Exhibit J – Responses to concerns from appeal letters

RESPONSE TO COMMENTS ON THE REYES CCB PROJECT

The City of Fresno (Lead Agency) received comments on the Environmental Checklist in Support of CEQA Guidelines Section 15183 Streamline Project Consistent with a Community Plan or Zoning ("15183 Consistency Checklist") as part of the Appeal of the decision of approval of the Reyes CCB Project (P22-00565) ("Project, "proposed Project") which was approved on October 28, 2022.

This document has been prepared in accordance with California Environmental Quality Act (CEQA) as amended (Public Resources Code Section 21000 et seq.) and the Guidelines for Implementation of the California Environmental Quality Act (State CEQA Guidelines) (Cal. Code Regs., tit. 14, § 15000 et seq.) and represents the independent judgment of the Lead Agency.

The following appeal letter was submitted to the City during the public review period:

1. South Fresno Community Alliance, Received November 9, 2022 (2 pages)
2. Laborers International Union of North America, Received November 14, 2022 (4 pages)

The appeal letters and responses to comments are included in the public record and are available to the Lead Agency decision-makers for their review and consideration prior to making their decision whether to approve the proposed Project.

CEQA Guidelines Section 15183 Streamline Analysis

CEQA Guidelines Section 15183 allows a streamlined environmental review process for projects that are consistent with the densities established by existing zoning, community plan or general plan policies for which an EIR was certified. As noted in 15183 Consistency Checklist, the proposed Project is consistent with the land use designation and densities established by the Fresno General Plan ("GP") for which an EIR was certified. The provisions contained in Section 15183 of the CEQA Guidelines are presented below.

15183. Projects Consistent with a Community Plan or Zoning

a) *CEQA mandates that projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site. This streamlines the review of such projects and reduces the need to prepare repetitive environmental studies.*
b) *In approving a project meeting the requirements of this section, a public agency shall limit its examination of environmental effects to those which the agency determines, in an initial study or other analysis:*
    1) *Are peculiar to the project or the parcel on which the project would be located,*
    2) *Were not analyzed as significant effects in a prior EIR on the zoning action, general plan, or community plan, with which the project is consistent,*
    3) *Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action, or*
    4) *Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.*
c) *If an impact is not peculiar to the parcel or to the project, has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards, as contemplated by subdivision I below, then an additional EIR need not be prepared for the project solely on the basis of that impact.*

d) *This section shall apply only to projects which meet the following conditions:*
   1) *The project is consistent with:*
      A. *A community plan adopted as part of a general plan,*
      B. *A zoning action which zoned or designated the parcel on which the project would be located to accommodate a particular density of development, or*
      C. *A general plan of a local agency, and*
   2) *An EIR was certified by the lead agency for the zoning action, the community plan, or the general plan.*

e) *This section shall limit the analysis of only those significant environmental effects for which:*
   1) *Each public agency with authority to mitigate any of the significant effects on the environment identified in the planning or zoning action undertakes or requires others to undertake mitigation measures specified in the EIR which the lead agency found to be feasible, and*
   2) *The lead agency makes a finding at a public hearing as to whether the feasible mitigation measures will be undertaken.*

f) *An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the City or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect. The finding shall be based on substantial evidence which need not include an EIR. Such development policies or standards need not apply throughout the entire City or county, but can apply only within the zoning district in which the project is located, or within the area subject to the community plan on which the lead agency is relying. Moreover, such policies or standards need not be part of the general plan or any community plan, but can be found within another pertinent planning document such as a zoning ordinance. Where a City or county, in previously adopting uniformly applied development policies or standards for imposition on future projects, failed to make a finding as to whether such policies or standards would substantially mitigate the effects of future projects, the decision-making body of the City or county, prior to approving such a future project pursuant to this section, may hold a public hearing for the purpose of considering whether, as applied to the project, such standards or policies would substantially mitigate the effects of the project. Such a public hearing need only be held if the City or county decides to apply the standards or policies as permitted in this section.*

