

**Responses to Comments  
on the  
Initial Study/Mitigated Negative Declaration  
for the  
5853 Rue Ferrari Project  
File No.: H21-006 and ER21-022**

Prepared by



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## **TABLE OF CONTENTS**

SECTION 1.0	Summary of Comments	2
SECTION 2.0	Responses to IS/MND Comments	2
SECTION 3.0	IS/MND Text Revisions	15
SECTION 4.0	Conclusion	17

## **APPENDICES**

Appendix A:	IS/MND Comment Letters	
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## SECTION 1.0 SUMMARY OF COMMENTS

The 5853 Rue Ferrari Project Initial Study/Mitigated Negative Declaration (IS/MND), dated January 2022, was circulated for public review from January 19, 2022 to February 8, 2022. The Notice of Intent (NOI) for the adoption of the IS/MND was sent via email to applicable public agencies, public members who have requested notices on all CEQA documents, and public members interested in the project. The NOI was also sent to all those who have registered for electronic notifications of Planning document posting and news on the City’s website. The NOI and IS/MND was also submitted to the State Clearinghouse (SCH) at the commencement of the comment period. During the circulation period, the City of San José received 4 comment letters as summarized in Section 2.0 below.

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. The following pages contain a list of the agencies and persons that submitted comments on the IS/MND and the City’s responses to comments received on the IS/MND. The specific comments have been excerpted from the letters and are presented as “Comment” with each response directly following (“Response”). Copies of the actual letters and emails submitted to the City of San José are attached to this document in Appendix A.

## SECTION 2.0 RESPONSES TO IS/MND COMMENTS

This document includes written responses to comments received by the City of San José on the IS/MND. Comments are organized under headings containing the source of the letter and its date. The specific comments from each of the letters and/or emails are presented with each response to that specific comment directly following. Copies of the letters and emails received by the City of San José are included in their entirety in Appendix A of this document. Comments received on the IS/MND are listed below.

<b>Comment Letter and Commenter</b>	<b>Page of Response</b>
TABLE OF CONTENTS.....	i
Appendices.....	i
Government Agencies.....	3
A. Bay Area Air Quality Management District (dated February 1, 2022).....	3
B. California Department of Transportation (dated February 8, 2022).....	6
Organizations, Businesses, and Individuals.....	9
C. Pacific Gas and Electric Company (dated February 9, 2022).....	9
D. United Food and Commercial Workers Local 5 (dated February 8, 2022).....	10

## GOVERNMENT AGENCIES

### A. Bay Area Air Quality Management District (dated February 1, 2022)

**Comment A.1:** We received notice of the 5853 Rue Ferrari Project MND and wanted to send you relevant recommendations and resources for the development of this project. While the project’s mitigated construction Air Quality emissions, net operational Air Quality emissions, cumulative Air Quality emissions, and GHG emissions do not exceed the Air District Thresholds, these resources and recommendations are helpful to align this project with the most up to date best practices for warehouse projects. While the project includes all Basic Construction Mitigation Measures, the Air District also recommends implementing all feasible and practical “Additional Construction Mitigation Measures” to reduce construction-related emissions to the greatest extent possible (Table 8- 3, page 85)<sup>5</sup>.

**Response A.1:** The comment reiterates the findings disclosed in the IS/MND and did not raise any new issues with respect to the disposition of significant environmental impacts or issues evaluated in the IS/MND. As noted on Page 43 of the IS/MND the project would include BAAQMD Basic Construction Control Measures to control dust at the project site during all phases of construction. With implementation of the Standard Permit Condition, the proposed project’s construction impacts would be less than significant. Therefore, no additional construction mitigation measures are required. The comment does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment A.2:** We also suggest strengthening the requirement for issuance of any demolition, grading, and/or building permits to require Tier 4 construction equipment. Mitigation Measure HRA-1, which is intended to reduce construction cancer risk from 27.93 to 3.71 per million is based on the modeling and successful implementation of Tier 4 construction equipment. Allowing the project proponent to use Tier 3 engines, if Tier 4 equipment is not available, is inconsistent with the basis for Mitigation Measure HRA-1 to not exceed the cancer risk threshold.

**Response A.2:** See Section 3.0 of this document, IS/MND Text Revisions, and below for the clarified language of Mitigation Measure AQ-1.

#### **MM AQ-1     *Additional Construction Mitigation Measures***

Prior to issuance of any demolition, grading permits, and/or building permits (whichever occurs earliest), the project applicant shall prepare and submit a construction operations plan that includes specifications of the equipment to be used during construction to the Director of Planning, Building and Code Enforcement or the Director’s Designee. The plan shall be accompanied by a letter signed by a qualified air quality specialist, verifying that the equipment included in the plan meets the standards set forth below.

<sup>5</sup>[https://www.baaqmd.gov/~/\\_media/files/planning-and-research/ceqa/draft\\_baaqmd\\_ceqa\\_guidelines\\_may\\_2010\\_final.pdf?la=en&rev=0394ff5125764b1e848d32d4568dee89](https://www.baaqmd.gov/~/_media/files/planning-and-research/ceqa/draft_baaqmd_ceqa_guidelines_may_2010_final.pdf?la=en&rev=0394ff5125764b1e848d32d4568dee89)

- For all construction equipment larger than 25 horsepower operating on the site for more than two days continuously or 20 total hours, shall, at a minimum meet U.S. EPA Tier 4 Final emission standards.
- ~~If Tier 4 Final equipment is not available, all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieve an 85 percent reduction in particulate matter exhaust and 40 percent reduction in NOx in comparison to uncontrolled equipment.~~

The project applicant shall submit a construction operations plan prepared by the construction contractor that outlines how the contractor will achieve the measures outlined in this mitigation measure. The plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee for review and approval prior to the issuance of any demolition, grading and/or building permits (whichever occurs earliest). The plan shall include, but not be limited to the following:

- List of activities and estimated timing.
- Equipment that would be used for each activity.
- Manufacturer's specifications for each equipment that provides the emissions level; or the manufacturer's specifications for devices that would be added to each piece of equipment to ensure the emissions level meet the thresholds in the mitigation measure.
- How the construction contractor will ensure that the measures listed are monitored.
- How the construction contractor will remedy any exceedance of the thresholds.
- How often and the method the construction contractor will use to report compliance with this mitigation measure.

