# 2020 Recirculated Draft Environmental Impact Report Irwindale Materials Recovery Facility

and Transfer Station Project SCH No. 2013051029





City of Irwindale June 2020

# 2020 Recirculated Draft Environmental Impact Report

Irwindale Materials Recovery Facility and Transfer Station

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# Acronyms and Abbreviations Used in this 2020 RDEIR

AAQS	Ambient Air Quality Standards		
AQMP	Air Quality Management Plan		
APN	Assessor's Parcel Number		
AQMD	Air Quality Management District		
BAAQMD	Bay Area Air Quality Management District		
BMPs	Best Management Practices		
CAAQS	California Ambient Air Quality Standards		
CAFE	Corporate Average Fuel Economy		
CAPCOA	California Air Pollution Control Officers Association		
САР	Climate Action Plan		
CARB	California Air Resources Board		
CEC	California Energy Commission		
CEQA	California Environmental Quality Act		
CFR	Code of Federal Regulations		
CNG	Compressed Natural Gas		
СО	carbon monoxide		
CO <sub>2</sub>	carbon dioxide		
СОІ	City of Industry		
CUP	Conditional Use Permit		
DEIR	Draft Environmental Impact Report		
DDA	Disposition and Development Agreement		
EIR	Environmental Impact Report		
EISA	Energy Independence and Security Act of 2007		
EPA	Environmental Protection Agency		
FEIR	Final Draft Environmental Impact Report		
ft <sup>2</sup>	Square-feet		
GPA	General Plan Amendment		
GHG	Greenhouse Gas Emissions		
GWh	gigawatt hours		
HRA	Health Risk Assessment		
IEPR	Integrated Energy Policy Report		
LCFS	Low Carbon Fuel Standard		
μg/m <sup>3</sup>	microgram per cubic meter		
MCF	Million Cubic Feet		
mpg	miles per gallon		
MMRP	Mitigation Monitoring and Reporting Program		
MRF/TS	Materials Recovery Facility and Transfer Station		

MTCO <sup>2e</sup>	metric tons of CO2-equivalent per year		
MW	megawatts		
NAAQS	National Ambient Air Quality Standards		
NHTSA	National Highway Traffic Safety Administration		
NO <sub>2</sub>	Nitrogen Dioxide		
NOx	Nitrogen Oxides		
NOC	Notice of Completion		
NOD	Notice of Determination		
NOP	Notice of Preparation		
O3	Ozone		
PIIRA	Petroleum Industry Information Reporting Act		
PM2.5	Particulate Matter 2.5 microns in diameter or less		
PM10	Particulate Matter 10 microns in diameter or less		
ррт	parts per million		
PRC	Public Resources Code		
PV	Photovoltaic		
RDEIR	Recirculated Draft Environmental Impact Report		
RFS	Renewable Fuel Standard		
ROG	Reactive Organic Gases		
RPS	Renewable Portfolio Standard		
SCAB	South Coast Air Basin		
SCAQMD	South Coast Air Quality Management District		
SCE	Southern California Edison		
SJVAPCD	San Joaquin Valley Air Pollution Control District		
SMAQMD	Sacramento Metropolitan Air Quality Management District		
SoCalGas	Southern California Gas Company		
SO <sub>2</sub>	Sulfur Dioxide		
SUVs	Sport Utility Vehicles		
TACs	Toxic Air Contaminants		
tpd	tons per day		
TS	Transfer Station		
<b>U.S.</b>	United States		
USEPA	United States Environmental Protection Agency		
VMT	vehicle miles traveled		
VOCs	Volatile Organic Compounds		

# **Chapter 1.0 Executive Summary**

# **1.1 Introduction**

This 2020 Recirculated Draft Environmental Impact Report ("2020 Recirculated DEIR") is an informational document that supplements information that was previously presented in a Final EIR certified by the City of Irwindale on June 8, 2016 for the proposed Irwindale Materials Recovery Facility and Transfer Station ("MRF/TS" or "Proposed Project"). In response to the Los Angeles Superior Court's Writ of Mandate, the City decertified the Final EIR, and vacated all other project-related approvals and entitlements, including the City's adoption of Addendum No. 1 to the Final EIR in December 2019. However, the decertified Final EIR and Addendum No. 1 thereto remain a part of the City's administrative record for the Proposed Project. The entirety of the administrative record, with the exception of those portions of the record invalidated by the Court, provides the evidence and support upon which the City may rely in considering this 2020 Recirculated DEIR, re-certification of the Final EIR, and its decision whether to re-approve the Proposed Project.