g) *Examples of uniformly applied development policies or standards include, but are not limited to:*
   1) *Parking ordinances.*
   2) *Public access requirements.*
   3) *Grading ordinances.*
   4) *Hillside development ordinances.*
   5) *Flood plain ordinances.*
   6) *Habitat protection or conservation ordinances.*
   7) *View protection ordinances.*
   8) *Requirements for reducing greenhouse gas emissions, as set forth in adopted land use plans, policies, or regulations.*

h) *An environmental effect shall not be considered peculiar to the project or parcel solely because no uniformly applied development policy or standard is applicable to it.*

i) *Where the prior EIR relied upon by the lead agency was prepared for a general plan or community plan that meets the requirements of this section, any rezoning action consistent with the general plan or community plan shall be treated as a project subject to this section.*
   1) *"Community plan" is defined as a part of the general plan of a City or county which applies to a defined geographic portion of the total area included in the general plan, includes or references each of the mandatory elements specified in Section 65302 of the Government Code, and contains*

specific development policies and implementation measures which will apply those policies to each involved parcel.

2) *For purposes of this section, "consistent" means that the density of the proposed project is the same or less than the standard expressed for the involved parcel in the general plan, community plan or zoning action for which an EIR has been certified, and that the project complies with the density-related standards contained in that plan or zoning. Where the zoning ordinance refers to the general plan or community plan for its density standard, the project shall be consistent with the applicable plan.*

j) This section does not affect any requirement to analyze potentially significant offsite or cumulative impacts if those impacts were not adequately discussed in the prior EIR. If a significant offsite or cumulative impact was adequately discussed in the prior EIR, then this section may be used as a basis for excluding further analysis of that offsite or cumulative impact.

Project-Specific Environmental Review

The 15183 Consistency Checklist includes a discussion and analysis of any peculiar or site-specific environmental impacts associated with construction and operation of the proposed Project. The Checklist identifies the applicable City of Fresno development standards and policies that would apply to the proposed Project during both the construction and operational phases and explains how the application of these uniformly applied standards and policies would ensure that no peculiar or site-specific environmental impacts would occur. None of the environmental factors analyzed were determined to be affected by the proposed Project, as indicated by the 15183 Consistency Checklist. Furthermore, the 15183 Consistency Checklist provides substantial evidence that the proposed Project does not result any significant impacts, or any impacts triggering further environmental review pursuant to Section 15183(b). The comments have failed to provide any substantial evidence in support of a fair argument that the City has failed to meet the requirements of CEQA Guidelines Section 15183 or that the City has failed to adequately review the environmental effects designated by that provision. No further environmental review is necessary and an Negative Declaration or an EIR is not required.

Although State CEQA Guidelines Section 15088 does not require a Lead Agency to prepare written responses to comments received, the City of Fresno has elected to prepare the following written responses with the intent of providing a comprehensive and meaningful evaluation of the proposed Project. The number designations in the responses are correlated to the bracketed and identified portions of each comment letter.

Letter 1: South Fresno Community Alliance, Received November 9, 2022 (2 pages)

November 9, 2022

Jennifer Clark, AICP
Director, Department of Resource Management & Development
Fresno City Hall 2100 Fresno Street
Fresno, CA 93721-3604

Sent via E-Mail

RE: Appeal Director's Approval of Development Permit Application No. P22-00565

Dear Ms. Clark:

The undersigned individuals and organizations appeal the decision of the Department of Planning and Director, Jennifer Clark, to approve Development Permit Application No. P22-00565.

