns by impeding or redirecting flood flows, resulting in a less than significant impact.</u></p> |

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SECTION 4. CONCLUSION

The comments received during the public circulation period for the 644/675 Piercy Road Industrial Development project's IS/MND did not raise any new environmental issues or provide information signifying that the project would result in additional impacts or impacts of greater severity than described in the circulated IS/MND. In conclusion, the IS/MND provides a legally adequate level of environmental review for the project, pursuant to California Public Resources Code §21080(c) and 21081.1(a), and CEQA Guidelines §15070.

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Attachment A – Consolidated Public Comment Letters

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