# **1.2 Project Description**

A detailed Project Description is presented in Chapter 2 of this 2020 Recirculated DEIR, including the Statement of Objectives and list of discretionary approvals. The MRF/TS involves the development of a materials recovery facility and transfer station, and convenience store/public gas station. The Proposed Project site is addressed as 2200 Arrow Highway, Irwindale, CA 91706, and is located at the northwestern intersection of Live Oak Avenue and Arrow Highway, within the City of Irwindale, in eastern Los Angeles County, California. The Proposed Project site is 17.22 acres and is currently zoned for Heavy Manufacturing and is designated for commercial land use in the City's General Plan. The Assessor's Parcel Number for the property is 8535-001-911.

The MRF/TS includes the construction of a municipal solid waste processing facility designed to sort and recover recyclable and compostable materials, and bundle those for transport to respective destinations. The remaining residual wastes are transported to a regional landfill for disposal. The MRF/TS also includes a convenience store/public gas station. The convenience store / public gas station will have eight vehicle fueling positions (gasoline and diesel). No CNG fueling facilities are proposed within the project site. Athens waste collection and transfer trucks would not fuel at the public gas station; (see Chapter 3: Fueling Operations herein).

The MRF/TS facility would be designed to receive, process and transfer 6,000 tons per day (tpd), based upon estimated averages of 3,000 tpd of municipal solid waste, 1,000 tpd of green waste, 1,000 tpd of construction & demolition materials, and 1,000 tpd of self-haul waste.

The MRF/TS is proposed to be open for waste receipt 24 hours per day, seven days per week with the majority of waste receipt typically occurring between the hours of 6:00 AM to 8:00 PM from Monday through Friday, 6:00 AM to 4:00 PM on Saturday, and from 8:00 AM to 4:00 PM on Sunday. The Proposed Project would add approximately 345 employees to the local and regional workforce.

Figure 1-1 shows the current Site Plan and Figure 1-2 shows a rendition of the Proposed Project.

# **1.3 History of CEQA Process, Land Use Approvals, and Litigation that Led to this 2020 Recirculated DEIR**

In May 2013, Irwindale circulated a Notice of Preparation ("NOP") of the Draft Environmental Impact Report ("DEIR") for the proposed Irwindale MRF/TS. In April 2014, the DEIR was circulated for public review and comment. In response to comments received, Irwindale elected to prepare a ("2014 Recirculated DEIR"), which was circulated for comment in August 2014. The 2014 Recirculated DEIR included minor revisions to the Project Description, modified analyses of air quality and greenhouse gas emissions and traffic circulation, eliminated one alternative and added two additional alternatives, and made a minor correction to the Notice of Completion.

Irwindale then prepared a Final EIR ("FEIR"), which included responses to comments and revisions to the EIR. In April 2016, the City provided notice that it would consider certification of the FEIR. On June 8, 2016, the City Council considered and certified the FEIR, and adopted Findings of Fact, a statement of overriding considerations, and a mitigation monitoring and reporting program. The EIR concluded that the Project would result in several significant and unavoidable impacts to the environment, including impacts to air quality, traffic, and noise. In the FEIR, Irwindale incorporated the 2014 DEIR and its appendices and the 2014 Recirculated DEIR and its appendices. This 2020 Recirculated DEIR refers to these documents collectively as "EIR."