The previous Mitigation Measure AQ-1 would require that prior to issuance of any demolition, grading, and/or building permits (whichever occurs earlier), the project applicant shall submit construction equipment specifications and all equipment larger than 25 horsepower operating for more than two continuous days or a total of 20 hours shall meet the Tier 4 Final emission standards or use Tier 3 equipment with control devices. U.S. EPA Tier 4 Final emission standards and Tier 3 emission standards are regulated standards for construction equipment, with clear quantitative emissions thresholds to qualify as Tier 4 or Tier 3. The Director of Planning, Building and Code Enforcement or the Director's Designee, when enforcing the Mitigation Monitoring and Reporting Program (MMRP), has an objective standard to review against to approve or deny the construction operations plan. This would ensure that the emissions levels do not exceed established regulatory thresholds (i.e. BAAQMD). Mitigation Measure AQ-1 also specified that the equipment and specifications is required to be verified by a qualified air quality specialist to ensure that the reduction in pollutant meets BAAQMD threshold. Implementation of Tier 4 final equipment, as demonstrated in Table 4-8 of the IS/MND, would reduce the construction air quality impacts related to cancer risks to be below BAAQMD threshold. However, as the commenter notes, the Health Risk Analysis did not model the cancer risk associated with Tier 3 equipment with control devices. Nevertheless, the use of Tier 3 equipment with control devices that achieve an 85 percent reduction in particulate matter exhaust and 40 percent reduction in NOx would be anticipated to result in less than significant cancer risks, similar to the Tier 4 final equipment because the emissions would be reduced to similar levels as the Tier 4 equipment.

However, to provide additionally clarity, Mitigation Measure AQ-1 has since been revised to disallow the use of Tier 3 engines with control devices to be consistent with the analysis in Appendix A of the IS/MND. The clarified Mitigation Measure AQ-1 requires the applicant to only use Tier 4 Final equipment for all construction equipment larger than 25 horsepower operating on the site for more than two days continuously or 20 total hours. The language of the prior Mitigation Measure AQ-1, as outlined on page 49 of the IS/MND, clarifies who the responsible agency is, what is required of the applicant (i.e. required contents of the construction operation plan and associated air quality memo), when enforcement is required, and what the metrics of successful completion are. The acceptable remedial actions are detailed in the language of Mitigation Measure AQ-1, are to utilize Tier 4 Final equipment for all construction equipment larger than 25 horsepower operating on the site for more than two days continuously or 20 total hours. The clarified Mitigation Measure AQ-1 does not provide an option for the applicant to suggest alternative remedial actions. Additionally, the applicant would still be required to submit a construction operation plan that includes specifications of the equipment to be used during construction and the plan shall be accompanied by a letter signed by a qualified air quality specialist, verifying that the equipment included in the plan meets the standards set forth in Mitigation Measure AQ-1. The revised Mitigation Measure AQ-1 would require a more restrictive standard for construction equipment and as modeled in the Initial Study, and therefore, would result in less than significant impacts regarding air quality emissions and health risks to nearby sensitive receptors.

The revision to Mitigation Measure AQ-1 would clarify the mitigation measure to be more stringent and would not be a substantial revision, per CEQA Guidelines Section 15073.5, and therefore would not require recirculation of the IS/MND. Additionally, pursuant to CEQA Guidelines Section 15074.1 and 15073.5 (c)(1), recirculation is not required when mitigation measures are replaced with equal or more effective measures.

**Comment A.3:** Moreover, consider providing enhanced air filtration to nearby sensitive receptors, especially the Gateway City Church Daycare and Duck Pond Playspace, which are only 45 feet away from the project site. Note that the Duck Pond Playspace is not included in the list of Nearest Sensitive Receptors to the Project site but it is located next to the Daycare center and should be included in the HRA.

Due to the COVID-19 pandemic, many daycares are operating with open windows to increase ventilation and it is also advisable to take extra measures to protect the health of these sensitive receptors and minimize activities that would expose children to the highest levels of pollution. For instance, coordinate with the administrators of the sensitive receptor locations to create a construction plan that adjusts truck routes, demolition hours, etc. to minimize impacts. Another example is to prohibit idling for more than two minutes or prohibit idling altogether (instead of five minutes). Consider installing vegetative walls and installation of MERV-13 filters at sensitive receptor locations. Lastly, we strongly recommend enforcing the Mitigation Monitoring and Reporting Plan to assure rigorous implementation of all air quality mitigation measures.

**Response A.3:** Additional recommendations for improvements to nearby existing structures and buildings that host sensitive receptors have been passed on to the project applicant for consideration.

Pursuant to CEQA, Page 28 of the IS/MND identified the Gateway City Church and Day Care as sensitive receptors located approximately 45 feet east of the project site. While the Duck Pond Play Space is not mentioned by name, it is included in the analysis as the Day Care located 45 feet east of the project site. The Duck Pond Playspace and the Gateway City Church share a building and the Duck Pond Playspace is located on the eastern portion of the shared building, further from the project site. The Health Risk Assessment (HRA) (Appendix A of Initial Study) evaluated the potential exposures of sensitive receptors located 45 feet away from the project site property line. Specifically, the HRA conservatively modeled

what the construction period and operational emissions from the project site would be on sensitive receptors in an outdoor play space 45 feet from the property line, assuming 24 hours a day outdoor exposure during both construction and operations. In reality, the sensitive receptors would likely only be outdoors for a fraction of that time, so this approach is conservative. With the implementation of Mitigation Measure AQ-1, as amended in Section 3.0 of this document, which requires the use of Tier 4 final construction equipment, the project would further reduce diesel particulate matter (DPM) during construction periods and impacts to sensitive receptors including the Duck Pond Playspace and the Gateway City Church would be less than significant. Therefore, no additional mitigation measures such as improvements to nearby structure of buildings are required under CEQA. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment A.4:** We commend the project for incorporating the latest building energy efficiency standards, solar, VMT reduction measures, among others to reduce emissions over the life of the project. Consider implementing the following best practices and those included in the resources section below to further reduce the project's footprint.