The undersigned individuals and organizations have an interest in ensuring that this project's environmental and human impacts are fully mitigated in compliance with the California Environmental Quality Act ("CEQA"), the Fresno Municipal Code, and other relevant laws and regulations, and that the project benefits and does not harm the residents of the City and County of Fresno, in particular, residents who live, work, worship, recreate, and attend school in the vicinity of the project site. 1.1

The Director's decision to approve the Development Permit Application P22-00565 should not be upheld. While the City of Fresno Planning Department can state that this area should be approved based on the current zoning of heavy industrial uses, that ignores the following facts:

- The South Central Specific Plan is currently incomplete and pending the completion of Environmental Impact Reports that will change current zoning; 1.2
- The data from both CalEnviroScreen 3.0 and 4.0 confirm that the location of this proposed project is in the top 1% of the most pollution overburdened communities. 1.3
- This proposed project will have significant negative impacts to the residents of the City and County of Fresno due to the increase of heavy industrial uses and increased heavy duty truck traffic. 1.4
- The decision to approve this permit application will perpetuate the citing of heavy industrial uses near communities of color.

Please notify us via email at isaunders@leadershipcounsel.org as soon as the City identifies a hearing date for this appeal. Please contact Ivanka Saunders at Leadership Counsel for Justice and Accountability via email with any questions.

Sincerely,

Ivanka Saunders
Leadership Counsel for Justice and Accountability

Panfilo Cerillo
South Fresno Community Alliance

Rosa Depew
South Fresno Community Alliance

Katie Taylor
South Fresno Community Alliance

RESPONSE TO COMMENT LETTER 1: South Fresno Community Alliance

Response to Comment 1.1: This comment introduces the appeal letter, and states that the letter is being submitted to appeal the Director's October 28, 2022 decision of approval of the Reyes CCB Project (Master Case No. P22-00565) (Project). The commenter states that although the project consistent with the site's General Plan and Zoning designation, the Development Permit Application P22-00565 should not be upheld.

This comment does not express any specific concern or question regarding the adequacy of the CEQA document. No further response is required.

Response to Comment 1.2: The commenter states that the South Central Specific Plan is currently incomplete and pending the completion of environmental impact reports that will change the zoning.

The City prepared streamlined review for the Project pursuant to CEQA Guidelines Section 15183, which applies to certain projects consistent with a community plan or zoning. The Project is consistent with the land use designation and the Program Environmental Impact Report (PEIR) prepared for the City's 2021 General Plan Amendment (2021 GP PEIR). The General Plan and PEIR are the basis for consistency with CEQA Guidelines Section 15183. The Project is also consistent with the site's current zoning designation. Therefore, future revisions to the South Central Specific Plan are not relevant to the proposed Project. This comment does not express any specific concern or question regarding the adequacy of the CEQA document. No further response is required.

Response to Comment 1.3: This comment states that the location where the Project is proposed to be constructed is located in the top 1% of the most pollution overburdened communities in the City of Fresno, based on data from both CalEnviroScreen versions 3.0 and 4.0.

The CalEnviroScreen score cited by the commenter includes other environmental and socioeconomic indicators, not just air quality emissions. These indicators are: Pesticides, Toxic Releases, Traffic, Drinking Water Contaminants, Lead in Housing, Cleanups, Groundwater Threats, Hazardous Waste, Impaired Water, Solid Waste, Education, Housing Burden, Linguistic Isolation, Poverty, and Unemployment. As this score includes other environmental and socioeconomic indicators, it does not in and of itself provide evidence that the Project would trigger any significant CEQA impacts.