On June 8, 2016, the City also approved the Disposition and Development Agreement ("DDA"), agreeing to sell the Project Site to Athens. In late 2016, after the EIR was certified, Athens proposed final plans for the Project Site, including certain changes to the Project considered in the EIR. Thereafter Irwindale prepared an Addendum to the FEIR, which was approved by the Irwindale City Council on October 11, 2017. In October 2017, Irwindale also approved a General Plan Amendment, a Conditional Use Permit, and other land use approvals for the Project.

#### **Figure 1-1 Site Plan**





JRMA



**Figure 1-2 Rendering of Proposed Project** 

Aerial view west-northwest from above the intersection of Arrow Highway and Live Oak Avenue. Main building is the MRF/TS with the administration office incorporated in front-center, and convenience store at lower right.

Subsequently, the certified Final EIR was the subject of two Petitions for Writ of Mandate, one by the City of Baldwin Park and the second by Waste Management Collection and Recycling, Inc. (collectively "plaintiffs") seeking to invalidate the City's decisions. The plaintiffs alleged that the City had violated CEQA on a number of points of fact and process. Upon review, the Court found that, for the most part, the City proceeded in the manner required by law and that its decisions were supported by substantial evidence in the record, with the exception of four elements described in more detail below.

The Superior Court of California in the County of Los Angeles issued its Decision on September 5, 2019<sup>1</sup>. The Decision concluded by issuing a writ of mandate which directed the City of Irwindale to reconsider its decision on the project in light of the Court's opinion. The Court also entered a judgment directing the City to set aside and vacate the certification of the EIR, approval of the project, and all related approvals for the project.

Based on the Court's decision, the City is now charged with revising four related elements of the impact assessment. This 2020 Recirculated DEIR will revise the 2016 Final EIR to address the potential significance of four elements of the project, including:

- Fueling Operations
- Greenhouse Gas Emissions
- Transportation Energy Impacts
- Project-specific Health Risks from Emissions of ROG, NOx and Ozone

CEQA Guidelines Section 15234(d) provides direction that all other portions of the 2016 Final EIR, as affirmed by the Court, remain valid, and the City's responsibility for subsequent review is restricted only to those portions of the CEQA analysis that are germane to these four elements. As this document is limited to the bulleted issues identified above, pursuant to CEQA Guidelines Section 15088.5, subdivision (c), other contents of the DEIR and the FEIR are not being recirculated for public review and comment.

<sup>&</sup>lt;sup>1</sup> (See Appendix 4: Superior Court of California, County of Los Angeles, Judge Mary Strobel: *City of Baldwin Park and Waste Management Collection and Recycling, Inc. of San Gabriel / Pomona Valley v. City of Irwindale, et al., Respondents; Arakelian Enterprises, Inc. dba Athens Services, Real Party in Interest, September 5, 2019; 55 pages)* 

# **1.4 Environmental Review Process for this 2020 Recirculated Draft EIR**

This document constitutes the entire 2020 Recirculated Draft EIR. Other environmental documents associated with the proposed project may be found on the City of Irwindale's website at <u>www.IrwindaleCA.gov</u> including the 2016 Final EIR, 2014 Draft EIR, 2014 Recirculated Draft EIR, and 2017 Addendum. Pursuant to State CEQA Guidelines Section 15088.5(f)(2), the Lead Agency requests that reviewers limit their comments to the revised chapters and portions of the recirculated EIR. The Lead Agency will only respond to comments received during the recirculated. Comments will be responded to and included in a new Final EIR, which will then be considered for certification by the City.

# **1.5 Notice of Completion**

The City has prepared this 2020 Recirculated DEIR in accordance with the directives established by the trial court. Accordingly, the City has filed a Notice of Completion (NOC) for this 2020 Recirculated DEIR with the Governor's Office of Planning and Research to begin the 45-day public review period (Public Resources Code, Section 21161). In addition, the City has provided a Notice of Availability of this 2020 Recirculated DEIR via publication in the San Gabriel Valley Tribune newspaper, via mailings and outreach to interested agencies and other parties, and by posting on the City's website.