- Require or incentivize zero emission trucks for facility operations to the greatest degree feasible
- Prohibit or minimize the use of diesel fuel, consistent with the Air District's Diesel Free By '33 initiative (<http://dieselfree33.baaqmd.gov/>)
- Install electric vehicle charging infrastructure
- Require electric forklifts and install associated charging stations

**Response A.4:** The comment did not raise any new issues with respect to the disposition of significant environmental impacts or issues evaluated in the IS/MND and therefore, no further response is required.

**Comment A.5:** Finally, certain aspects of the Project may require a permit from the Air District (for example, backup diesel generators). Please contact Barry Young, Senior Advanced Projects Advisor, at (415) 749-4721 or [byoung@baaqmd.gov](mailto:byoung@baaqmd.gov) to discuss permit requirements.

**Response A.5:** If any aspects of the project would require a permit from the Bay Area Air Quality Management District, the applicant will obtain the specified permit and would comply with any regulatory measures. The comment did not raise any new issues with respect to the disposition of significant environmental impacts or issues evaluated in the IS/MND. and therefore, no further response is required.

## **B. California Department of Transportation (dated February 8, 2022)**

**Comment B.1:** The project VMT analysis and significance determination are undertaken in a manner consistent with the Office of Planning and Research's (OPR) Technical Advisory. Per the MND, this project is found to have significant VMT impact. Caltrans commends the Lead Agency in developing mitigation measures and multi-modal infrastructure improvements to reduce project related VMT.

We encourage a sufficient allocation of fair share contributions toward multi-modal and regional transit improvements to mitigate the increase of regional VMT above the City's adopted threshold. We also strongly support measures to increase sustainable mode shares, thereby reducing VMT. Please consider fair share contributions or multi-modal improvements to the following projects and locations:

- San Jose Better Bike Plan: Coyote Creek Trail from Silver Creek Valley Rd to Silicon Valley Blvd (Class 1 bike lanes);
- San Jose Better Bike Plan: Silicon Valley Boulevard / Bernal Road from Heaton Moor Drive to Hellyer Avenue (Class IV protected bike lanes). This project would provide improved access for bicyclists crossing US-101 from Rue Ferrari;
- Caltrans District 4 Bike Plan: SC-101-X03 101 Blossom Hill Road (Class IV bike lanes). Once constructed, this project will improve bike accommodations on EB Blossom Hill Rd, access to/from the Class I path at Coyote Rd, and signage providing for protection for bicyclists and pedestrians. Blossom Hill Road provides the most direct path of access to the Blossom Hill Transit Station, as such, it is essential to providing successful Transportation Demand Management (TDM) measures at the Rue Ferrari site; and
- Caltrans District 4 Pedestrian Plan: US 101/Blossom Hill Rd Interchange and US 101/Bernal Rd/Silicon Valley Blvd Interchange. With the proximity of the State Route (SR) 85/US-101 Interchange to US-101/Bernal Rd/Silicon Valley Blvd, pedestrians navigate several ramp crossings. Any improvements that increase the visibility of pedestrians at ramp crossings, including high visibility striping and advance yield markings, are recommended.

**Response B.1:** The comment reiterates the IS/MND findings and recommends additional contribution and improvements to be considered. As discussed in the IS/MND, a VMT analysis was used to evaluate the proposed project's VMT levels against the appropriate thresholds of significance established in Council Policy 5-1. The project would exceed the City's industrial VMT per employee threshold resulting in a potentially significant VMT impact, without mitigation. However, with the implementation of Mitigation Measure TRANS-1, impacts would be reduced to less than significant. More specifically, Mitigation Measure TRANS-1 requires that the project applicant prepare a development plan set that illustrates various multi-modal infrastructure improvements. These include the installation of a rapid-flashing beacon enhanced mid-block crosswalk and connecting pathway located west of the project's southernmost driveway on Eden Park Place and construction of an American Disabilities Act (ADA) compliant connection at the mid-block crosswalk with curb ramps from the project frontage to the existing Coyote Creek Trail. Thus, impacts would be reduced without the necessity of providing a fair share contribution. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5.

**Comment B.2:** As the Lead Agency, the City of San Jose is responsible for all project mitigation, including any needed improvements to the State Transportation Network (STN). The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

**Response B.2.** See Response B.1 for a discussion of the project's need to provide a fair share contribution to proposed transportation impacts. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5. In addition, the comment does not constitute substantial evidence in light of the whole record that the project will result in a significant impact to the



environment which cannot be mitigated or avoided.

**Comment B.3:** If any Caltrans facilities are impacted by the project, those facilities must meet ADA Standards after project completion. As well, the project must maintain bicycle and pedestrian access during construction. These access considerations support Caltrans' equity mission to provide a safe, sustainable, and equitable transportation network for all users.

**Response B.3:** The project would be fully compliant with ADA standards for any new project components including parking spaces, sidewalks, roadways, accessways and interior spaces. The project would maintain bicycle and pedestrian access during construction. The proposed project would not negatively impact any existing Caltrans facilities. Furthermore, ADA access to the project would be improved as a part of the proposed project, with the construction of an ADA compliant connection at the mid-block crosswalk with curb ramps from the project frontage to the existing Coyote Creek Trail as part of improvements provided under Mitigation Measure TRANS-1 discussed under Response B.1. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5. In addition, the comment does not constitute substantial evidence in light of the whole record that the project will result in a significant impact to the environment which cannot be mitigated or avoided.

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## ORGANIZATIONS, BUSINESSES, AND INDIVIDUALS

### C. Pacific Gas and Electric Company (dated February 9, 2022)

**Comment C.1:** PGE operates underground electric distribution facilities currently serving this property. The Company strongly suggests all vegetation be kept a minimum of 5-feet away from all distribution lines. 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](http://www.pge.com/cco) for any modification or relocation requests, or for any additional services you may require. 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.

**Response C.1:** The comment includes information regarding protocols that projects must comply with if work is near a PG&E structure or facility. The project would be required to comply to similar conditions, if near PG&E structures or facilities as part of the project conditions. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5. In addition, the comment does not constitute substantial evidence in light of the whole record that the project will result in a significant impact to the environment which cannot be mitigated or avoided.

#### D. United Food and Commercial Workers Local 5 (dated February 8, 2022)

**Comment D.1:** A mitigated negative declaration is not an appropriate form of review for this project, given the context of the project and likely impacts. The city and the project proponent need to provide analysis of, and consider the project within, the broader context of logistics warehouse developments in the region. A cumulative impact assessment should have been required for this project. Due to an improper and insufficient analysis and review of other environmental impacts, including air quality, the MND should not be adopted as is.