As discussed in Section 3, Air Quality, the project conducted an operational Health Risk Assessment (HRA) which found that all health risk levels to nearby residents from operation-related emissions of Toxic Air Contaminates (TACs) would be well below the SJVAPCD's HRA thresholds. As shown in Table 5, the maximum cancer risk from Project construction to off-site sensitive receptors would be 5.21 in one million, less than the threshold of 20 in one million. The worker receptor risk would be lower at 1.07 in one million. The total chronic hazard index would be 0.059 for the worker receptor and 0.005 for the sensitive receptor, which is below the threshold of 1.0. In addition, the total acute hazard index would be nominal (0.000), which would also not exceed the threshold of 1.0. As these results show, all health risk levels to nearby residents from construction-related emissions of TACs would be below the SJVAPCD's HRA thresholds. As shown in Table 6, the maximum cancer risk for the sensitive receptor from Project operations would be 3.04 in one million, less than the threshold of 20 in one million. The worker receptor risk would be lower at 1.39 in one million. The total chronic hazard index would be 0.006 for the worker receptor and nominal (0.000) for the sensitive receptor, which is below the threshold of 1.0. In addition, the total acute hazard index would be nominal (0.000), which would also not exceed the threshold of 1.0. As these results show, all health risk levels to nearby residents from operation-related emissions of TACs would be well below the SJVAPCD's HRA thresholds. As such, the Project will not cause a significant human health or cancer risk to nearby residences, requiring no mitigation.

Furthermore, the 15183 Consistency Checklist analysis provided substantial evidence and determined that the Project would not exceed the significance criteria for annual ROG, NOx, CO, SOx, PM10, or PM2.5 emissions (see Air Quality, Health Risk, Greenhouse Gas, and Energy Impact Report (AQ/HR/GHG/Energy Study), dated 2022 prepared by LSA Associates, Inc.); therefore, the proposed project would not have a significant effect on regional air quality. Because the Project would not exceed thresholds for any criteria pollutants, or either diesel particulate matter or localized significance thresholds, the Project would not adversely impact neighboring disadvantaged communities.

Response to Comment 1.4: The comment states that the Project will have an increase in heavy industrial uses and increased heavy duty traffic which will also have impacts to the residents of the City and County of Fresno. However, project trip generation was evaluated using trip rates from the Institute of Transportation Engineers (ITE) and estimated that the Project would generate fewer than 100 peak hour trips (59 AM and 84 PM peak hour PCE trips) as shown on the provided Project Trip Generation (see Table 17 in the 15183 Consistency Checklist). See also Section 11, *Land Use and Planning* of Checklist, Table 12: *Project Consistency with General Plan,* which demonstrates the Project's consistency with the objectives and policies from the General Plan (including Policy MT-2-I) and would result in no new impacts, as the impacts are less than significant.

This comment also states that the approval of this project will perpetuate the citing of heavy industrial uses near communities of color. The comment does not provide any substantial evidence that would, pursuant to CEQA, require any changes to the City's conclusion that the Project is consistent with the 2021 GP PEIR, pursuant to a 15183 Consistency Checklist.

Therefore, the commenter has failed to provide any substantial evidence in support of even a fair argument that the City has failed to meet the requirements of CEQA Guidelines Section 15183 or that the City has failed to adequately review the environmental effects designated by that provision. No further environmental review is necessary and an ND or EIR is not required.

Letter 2: Laborers International Union of North America (4 pages)

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November 14, 2022

Thomas Veatch, Planner
City of Fresno
Planning and Development Department
2600 Fresno Street, Room 3043
Fresno, CA 93721

Re: Letter in Support of Appeal of Director's Decision Approving P22-00565

Dear Mr. Veatch:

I am writing on behalf of the Laborers International Union of North America, Local Union 294 ("LIUNA"), regarding Environmental Assessment No. P22-00565 for Development Permit Application No. P22-00565 ("Project"). LIUNA is appealing the approval of the Project by the planning director for the City of Fresno ("City") and requests that the City remand the Project application back to staff to prepare and circulate an appropriate California Environmental Quality Act ("CEQA") document for public review and comment. 2.1

The City has prepared streamlined review for the Project pursuant to 14 CCR § 15183, which applies to certain projects consistent with a community plan or zoning ("Section 15183 Review"). The City states that the Project is consistent with the Program Environmental Impact Report ("PEIR") prepared for the City's 2021 General Plan Amendment (hereafter, "2021 GP PEIR") and has prepared an Environmental Assessment ("EA") to support its findings. However, as discussed below, the proposed Project does not meet the requirements of Section 15183 Review, and must prepare either a Negative Declaration ("ND") for less than significant impacts or an Environmental Impact Report ("EIR") which adequately assesses the Project's potentially significant environmental impacts.