# **1.6 Public Notice and Public Review**

This 2020 Recirculated DEIR is available for public review for a 45-day period, during which time written comments may be submitted to the City at the address provided below. Responses to comments received on the 2020 Recirculated DEIR and submitted within the specified review period will be prepared and included in the Final EIR. Given the limited scope of the 2020 Recirculated DEIR, together with the directives contained in the Court's remand and the requirements of CEQA Guidelines Section 15234(d), comments that are not related to the specific issues under review will not be responded to.

All comments or questions regarding the 2020 Recirculated DEIR should be addressed as follows:

#### By email to:

MSimpson@IrwindaleCA.gov

#### By mail to:

City of Irwindale Community Development Department Attn: Irwindale MRF/TS Recirculated DEIR 5050 N. Irwindale Avenue Irwindale, CA 91706

# **1.7 Final EIR and Certification**

Following the public review period, a new Final EIR will be prepared. The Final EIR will include written responses to comments on this 2020 Recirculated DEIR received during the public review period. The Final EIR will also include all of the materials included and incorporated by reference in the 2014 Recirculated DEIR and 2016 Final EIR and 2017 Addendum No. 1 to the Final EIR. Pursuant to State CEQA Guidelines Section 15088.5(f)(2), the Final EIR will only include responses to those comments received during the recirculated network to the chapters and portions of the EIR that have been revised and recirculated.

# **1.8 Certification of the EIR and Project Consideration**

The City will review and consider the new Final EIR at a noticed public hearing and if the City finds that the new Final EIR is adequate and complete, the City will certify the Final EIR. Upon review and consideration of the Final EIR, the City Council may take action to approve, conditionally approve, revise, or reject the Proposed Project. A decision to approve the Project must be accompanied by written findings in accordance with CEQA *Guidelines* Section 15091, and Section 15093, as applicable. A Mitigation Monitoring and Reporting Program, as described below, would also be adopted for project design features and mitigation measures that have been incorporated into the proposed Project or adopted as conditions of approval to reduce or avoid significant effects on the environment.

# **1.9 Mitigation Monitoring and Reporting Program**

Throughout the EIR, mitigation measures have been identified and incorporated in a comprehensive Mitigation Monitoring and Reporting Program ("MMRP"). Public Resources Code Section 21081.6(a) requires lead agencies to adopt a MMRP including all measures that have been made a condition of project approval to mitigate or avoid significant adverse impacts on the environment. The MMRP will be presented to the City Council for adoption at the time of project approval. The MMRP is intended to ensure that all adopted measures are carried out during project implementation.

# 1.10 Organization of this 2020 Recirculated DEIR

Per the Court's directives, the City's responsibility for revised environmental review is limited to the four elements described above. Accordingly, the 2020 Recirculated DEIR is comprised of the following:

**Chapter 1: Executive Summary** provides an overview of the Proposed Project and background to the 2020 Recirculated DEIR. The Executive Summary includes an overview of the Project Description, describes the process that will be followed during public review of the 2020 Recirculated DEIR and the preparation and consideration of a new Final EIR, and summarizes the conclusions of the four required supplemental analyses.

**Chapter 2: Project Description** provides details of the proposed MRF/TS waste streams and operations, goals and objectives, and a list of agencies with related project approvals that will rely upon the Final EIR.

**Chapter 3: Fueling Operations** presents an assessment of fueling operations for all vehicles using the MRF/TS and distinguishes those fueling operations from the vehicles that would use the convenience store / public gas station located on the project site. The analysis concludes that there are no adverse environmental impacts caused by these fueling operations.

**Chapter 4: Greenhouse Gas Emissions** presents analysis of the quantitative GHG threshold, identifying a "net zero GHG" quantitative threshold and providing substantial evidence for that threshold. As with transportation energy use, the analysis recognizes that the Irwindale MRF/TS would not generate waste, rather, it would process waste that would be redirected from the Athens' City of Industry MRF/TS or other MRF/TS facilities in the region. The regional efficiencies obtained with reduced average travel distances for waste collection and haul trucks results in a net reduction in related emissions, including greenhouse gas emissions. Therefore, the analysis concludes that there are no potentially significant GHG impacts, and no mitigation is needed.