**Response D.1:** Section 4.0 of the IS/MND evaluates all potential environmental impacts, including the consideration of cumulative effects, pursuant to CEQA. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5. In addition, the comment does not constitute substantial evidence in light of the whole record that the project will result in a significant impact to the environment which cannot be mitigated or avoided.

**Comment D.2:** The project is characterized as a 300,000 tilt-up logistical warehouse. The project application materials indicate that the presumption is that the project will be a "high cube fulfillment center" warehouse. (Kimley-Horn Transportation analysis, page 28). It is noteworthy that Duke Realty, the REIT developer of the project, is a major developer for Amazon - Amazon is among, if not the largest, lessee of Duke industrial warehouse properties. This is relevant for the environmental analysis because while the project may be "speculative" or "in negotiation" at the time the applicant is seeking entitlement, this practice should not excuse the applicant from conducting the most thorough possible analysis.

The public and the city should not be screened off from conducting the proper degree of environmental analysis simply because applicants repeatedly use the process of delaying executing a lease agreement until after entitlements are secured and characterizing this as "speculative." And it is particularly important for cumulative impact analysis.

**Response D.2:** Section 3.0 of the Initial Study, pages 10-12, describe the project in its entirety including both the proposed land use type and the proposed daily operation pursuant to sections 15063 and 15071 of the CEQA Guidelines. Specifically, page 11 of the IS/MND indicates, "The project intends to redevelop the property as a modern industrial facility. While no tenants have been identified, the building is programmed and designed to attract users such as logistics, e-commerce, warehouse/distribution, wholesaling, industrial services, and light to medium manufacturing." Section 3.2 of the IS/MND also identified the specific operation of the proposed use, even without a tenant identified. The technical reports such as the Local Transportation Analysis (LTA) (Appendix I to the IS/MND) also analyzed a distribution warehouse use and accounted for the trips to and from the project site, consistent with the description in the project description and operation. Due to the project description and the unknown future tenants for the industrial uses, the 155 ITE land use code "High Cube Fulfillment Center Warehouse" was conservatively applied to the proposed Rue Ferrari development as it would generate the highest AM and PM peak hour project trips. Typical functions under this ITE land use code include storage and direct distribution of e-commerce product to end users; smaller packages and quantities than for other types of high-cube warehouses; and often includes multiple mezzanine levels for product storage and picking. The 155 ITE code was used as a conservative approach, because it has a higher trip generation rate than several other ITE codes of land uses that could also be allowed on-site.

A cumulative traffic analysis is also documented in Section 3.4 of the LTA (Appendix I of the Initial Study). As discussed in Section 4.2 in the IS/MND, the proposed project would result in temporary air quality, water quality, biology, and noise impacts during construction and permanent impact to biology due to

tree removal. However, with the implementation of the identified mitigation measures, Conditions of Project Approval, and Standard Permit Conditions, the impacts associated with the construction and operations of the distribution warehouse use would be mitigated to a less than significant level. Furthermore, even if a tenant were identified at the time of the IS/MND analysis and associated technical reports, it would not change the categorization of the land use item for either the IS/MND analysis or the technical analysis to be a more impactful categorization, as both analyses have taken into consideration a conservative use that is consistent with the project description.

The comment fails to provide substantial evidence to support a fair argument that a specific tenant is required to be identified in order to provide adequate environmental analysis or that the City prepared an improper or insufficient analysis. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5. In addition, the comment does not constitute substantial evidence in light of the whole record that the project will result in a significant impact to the environment which cannot be mitigated or avoided.

**Comment D.3:** Should the project be built and constructed and operated as an Amazon fulfillment center or last-mile delivery station, it would be acting as another node in a logistical chain that will have a local and regional impact. To date, developers and Amazon itself have avoided any type of more holistic study of the impact of their very rapidly expanding logistical supply network by simply concealing their involvement until after entitlements have been granted; but this is still essentially simply a policy choice by local governments.

In this case, the Rue Ferrari location would be located approximately 11 minutes from a recently permitted Amazon facility at 1660 Old Bayshore in San Jose, which itself is just ten minutes from another major Amazon fulfillment facility in Milpitas on McCarthy Boulevard that opened in the last two years. Obviously, all of these facilities would operate with some degree of connection, and the output and intake of these facilities would be interrelated. This is particularly true for fulfillment centers-the definition of a "high cube warehouse," ITE Manual Code 155, which the transportation study presumes-which not only serve as dispatch points for deliveries to people's homes but also may have more of internal logistical function for the supply chain.

We strongly urge the city to take the time to conduct cumulative impact analysis. There is a fair argument that these industrial warehouse facilities, if they will come to be operated by Amazon, as they have in the recent past, will operate as part of a single logistical system, with packages moving between them and out into residential areas according to an internal system of allocation and distribution. Modeling can show projected increases in volume, which will not only impact traffic and emissions around the site(s), but also emissions and traffic patterns throughout residential neighborhoods where packages will be delivered.

The rapid increase in developed industrial warehouse space for e-commerce style last mile delivery stations is not merely to accommodate existing demand but to account for anticipated demand. These figures need to be disclosed to and understood by local governments in order to make informed decisions about whether to approve these projects and what safeguards are necessary to account for their potential impacts.

**Response D.3:** Refer to Response D.2 above regarding the project description and identified operations of the project in the IS/MND. There is no evidence that this project would be occupied by any specific tenant. Further, the IS/MND considered potential cumulative effects related to traffic. Specifically, Section 5.2 of the LTA (Appendix I to the IS/MND) discusses how relevant projects were selected in the

study area and demonstrates the cumulative traffic conditions are not considerable.

Regardless of the tenant that ultimately occupies the project, the existing analysis in the IS/MND sufficiently evaluates all potential environmental impacts of operations that are consistent with the project description. While a distribution center may support a tenant's overall business operations to move and deliver goods, it is unreasonable to treat all operations and facilities as a single "project" as defined by CEQA simply because operations are related. If such an approach was the standard of review, similar uses – such as an individual grocery store, for example – would require an analysis not only of that grocery store, but also that brand's warehouse and distribution facilities, and perhaps even the growing of food that is delivered to the warehouses. CEQA provides a "rule of reason" for environmental review. Analyzing an entire supply chain, or an entire life cycle of a product, is beyond the reasonable scope of review even if the Lead Agency had access to such information.