I. LEGAL STANDARD

Section 15183 of the CEQA guidelines allows a project to streamline environmental review if it is "consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was 2.2

certified….." (14 CCR § 15183). The section then states that an agency utilizing the provision must analyze certain environmental effects, the following of which are relevant here: environmental effects that "[w]ere not analyzed as significant effects in a prior EIR on the zoning action, general plan, or community plan, with which the project is consistent," or environmental effects that "[a]re potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action." (14 CCR § 15183 (b)(2), (3)).

The fair argument standard applies to the review of environmental effects mandated by Section 15183. (*See Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal. App. 4th 273, 287, citing *Gentry v. City of Murrieta, supra,* 36 Cal.App.4th at pp. 1373, 1406, fn. 24, 43 Cal.Rptr.2d 170 [suggesting fair argument standard applies to determination under § 21083.3].) Thus, in reviewing a project's environmental effects under these sections, if an agency finds that the project may have a significant impact with respect to one or more of the effects, they must prepare an EIR to assess those impacts. As the California Supreme Court has held "[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR." (*Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-320.) The "fair argument" standard creates a "low threshold" favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. (*Pocket Protectors* v. City of Sacramento (2004) 124 Cal.App.4th 903, 928.) 2.2 cont.

If the agency finds that there is no significant impact, they must prepare an MND or an ND. An MND is proper *only* if the project revisions would avoid or mitigate the potentially significant effects identified in the initial study "to a point where clearly no significant effect on the environment would occur, and…there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment." (PRC §§ 21064.5 and 21080(c)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331.) In that context, "may" means a reasonable possibility of a significant effect on the environment. (PRC §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927; *League for Protection of Oakland's etc. Historic Res. v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–05.)

II. DISCUSSION

As explained below, the City has failed to adequately analyze the proposed Project with respect to air quality impacts, biological impacts, and energy impacts. The City must therefore prepare an EIR or an ND to adequately analyze these effects in accordance with Section 15183 Review.

a. The Project May Have Potentially Significant Air Quality Impacts.

The Project's operational air quality impacts were not discussed as significant impacts in the prior EIR, and as such, they must be analyzed in an ND or supplemental EIR. Although the EA states that the proposed Project would emit 9 tons/day of nitrogen oxides (NOx), one ton under the San Joaquin Valley Air Pollution Control District threshold of 10 tons/day, LIUNA believes that the modeling estimating these NOx emissions may have underestimated these emissions, and that when calculated correctly, they may exceed the significance threshold. The City may therefore have to prepare an EIR to assess these impacts, pursuant to 14 CCR 15183(b)(2). Even if the City's analysis is correct, and these NOx emissions are not significant impacts, the evaluation must be accompanied by a negative declaration including the requisite public participation requirements. 2.3

b. The City Fails to Assess the Impact of Project-Generated Traffic on Wildlife Mortality.

Neither the 2021 GP PEIR nor the Environmental Assessment prepared in support of the Project's 15183 Review discuss the Project's potential impacts on wildlife caused by project-generated traffic. According to the EA, the Project is anticipated to generate 481 daily trips during operation. However, the EA fails to consider how this increased traffic from the Project will lead to vehicle collisions with wildlife, potentially including special-status species of wildlife. This is an impact which was not discussed in the 2021 GP PEIR, and which is potentially significant. As such, the City is required to assess this impact and should prepare an EIR or an ND for the Project, pursuant to 14 CCR 15183(b)(3). 2.4

c. The Project's Energy Usage is Wasteful.