**Chapter 5: Transportation Energy Impacts** presents an assessment of potential energy impacts based upon energy questions in the CEQA Guidelines *Appendix G: Environmental Checklist form, section VI., Energy, that* were added to the CEQA Guidelines in 2019, and analysis of the Proposed Project's transportation energy use requirements and use of efficient transportation alternatives, per CEQA Guidelines, *Appendix F: Energy Conservation*. The analysis recognizes that the proposed MRF/TS would not generate waste but would instead process waste that would be redirected from the Athens' City of Industry MRF/TS or other MRF/TS facilities in the region. The regional efficiencies obtained with reduced average travel distances for waste collection and haul trucks results in a net reduction in fuel demand. The analysis concludes that with the regional efficiencies obtained by processing materials at this site rather than at locations at greater distance from collection sources and/or processing and disposal facilities, there are no adverse environmental impacts caused by the transportation energy use required for waste collection and materials hauling operations.

**Chapter 6: Project-Specific Health Risks from Emissions of ROG, NOx and Ozone** provides assessment of the potential health impacts from significant and unavoidable air pollutant emissions of ROG and NOx, and related ozone. This chapter explains the health assessments that were presented in the 2014 Recirculated DEIR and explains why additional modeling to isolate project-specific local and regional emissions related health effects is not feasible or meaningful given the details of the Proposed Project and current state of air quality modeling.

Chapter 7: Report Preparation identifies the authors of this 2020 Recirculated DEIR.

**Appendix 1:** Overview of Relevant Criteria Air Pollutants Status / Control in the South Coast Air Basin

**Appendix 2:** Friant Case: South Coast Air Quality Management District Amicus Brief, April 13, 2015

**Appendix 3:** Friant Case: San Joaquin Valley Unified Air Pollution Control District Amicus Brief, April 13, 2015

**Appendix 4: Superior Court of California, County of Los Angeles, Judge Mary Strobel:** *City of Baldwin Park and Waste Management Collection and Recycling, Inc. of San Gabriel / Pomona Valley v. City of Irwindale, et al., Respondents; Arakelian Enterprises, Inc. dba Athens Services, Real Party in Interest, September 5, 2019* 

# **1.11 Intended Uses of the Final EIR**

Once complete and certified, the Final EIR will provide the CEQA compliance documentation upon which the City of Irwindale's reconsideration of, and action on, all applicable land use permits and other approvals for the proposed project are based. These include all approvals listed in the 2016 Final EIR and Resolutions, as well as any additional approvals that may be necessary to implement the proposed project. These include, but may not be limited to:

- General Plan Amendment
- Zoning Ordinance Amendment
- Site Plan & Design Review Permit
- Conditional Use Permit
- Development Agreement
- Disposition and Development Agreement, or other disposition document
- Franchise and Facility Operations Agreement

The Final EIR will provide the additional CEQA compliance documentation, together with the 2014 Draft EIR, 2016 Final EIR, 2017 Addendum No. 1, and this 2020 Recirculated DEIR that will be relied upon by responsible agencies and trustee agencies in considering and acting upon related project approvals.

# **Chapter 2.0 Project Description**

# **2.1 Introduction**

The proposed Irwindale Materials Recovery Facility and Transfer Station Project ("MRF/TS" or "Proposed Project") includes development of a municipal solid waste collection facility, in which materials are sorted for recovery of recyclable and compostable materials, and then transported to either shipping facilities (for recyclables), composting facilities, and landfills (for residual wastes). The MRF/TS includes associated administrative offices, and a convenience store / public gas station. The convenience store / public gas station will have eight vehicle fueling positions (gasoline and diesel). No CNG fueling facilities are proposed within the project site. The Proposed Project is described in detail below, following a brief summary of the environmental review process that has been undertaken to date.