According to Section 15151 of the CEQA Guidelines, an EIR (or in this case, a Mitigated Negative Declaration) should include "a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences." The Guidelines continue to state that "an evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." According to Title 14 California Code of Regulations Section 15204(a), "adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters."

As the court held in *Save the Plastic Bay Coalition v. City of Manhattan Beach* (2011), 62 Cal. 4th 155, although the area affected by a project may reach beyond the project boundaries, "[t]his does not mean, however, that an agency is required to conduct an exhaustive analysis of all conceivable impacts a project may have in areas outside its geographical boundaries...(l)ess detail, for example, would be required where those effects are more indirect than effects felt within the project area, or where it [would] be difficult to predict them with any accuracy."

**Comment D.4:** The air quality analysis found that in order to avoid the cancer risk levels of emissions caused during construction, a mitigation was necessary. This mitigation (MM AQ-1) requires that project applicant, or their contractor, submit a letter verifying that equipment would meet various standards prior to the issuance of a building permit. This mitigation measure is insufficient, as unworkably vague. While it implicitly gives the Director of Planning, Building and Code Enforcement to deny any such permit if the contents of the letter are inadequate, the requirements for the content of the letter are insufficient.

As one example, the letter is required to state what remedial actions the contractor will take but offers the public no sense of what type of remedial measures will be acceptable, and what remedial measures will not be acceptable. From the letter of the measure itself, it could be taken that any remedial measure would meet the requirements of the MND and therefore the applicant would be entitled to have a permit issue. The same follows for a requirement that the letter indicate how and when the monitoring measures will be implemented and reported. It is also unclear how this mitigation measure will interact with analysis of greenhouse gas emissions, based on estimates of construction phasing and timing, and the equipment necessary for us. As written, this mitigation measure assumes that the specifics of construction phasing and timing are yet to be determined.

**Response D.4:** Refer to Response A.2 for revisions to the Mitigation Measure AQ-1 based on BAAQMD's comment. Mitigation Measure AQ-1 requires that prior to issuance of any demolition, grading, and/or building permits (whichever occurs earlier), the project applicant shall submit construction

equipment specifications and all equipment larger than 25 horsepower operating for more than two continuous days or a total of 20 hours shall meet the Tier 4 Final emission standards. Mitigation Measure AQ-1 also specified that the equipment and specifications is required to be verified by a qualified air quality specialist to ensure that the reduction in pollutant meets BAAQMD threshold. This mitigation measure, as demonstrated in Table 4-8 of the IS/MND, would reduce the construction air quality impacts to be below BAAQMD threshold. The language of Mitigation Measure AQ-1, as outlined on page 49 of the IS/MND and clarified in Section 3.0 of this document, is clear about the agency that is responsible, what is required of the applicant (i.e. required contents of the construction operation plan and associated air quality memo), when enforcement is required, and what the metrics of successful completion are. The acceptable remedial actions are detailed in the language of Mitigation Measure AQ-1, which are to utilize Tier 4 Final equipment for all construction equipment larger than 25 horsepower operating on the site for more than two days continuously or 20 total hours. The Mitigation Measure AQ-1 does not provide an option for the applicant to suggest alternative remedial actions. Additionally, the applicant would still be required to submit a construction operation plan that includes specifications of the equipment to be used during construction and the plan shall be accompanied by a letter signed by a qualified air quality specialist, verifying that the equipment included in the plan meets the standards set forth in Mitigation Measure AQ-1.

Page 12 of the IS/MND identifies the anticipated construction schedule for the project as, “expected to commence in February 2022 and last for approximately one year”. This schedule is also identified on page 1 of the Greenhouse Gas Assessment Report (Appendix F to Initial Study). As stated on page 42 of the IS/MND, “The exact construction timeline is unknown; however, to be conservative, earlier dates were utilized in the modeling. This approach is conservative given that emissions factors decrease in future years due to regulatory and technological improvements in cleaner construction fleets. Therefore, by utilizing earlier start dates for the construction schedule, less efficient equipment was modeled which results in more conservative outputs.” As such, the findings of the IS/MND regarding construction period emissions are conservative.

Furthermore, refer to Response A.2 for revisions to the Mitigation Measure AQ-1, which has been revised to disallow the use of Tier 3 engines with control devices to be consistent with the analysis in Appendix A. See Section 3.0, IS/MND Text Revisions, below for the clarified language of Mitigation Measure AQ-1. As stated in Response A.2, above, this text revision is not a substantial change to the IS/MND and would clarify a mitigation measure to be more stringent; therefore the text revision to not require recirculation of the IS/MND.

The comment does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5. In addition, the comment does not constitute substantial evidence in light of the whole record that the project will result in a significant impact to the environment which cannot be mitigated or avoided.

**Comment D.5:** For the foregoing reasons, we recommend that the MND be returned for further study of the cumulative impact of the proposed warehouse, and that mitigation measure AQ-1 be defined with further specificity to allow the public to understand its true risks and the measures being taken to prevent them.

**Response D.5:** Based on all of the above responses, the IS/MND is the adequate CEQA document for analysis of the project. The project was reviewed by the City of San José Director of Planning to determine whether it could have a significant impact on the environment as a result of project completion. CEQA Guidelines §15382 defines a "Significant effect on the environment" as a substantial or potentially

substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. Based on the analysis and conclusions in the IS/MND, the project will not have a significant effect on the environment in that the IS/MND identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level, as defined in CEQA Guidelines §15369.5. Furthermore, as shown in the responses to the comments received on the draft IS/MND, the comments 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 Guidelines §15074(b)].

## SECTION 3.0 IS/MND TEXT REVISIONS

This section contains revisions to the text of the 5853 Rue Ferrari Project IS/MND dated January 2022. Revised or new language is underlined. All deletions are shown with a ~~line through the text~~.