CEQA requires analysis of whether a project would "result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during construction or operation." (CEQA Appendix G). The Project's specific use of energy was not discussed or evaluated in the prior EIR as a significant impact or potential offsite or cumulative impact. The proposed Project has failed to adequately offset its energy usage through the implementation of solar panels, therefore its use of energy is wasteful. This is a significant impact which has not been addressed in the City's Section 15183 Review, and either an EIR or an ND is necessary to adequately analyze energy impacts and appropriate mitigation. 2.5

The Project proposes to install a minimum of 450 kW of rooftop solar. 450 kW of rooftop solar could be expected to generate approximately 50,000 – 70,000 kWh

of energy per month.[1] The EA estimates that during operation, the Project will consume 2,492,730 kWh/year, which is equivalent to about 207,727 kWh/month. The anticipated rooftop solar would therefore only cover about one fourth of the Project's anticipated monthly energy usage. The Project's energy usage therefore remains wasteful.

Additionally, the EA does not explain what amount of rooftop space the 450 kW of rooftop solar will occupy, and it is therefore impossible to ascertain whether the solar panels being used on the Project have been maximized. Assuming for the sake of argument that the Project proposes to use 370W panels to reach its 450 kW of rooftop solar, the solar panels will take up approximately 2,133.1 square meters of roof, or approximately 22,960 square feet.[2] When compared to the Project's proposed 205,000 square feet of warehouse space, plus the potential additional 40,300 square feet to be constructed in a later phase, the proposed quantity of solar paneling seems significantly lower than that which could presumably fit on the building's roof.

2.5 cont.

The City must prepare an ND or an EIR which adequately offsets the Project's wasteful use of energy.

III. CONCLUSION

The City has failed to meet the requirements of Section 15183 Review and has failed to adequately review the environmental effects designated by that provision to address whether either an ND or EIR is required for those effects. The City must prepare either an ND or an EIR for the Project to adequately address the issues raised in this letter.

Sincerely,

Amalia Bowley Fuentes
LOZEAU DRURY LLP

[1] https://www.solarreviews.com/blog/how-much-electricity-does-a-solar-panel-produce.
[2] https://quotes.solarproof.com.au/system-sizes/450kw-solar-system-information-facts-figures/.

RESPONSE TO COMMENT LETTER 2: : Laborers International Union of North America (LIUNA)

Response to Comment 2.1: This comment introduces the appeal letter, and states that the letter is being submitted on behalf of LIUNA to appeal the Director's decision of approval of the Reyes CCB Project (Master Case No. P22-00565). The commenter states the proposed Project does not meet the requirements of Section 15183 Review and must prepare either a Negative Declaration ("ND") or an Environmental Impact Report ("EIR").

This comment is a summary of the commenter's opinion and does not express any specific concern or question regarding the adequacy of the CEQA document. No further response is required.

Response to Comment 2.2: This comment is a partial summary Section 15183 of the CEQA Guidelines as well as a summary of the fair argument standard that the commenter asserts applies to a 15183 consistency determination. The commenter also erroneously states that if the agency finds that there is no significant impact, they must prepare an. MND or an ND and claims that an MND is proper only if the project revisions would avoid or mitigate the potentially significant effects identified in the initial study "to a point where clearly no significant effect on the environment would occur, and…there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment."

The commenter confounds the legal standard for review of a 15183 consistency analysis and confuses the 15183 analysis for a MND. Guidelines Section 15183(a) states that CEQA *mandates* that projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site. This streamlines the review of such projects and reduces the need to prepare repetitive environmental studies. Section 15183(b) states that:

> In approving a project meeting the requirements of this section, a public agency shall limit its examination of environmental effects to those which the agency determines, in an initial study or other analysis:
>
> > (1) Are peculiar to the project or the parcel on which the project would be located,
> >
> > (2) Were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent,
> >
> > (3) Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action, or
> >
> > (4) Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

The City prepared a 15183 Consistency Checklist for all environmental topics, made findings based on substantial evidence, and determined that the proposed Project does not result any impacts triggering further environmental review pursuant to Section 15183(b).