#### 2014 Draft Environmental Impact Report

The Project was originally described in the 2014 Draft EIR as including 247,007 square feet of development (including the main MRF/TS building (with Green Waste and Self Haul – Construction & Demolition areas, Maintenance building, Administrative / Visitor Center, and the separate convenience store/public gas station) and 170 parking stalls. The 2014 Draft EIR described the MRF/TS facility as being designed and permitted to process a daily maximum of 6,000 tons of material, including municipal solid waste, green waste / organics / food waste, construction and demolition material, and self-haul materials. As described in the 2014 Draft EIR, the MRF/TS would use a variety of equipment to efficiently import, process, and export the materials received.

#### 2014 Recirculated Draft Environmental Impact Report

After release and circulation of the 2014 Draft EIR, revisions were made to the Draft EIR and it was recirculated for an additional public review and comment period. The 2014 Recirculated Draft EIR ("2014 RDEIR") made only minor changes to the Project Description to clarify: (1) that the daily maximum capacity of 6,000 tons of material was an anticipated future maximum daily capacity; (2) that the estimated division of square footage amongst the Project's various building elements provided in the Draft EIR were not absolute and may change; (3) where solid waste transferred from the Proposed Project would be sent; (4) clarify that vehicles loaded with residual materials would be removed from the Project Site within 48-hours and not 24-hours; and (5) identify additional Project objectives. The 2014 RDEIR also updated Project Description graphics to provide exhibits with higher resolution. The 2014 RDEIR was then incorporated into the Project's Final EIR, which included an updated site plan showing the convenience store relocated to the southeast corner of the site. The Final EIR was certified by the City in June 2016.

#### 2017 Addendum No. 1

In 2017 and after certification of the Final EIR, Addendum No. 1 was prepared to address minor internal site plan adjustments made in the final design to improve the facility's functionality and efficiency, enhance the aesthetic design of the site, and increase setbacks. In addition, there were minor off-site improvements resulting from the internal site changes, including a right-hand turn lane and installation of an intersection signal at Driveway 1 on Arrow Highway. The analyses included in Addendum No. 1 concluded that these minor changes would not result in any additional significant impacts beyond those already disclosed in the Final EIR. The City adopted Addendum No. 1 in October 2017 and approved the minor Project revisions.

#### 2019 Superior Court Writ of Mandate

In response to the Los Angeles Superior Court's Writ of Mandate, the City decertified the Final EIR, and vacated all other project-related approvals and entitlements, including the City's adoption of Addendum No. 1, in December 2019. However, the decertified Final EIR and Addendum No. 1 thereto remain a part of the City's administrative record for the Proposed Project. The entirety of the administrative record, with the exception of those portions of the record invalidated by the Court, provides the evidence and support upon which the City may rely in considering this 2020 Recirculated DEIR, re-certification of the Final EIR, and its decision whether to re-approve the Proposed Project.

#### 2020 Recirculated Draft Environmental Impact Report

Since the adoption of Addendum No. 1, no additional changes to the Project Description have been made or proposed. Thus, this 2020 Recirculated DEIR does not revise or alter the Project Description, as disclosed and analyzed by Addendum No. 1, in any substantive way. This chapter of the 2020 Recirculated DEIR instead summarizes and clarifies, but does not modify, the key features of the Project Description.

## **2.2 Project Location and Setting**

The Proposed Project is located within the City of Irwindale, which encompasses approximately 9.5 square miles within the San Gabriel Valley in eastern Los Angeles County and is located approximately 20 miles east of downtown Los Angeles. The City shares boundaries with seven neighboring municipalities, including Duarte (to the north and west), Azusa (to the north and east), West Covina (to the southeast), Baldwin Park (to the south), Monrovia (to the southwest and northwest), El Monte (to the southwest), and Arcadia (to the west); (see Figure 2-1: Regional Map, and Figure 2-2: Site Location Map).