IS/MND Section	Text Revisions
Section 4.3, Air Quality, page 48-49	<p><b>MM AQ-1</b>    <b><i>Additional Construction Mitigation Measures</i></b></p> <p>Prior to issuance of any demolition, grading permits, and/or building permits (whichever occurs earliest), the project applicant shall prepare and submit a construction operations plan that includes specifications of the equipment to be used during construction to the Director of Planning, Building and Code Enforcement or the Director’s Designee. The plan shall be accompanied by a letter signed by a qualified air quality specialist, verifying that the equipment included in the plan meets the standards set forth below.</p> <ul style="list-style-type: none"> <li>• For all construction equipment larger than 25 horsepower operating on the site for more than two days continuously or 20 total hours, shall, at a minimum meet U.S. EPA Tier 4 Final emission standards.</li> <li>• <del>If Tier 4 Final equipment is not available, all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieve an 85 percent reduction in particulate matter exhaust and 40 percent reduction in NOx in comparison to uncontrolled equipment.</del></li> </ul> <p>The project applicant shall submit a construction operations plan prepared by the construction contractor that outlines how the contractor will achieve the measures outlined in this mitigation measure. The plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director’s designee for review and approval prior to the issuance of any demolition, grading and/or building permits (whichever occurs earliest). The plan shall include, but not be limited to the following:</p> <ul style="list-style-type: none"> <li>• List of activities and estimated timing.</li> </ul>



IS/MND Section	Text Revisions
	<ul style="list-style-type: none"><li>• Equipment that would be used for each activity.</li><li>• Manufacturer’s specifications for each equipment that provides the emissions level; or the manufacturer’s specifications for devices that would be added to each piece of equipment to ensure the emissions level meet the thresholds in the mitigation measure.</li><li>• How the construction contractor will ensure that the measures listed are monitored.</li><li>• How the construction contractor will remedy any exceedance of the thresholds.</li><li>• How often and the method the construction contractor will use to report compliance with this mitigation measure.</li></ul>

## SECTION 4.0 CONCLUSION

The California Environmental Quality Act (CEQA) Guidelines, Section 15073.5, requires that a lead agency recirculate a negative declaration “when the document must be substantially revised.” A “substantial revision” includes: (1) identification of a new, avoidable significant effect requiring mitigation measures or project revisions, and/or (2) determination that proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures and revisions must be required.

State CEQA Guidelines specify situations in which recirculation of a negative declaration is not required. This includes, but is not limited to, situations in which “new information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.” As noted below, revisions to the proposed project would not change the extent of the project analyzed in the IS/MND. Changes to the IS/MND merely clarify the project being analyzed, and modifications would be insignificant. Recirculation of the IS/MND is not required in accordance with Section 15073.5(c).

Since the end of the public review period for the IS/MND, text changes were made to the IS/MND (noted above) to clarify and change minor errors. Changes were made for clarification purposes and do not change the conclusion of the IS/MND.

All changes have been considered and analyzed for impacts to the entire analysis presented in the IS/MND. The modifications to the IS/MND did not result in any new or more significant impacts, or alter any significant conclusions identified within the MND.

For these reasons, the changes to the IS/MND would not result in any new significant environmental impacts or a substantial increase in the severity of previously identified significant impacts. The information presented in this document serves to clarify or amplify conclusions in the IS/MND. The new information is not significant, and recirculation is not required. In conformance with Section 15074 of the CEQA Guidelines, the IS/MND, technical appendices and reports, together with the information contained in this document are intended to serve as documents that will inform the decision-makers and the public of environmental effects of this project.

Appendix A  
IS/MND Comment Letters

# Comment Letter A

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**From:** Miriam Torres [mailto:miriamtorres@baaqmd.gov]  
**Sent:** Tuesday, February 1, 2022 10:57 AM  
**To:** Le, Thai-Chau <Thai-Chau.Le@sanjoseca.gov>  
**Cc:** Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov>; Keyon, David <david.keyon@sanjoseca.gov>; Kelly Malinowski <kmalinowski@baaqmd.gov>  
**Subject:** RE: 5853 Rue Ferrari Project

You don't often get email from [miriamtorres@baaqmd.gov](mailto:miriamtorres@baaqmd.gov). [Learn why this is important](#)

[External Email]

Dear Thai-Chau Le,

We received notice of the 5853 Rue Ferrari Project MND and wanted to send you relevant recommendations and resources for the development of this project. While the project's mitigated construction Air Quality emissions, net operational Air Quality emissions, cumulative Air Quality emissions, and GHG emissions do not exceed the Air District Thresholds, these resources and recommendations are helpful to align this project with the most up to date best practices for warehouse projects.

While the project includes all Basic Construction Mitigation Measures, the Air District also recommends implementing all feasible and practical "Additional Construction Mitigation Measures" to reduce construction-related emissions to the greatest extent possible ([Table 8-3, page 85](#)).

We also suggest strengthening the requirement for issuance of any demolition, grading, and/or building permits to require Tier 4 construction equipment. Mitigation Measure HRA-1, which is intended to reduce construction cancer risk from 27.93 to 3.71 per million is based on the modeling and successful implementation of Tier 4 construction equipment. Allowing the project proponent to use Tier 3 engines, if Tier 4 equipment is not available, is inconsistent with the basis for Mitigation Measure HRA-1 to not exceed the cancer risk threshold. Moreover, consider providing enhanced air filtration to nearby sensitive receptors, especially the Gateway City Church Daycare and Duck Pond Playspace, which are only 45 feet away from the project site. Note that the Duck Pond Playspace is not included in the list of Nearest Sensitive Receptors to the Project site but it is located next to the Daycare center and should be included in the HRA.

Due to the COVID-19 pandemic, many daycares are operating with open windows to increase ventilation and it is also advisable to take extra measures to protect the health of these sensitive receptors and minimize activities that would expose children to the highest levels of pollution. For instance, coordinate with the administrators of the sensitive receptor locations to create a construction plan that adjusts truck routes, demolition hours, etc. to minimize impacts. Another example is to prohibit idling for more than two minutes or prohibit idling altogether (instead of five minutes). Consider installing vegetative walls and installation of MERV-13 filters at sensitive receptor locations. Lastly, we strongly recommend enforcing the Mitigation Monitoring and Reporting Plan to assure rigorous implementation of all air quality mitigation measures.

We commend the project for incorporating the latest building energy efficiency standards, solar, VMT reduction measures, among others to reduce emissions over the life of the project. Consider implementing the following best practices and those included in the resources section below to further reduce the project's footprint.