Response to Comment 2.3: The comment suggests that the 15183 Consistency Checklist completed for the Project "may" have underestimated the nitrogen oxides (NOx) emissions, and that the operational air quality impacts will need to be analyzed in an ND with public participation requirements.

The statement that impacts "related to NOx "may" have been underestimated is conjecture and the comment provides no facts into evidence as to why the CalEEMod modeling is flawed or how the CEQA document in incorrect. Furthermore, there is no basis for requiring a ND. Finally, the GP PEIR concluded that implementation of the GP will reduce criteria pollutant emissions, however the GP exceeded the SJVAPCD project level thresholds of significance for ROG, NOx, PM10, and PM2.5 and impacts were determined to be significant and unavoidable. Even if the proposed Project NOx emissions exceeded thresholds, which they do not, the Project will still fail to trigger further environmental review pursuant to Section 15183(b). No facts have been submitted regarding the analysis in the 15183 Consistency Checklist and no further response is necessary.

Response to Comment 2.4 This comment states that the General Plan PEIR nor the 15183 Consistency Checklist discuss the Project's potential impacts on the wildlife mortality caused by project-generated traffic.

As discussed in Section IV, *Biological Resources*, of the 15183 Consistency Checklist the Project site consists of highly disturbed and previously grubbed and cleared vacant land that is surrounded by industrial and commercial development. A Biological Technical Memo (BTM), (Appendix C) was prepared and, determined the Project site contained no drainages, and no sensitive species were observed during site surveys. The biological site survey revealed that no species of significance were observed during the site visit. Several ravens and house sparrows were detected during the site visit but no sensitive species were observed. No rare plants were observed. There is no sign of kangaroo rats, kit fox or blunt nosed leopard lizard habitat present either. Therefore, the City properly determined that biological impacts are less than significant, based on substantial evidence, and consistent the GP PEIR. Furthermore, there is no evidence in the record presented by LIUNA that there is any potential for secondary traffic-related impacts to the wildlife as a whole, or to any special status species within the fully developed industrial area.

Response to Comment 2.4: The comment states that Project's specific use of energy was not evaluated in the prior EIR for significant impacts, and that there are not discussions to adequately offset its energy usage through the usage of solar panels. The comment assumes that the Project would be wasteful of energy because it does not offset 100% of its energy use with rooftop solar. The commenter states that this significant impact which has not been addressed in the City's Section 15183 Review, and either an EIR or an ND is necessary to adequately analyze energy impacts and appropriate mitigation.

The commenter is referred to 15183 Consistency Checklist Section VI, *Energy,* which analyzes whether there are significant environmental impacts due to wasteful, inefficient, or unnecessary consumption of energy resources, during Project construction or operation. It makes a conclusion based on modeling using CalEEMod and EMFAC (provided in Appendix A of the Checklist) and discusses how the Project would comply with Title 24 and Fresno Green, and demonstrates that impacts would be less that significant. The assertion that by not offsetting 100% of its energy with solar leads results is a significant impact requiring an EIR or ND is conjecture not substantiated by fact. Furthermore, the 15183 Consistency Checklist provides substantial evidence that the proposed Project does not result any significant impacts, or any impacts triggering further environmental review pursuant to Section 15183(b). Energy use and efficiency is not a significant impact or peculiar impact for industrial projects in the region as a whole, and certainly not for this Projects - meaning that there is nothing specific about this Project's operational use of energy that is inefficient or wasteful.

Therefore, the commenter has failed to provide any substantial evidence in support of even a fair argument that the City has failed to meet the requirements of CEQA Guidelines Section 15183 or that the City has failed to adequately review the environmental effects designated by that provision. No further environmental review is necessary and an ND or EIR is not required.