The Project Site is addressed as 2200 Arrow Highway, Irwindale, CA 91706, and is northwest of the intersection of Live Oak Avenue and Arrow Highway. The Assessor's Parcel Number for the property is 8535-001-911.

The Project Site is approximately 17.22 acres and is currently zoned for Heavy Manufacturing and designated for commercial land use in the City's General Plan. The site is in an existing industrial area, with various commercial/industrial, and recreational land uses in the immediate vicinity. Existing land uses adjacent to the site include a mixture of commercial and industrial to the west, east, and south, recreation/open space to the north, and residential to the south beyond the commercial/industrial districts in the City of Baldwin Park bordering the south side of Live Oak Avenue.

The triangular-shaped Project Site is currently unimproved, and bordered on the south by Live Oak Avenue, on the east by the Santa Fe Dam and property owned by the U.S. Army Corps of Engineers, on the northeast by Arrow Highway, and on the west and northwest by an existing business/industrial parking lot. The site is crossed by a City of Los Angeles Department of Water and Power electricity transmission easement along the south side, which covers approximately 2.84 acres of the project site. In addition, Southern California Edison holds a 23-foot-wide, underground utility easement along the entire length of the site frontage on Arrow Highway.

# **2.3 Project Features and Operations**

The MRF/TS is a regional facility where residential, commercial, and/or industrial municipal solid waste and recyclable materials are delivered by commercial and non-commercial haulers, and sorted and processed in one central location prior to delivery at end use distributors or regional landfills. The MRF/TS consists of a fully enclosed building with the interior designed to provide separate areas to receive, process, and transfer mixed municipal solid waste, green waste, construction and demolition materials, and waste hauled in by self-haulers. MRF/TS operations would consist of sorting, consolidating, and compacting received materials, and then re-loading all material into transfer trucks for transport to additional processing and/or disposal facilities (end use distributors). The facility also includes administrative office space.

The convenience store / public gas station would be a separate structure located in the southeastern portion of the site adjacent to Arrow Highway. The gas station would serve members of the public and surrounding community, and possibly some self-haul and employee vehicles (i.e. cars and pickup trucks taking materials to the MRF/TS), but will not be used for fueling waste collection and haul trucks. (See **Figure 2-3: Site Plan; Figure 2-4: Site Plan Rendering**.) Chapter 3: Fueling Operations in this 2020 RDEIR provides a detailed explanation of how and where waste collection and haul trucks will be refueled.

#### **Figure 2-1 Regional Map**





**Figure 2-2 Site Location Map** 



#### 2.3.1 Materials Recovery Facility/Transfer Station

The Proposed Project's MRF/TS would consist of a single building covering approximately 262,640 square-feet ( $ft^2$ ) that includes several dedicated areas for recovery and transfer activities (104,730 ft<sup>2</sup>), material staging (25,000 ft<sup>2</sup>)), maintenance (17,180 ft<sup>2</sup>), construction and demolition materials (41,500 ft<sup>2</sup>), self-haul materials (52,000 ft<sup>2</sup>), administrative offices (12,780 ft<sup>2</sup>), and an employee area (9,250 ft<sup>2</sup>) (See **Figure 2-3: Site Plan**.). Outside of the main building are four 50 ft<sup>2</sup> scale houses (200 ft<sup>2</sup> total); one is located on the western side of the Project Site and three are located on the eastern side of the site.

Along the southside of the MRF/Transfer building is the facility's loadout tunnel, with a bridge provided over the tunnel to separate collection/commercial traffic from transfer truck traffic. The recyclable loading dock is on the south side of the Material Staging building. All commercial traffic and visitor traffic enters and exits the Project Site from Arrow Highway, while employee traffic will primarily enter and exit the Project Site from the intersection of Live Oak Avenue and Baldwin Park Boulevard. An employee parking area is also proposed along Arrow Highway. In total, the Project includes 307 employee and visitor parking stalls, and 19 transfer truck parking spaces.