- Require or incentivize zero emission trucks for facility operations to the greatest degree feasible
- Prohibit or minimize the use of diesel fuel, consistent with the Air District's Diesel Free By '33 initiative (<http://dieselfree33.baaqmd.gov/>)
- Install electric vehicle charging infrastructure
- Require electric forklifts and install associated charging stations

Finally, certain aspects of the Project may require a permit from the Air District (for example, backup diesel generators). Please contact Barry Young, Senior Advanced Projects Advisor, at (415) 749-4721 or [byoung@baaqmd.gov](mailto:byoung@baaqmd.gov) to discuss permit requirements.

### **Resources:**

The first two documents are similar logistics center/warehouse comment letters that describe Air District recommendations. We are also including additional resource links from other agencies and the Attorney General's office that could be useful in the development of this project.

- [BAAQMD CEQA Comment Letter: CenterPoint North Richmond Warehouse Project EIR](#)
- [BAAQMD CEQA Comment Letter: Scannell Properties, LLC North Richmond Warehouse Project NOP](#)
- [CARB's Concept Paper for the Freight Handbook](#): Provides practices to minimize community health impacts from warehouses and freight facilities.
- [CA Attorney General's Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act](#): References good neighbor policies, best practices for community engagement, and other requirements such as

fully analyzing impacts from truck trips.

Let us know if you have any questions or would like to discuss. Thank you again for your time.

Best,

Miriam and Kelly

## California Department of Transportation

DISTRICT 4  
OFFICE OF TRANSIT AND COMMUNITY PLANNING  
P.O. BOX 23660, MS-10D | OAKLAND, CA 94623-0660  
[www.dot.ca.gov](http://www.dot.ca.gov)



February 8, 2022

SCH #: 2022010266  
GTS #: 04-SCL-2022-01008  
GTS ID: 25327  
Co/Rt/Pm: SCL/101/27.4

Thai-Chau Le, Supervising Planner  
City of San Jose  
200 East Santa Clara Street, T-3  
San Jose, CA 95112

### **Re: 5853 Rue Ferrari Project Mitigated Negative Declaration (MND)**

Dear Thai-Chau Le:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the 5853 Rue Ferrari Project. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system. The following comments are based on our review of the January 2022 MND.

#### **Project Understanding**

The project proposes to demolish two existing warehouse buildings and to construct a 302,772 square foot tilt-up warehouse building. The new warehouse building would contain 292,772 square feet of warehouse space and 10,000 square feet of office space. The proposed warehouse building would include 47 loading dock doors for trailer, box, and recycling trucks. The proposed project would also include surface parking with 108 trailer truck stalls and 296 automobile stalls.

#### **Travel Demand Analysis and Fair Share Contributions**

The project VMT analysis and significance determination are undertaken in a manner consistent with the Office of Planning and Research's (OPR) Technical Advisory. Per the MND, this project is found to have significant VMT impact. Caltrans commends the Lead Agency in developing mitigation measures and multi-modal infrastructure improvements to reduce project related VMT.

We encourage a sufficient allocation of fair share contributions toward multi-modal and regional transit improvements to mitigate the increase of regional VMT above the City's adopted threshold. We also strongly support measures to increase sustainable mode shares, thereby reducing VMT.

Please consider fair share contributions or multi-modal improvements to the following projects and locations:

- San Jose Better Bike Plan: Coyote Creek Trail from Silver Creek Valley Rd to Silicon Valley Blvd (Class 1 bike lanes);
- San Jose Better Bike Plan: Silicon Valley Boulevard / Bernal Road from Heaton Moor Drive to Hellyer Avenue (Class IV protected bike lanes). This project would provide improved access for bicyclists crossing US-101 from Rue Ferrari;
- Caltrans District 4 Bike Plan: SC-101-X03 101 Blossom Hill Road (Class IV bike lanes). Once constructed, this project will improve bike accommodations on EB Blossom Hill Rd, access to/from the Class I path at Coyote Rd, and signage providing for protection for bicyclists and pedestrians. Blossom Hill Road provides the most direct path of access to the Blossom Hill Transit Station, as such, it is essential to providing successful Transportation Demand Management (TDM) measures at the Rue Ferrari site; and
- Caltrans District 4 Pedestrian Plan: US 101/Blossom Hill Rd Interchange and US 101/Bernal Rd/Silicon Valley Blvd Interchange. With the proximity of the State Route (SR) 85/US-101 Interchange to US-101/Bernal Rd/Silicon Valley Blvd, pedestrians navigate several ramp crossings. Any improvements that increase the visibility of pedestrians at ramp crossings, including high visibility striping and advance yield markings, are recommended.

### **Lead Agency**

As the Lead Agency, the City of San Jose is responsible for all project mitigation, including any needed improvements to the State Transportation Network (STN). The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

### **Equitable Access**

If any Caltrans facilities are impacted by the project, those facilities must meet American Disabilities Act (ADA) Standards after project completion. As well, the project must maintain bicycle and pedestrian access during construction. These access considerations support Caltrans' equity mission to provide a safe, sustainable, and equitable transportation network for all users.



Thai-Chau Le, Supervising Planner  
February 8, 2022  
Page 3

Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, or for future notifications and requests for review of new projects, please email [LDR-D4@dot.ca.gov](mailto:LDR-D4@dot.ca.gov).

Sincerely,

A handwritten signature in black ink that reads "Mark Leong". The signature is written in a cursive, flowing style with a long horizontal tail on the "g".

MARK LEONG  
District Branch Chief  
Local Development Review

c: State Clearinghouse

# Comment Letter C

February 9, 2022

Thai-Chua Le  
City of San Jose  
200 East Santa Clara Street, 3<sup>rd</sup> Flr Tower  
San Jose, CA 95113

Re: Rue Ferrari Project  
5853 Rue Ferrari, San Jose, CA

Dear Thai-Chua Le,

Thank you for giving us the opportunity to review the subject plans. The proposed Rue Ferrari Project is within the same vicinity of PG&E's existing facilities that impact this property.

PGE operates underground electric distribution facilities currently serving this property. The Company strongly suggests all vegetation be kept a minimum of 5-feet away from all distribution lines.

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](http://www.pge.com/cco) for any modification or relocation requests, or for any additional services you may require.

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.

If you have any questions regarding our response, please contact me at [alexa.gardea@pge.com](mailto:alexa.gardea@pge.com).

Sincerely,



Alexa Gardea  
Land Management  
916-760-5738



**John Nunes**  
President

**Jack Landes**  
Secretary - Treasurer

**Main Office:**  
**United Food & Commercial  
Workers Union, Local 5**  
28870 Mission Blvd.  
Hayward, CA 94544  
(510) 889-0870  
Fax: (510) 889-6415  
Toll Free: (877) 655-FIVE  
[www.ufcw5.org](http://www.ufcw5.org)

240 South Market Street  
San Jose, CA 95113-2382  
(408) 998-0428  
Fax: (408) 971-8355

208 Miller Avenue  
So. San Francisco, CA 94080  
(650) 871-5730  
Fax: (650) 871-3590

4121 Alhambra Ave.  
Martinez, CA 94553  
(925) 228-8800  
Fax: (925) 228-8355

1145 North Main St.  
Salinas, CA 93906  
(831) 757-3094  
Fax: (831) 757-9115

323 Geary Street, Room 709  
San Francisco, CA 941 02  
(415) 693-0143  
Fax: (415) 693-9352

85 Galli Drive, Suite H  
Novato, CA 94949  
(415) 883-6833  
Fax: (415) 883-1043

840 E Street, Suite 8  
Eureka, CA 95501  
(707) 442-1751  
Fax: (707) 442-9572

Thai-Chau Le  
Thai-Chau.Le@sanjoseca.gov

RE: File No.: H21-006 and ER21-022, 5853 Rue Ferrari Project

This comment is submitted in response to the mitigated negative declaration proposed for adoption for the File Numbers H21-006, ER21-022, a 302,772 square foot tilt-up warehouse on Rue Ferrari in south San Jose.

A mitigated negative declaration is not an appropriate form of review for this project, given the context of the project and likely impacts. The city and the project proponent need to provide analysis of, and consider the project within, the broader context of logistics warehouse developments in the region. A cumulative impact assessment should have been required for this project. Due to an improper and insufficient analysis and review of other environmental impacts, including air quality, the MND should not be adopted as is.

Project Characteristics

The project is characterized as a 300,000 tilt-up logistical warehouse. The project application materials indicate that the presumption is that the project will be a "high cube fulfillment center" warehouse. (Kimley-Horn Transportation analysis, page 28). It is noteworthy that Duke Realty, the REIT developer of the project, is a major developer for Amazon-Amazon is among, if not the largest, lessee of Duke industrial warehouse properties. This is relevant for the environmental analysis because while the project may be "speculative"

or "in negotiation" at the time the applicant is seeking entitlement, this practice should not excuse the applicant from conducting the most thorough possible analysis.

The public and the city should not be screened off from conducting the proper degree of environmental analysis simply because applicants repeatedly use the process of delaying executing a lease agreement until *after* entitlements are secured and characterizing this as "speculative." And it is particularly important for cumulative impact analysis.

#### Cumulative Impact Analysis

Should the project be built and constructed and operated as an Amazon fulfillment center or last-mile delivery station, it would be acting as another node in a logistical chain that will have a local and regional impact. To date, developers and Amazon itself have avoided any type of more holistic study of the impact of their very rapidly expanding logistical supply network by simply concealing their involvement until after entitlements have been granted; but this is still essentially simply a policy choice by local governments.

In this case, the Rue Ferrari location would be located approximately 11 minutes from a recently permitted Amazon facility at 1660 Old Bayshore in San Jose, which itself is just ten minutes from another major Amazon fulfillment facility in Milpitas on McCarthy Boulevard that opened in the last two years. Obviously, all of these facilities would operate with some degree of connection, and the output and intake of these facilities would be interrelated. This is

particularly true for fulfillment centers-the definition of a "high cube

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warehouse," ITE Manual Code 155, which the transportation study presumes- which not only serve as dispatch points for deliveries to people's homes but also may have more of internal logistical function for the supply chain.

We strongly urge the city to take the time to conduct cumulative impact analysis. There is a fair argument that these industrial warehouse facilities, if they will come to be operated by Amazon, as they have in the recent past, will operate as part of a single logistical system, with packages moving between them and out into residential areas according to an internal system of allocation and distribution. Modeling can show projected increases in volume, which will not only impact traffic and emissions around the site(s), but also emissions and traffic patterns throughout residential neighborhoods where packages will be delivered.

The rapid increase in developed industrial warehouse space for e-commerce style last mile delivery stations is not merely to accommodate existing demand but to account for *anticipated* demand. These figures need to be disclosed to and understood by local governments in order to make informed decisions about whether to approve these projects and what safeguards are necessary to account for their potential impacts.

#### Air Quality Impact Mitigation

The air quality analysis found that in order to avoid the cancer risk levels of emissions caused during construction, a mitigation was necessary. This

mitigation (AQ-1) requires that project applicant, or their contractor, submit a letter verifying that equipment would meet various standards prior to the issuance of a building permit. This mitigation measure is insufficient, as unworkably vague. While it implicitly gives the Director of Planning, Building and Code Enforcement to deny any such permit if the contents of the letter are inadequate, the requirements for the content of the letter are insufficient.

As one example, the letter is required to state what remedial actions the contractor will take but offers the public no sense of what type of remedial measures will be acceptable, and what remedial measures will not be acceptable. From the letter of the measure itself, it could be taken that any remedial measure would meet the requirements of the MND and therefore the applicant would be entitled to have a permit issue. The same follows for a requirement that the letter indicate how and when the monitoring measures will be implemented and reported.

It is also unclear how this mitigation measure will interact with analysis of greenhouse gas emissions, based on estimates of construction phasing and timing, and the equipment necessary for us. As written, this mitigation measure assumes that the specifics of construction phasing and timing are yet to be determined.

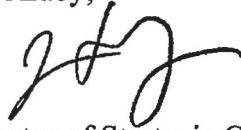
### Conclusion

For the foregoing reasons, we recommend that the MND be returned for further study of the cumulative impact of the proposed warehouse, and that

mitigation measure AQ-1 be defined with further specificity to allow the public to understand its true risks and the measures being taken to prevent them.

---

Jim Araby,

A handwritten signature in black ink, appearing to be 'JA', written in a cursive style.

Director of Strategic Campaigns