The MRF/TS facility would be designed to receive, process and transfer 6,000 tons per day ("tpd"), based upon estimated maximum averages of 3,000 tpd of municipal solid waste, 1,000 tpd of green waste, 1,000 tpd of construction and demolition materials, and 1,000 tpd of self-haul waste. While actual processing volume of each type of material per day could exceed these estimated averages, in no event will the facility process more than 6,000 tpd in the aggregate on any given day. While 6,000 tpd is the maximum daily capacity, actual use may decrease significantly on Saturday and Sunday when commercial waste hauling is minimal, but self-hauling may be higher.

No hazardous wastes would be accepted or processed by the Proposed Project. Only nonhazardous solid waste and non-hazardous recyclable materials would be accepted, and the facility would comply with all State and federal statutes and regulations ensuring that any incidental hazardous wastes entering the site will be appropriately handled, temporarily stored, and transported offsite for proper disposal by a licensed hazardous waste handling contractor.

The MRF/TS is proposed to be open for waste receipt 24 hours per day, seven days per week with the majority of waste receipt typically occurring between the hours of 6:00 AM to 8:00 PM Monday through Friday, 6:00 AM to 4:00 PM on Saturday, and from 8:00 AM to 4:00 PM on Sunday. The MRF/TS would also provide 24-hour service operations and activities associated with off-hour waste management services (Caltrans off-hour road maintenance, emergency-related clean-up, etc.), and to encourage waste hauling during non-peak traffic hours to reduce traffic congestion.

The MRF/TS will employ approximately 345 full-time employees at full capacity, divided into three full-time working shifts (6:00 AM to 2:30 PM; 2:30 PM to 10:30 PM; and 10:00 PM to 6:30 AM).

#### 2.3.2 Convenience Store / Public Gas Station

The Proposed Project would also develop a convenience store / public gas station as a separate, structure. The convenience store / public gas station would be located in the southeastern corner of the site, adjacent to and accessed from Arrow Highway. The approximately 2,590 ft<sup>2</sup> convenience store / public gas station would serve the public and surrounding community. Athens waste collection and transfer trucks would not fuel at the convenience store public gas station. Fuel dispensing will include only gasoline and diesel fuel and does not include any natural gas fueling (see Chapter 3). Anticipated hours of operation would be 4:00 AM-12:00 PM. The convenience store would have parking for its customers (26 parking stalls), separate from that of the MRF/TS facility. (See Figure 2-3: Site Plan.)

#### 2.3.3 Construction Schedule

The Proposed Project would be constructed in a single phase. The schedule for the construction of the MRF/TS and convenience store / public gas station at the site is estimated to require 18 months. It is estimated that an average daily construction crew of 84 employees would be present onsite during construction.

# 2.4 Project Goals and Objectives

Pursuant to State CEQA Guidelines §15124(b), the Project Description includes a statement of objectives. No change to any Project Objectives has occurred since certification of the Final EIR. The City's Project objectives are:

- The City of Irwindale seeks long term economic development that provides a range of employment opportunities to local citizens.
- The City desires current and ongoing economic development of underutilized City-owned property, including lands that have been targeted for redevelopment.
- California's goal has a 75% recycling goal; therefore, the City of Irwindale seeks to achieve and surpass waste reduction and diversion goals and mandates, by providing additional processing capacity to increase diversion of recyclable commodities from the mixed municipal waste stream, thereby reducing the consumption of landfill capacity and prolonging the operational period of the region's current permitted landfill capacity.

#### Figure 2-3 Site Plan







SCALE: 1"=50'-0"

Athens Irwindale

Material Recovery Facility and Transfer Station 2200 Arrow Hwy, Irwindale, CA

# Figure 2-4 Site Plan Rendering



Aerial view west-northwest from above the intersection of Arrow Highway and Live Oak Avenue. The main building is the MRF/TS with the administration office incorporated in front-center, and convenience store / gas station at lower right.

- Provide a state-of-the-art waste processing and transfer facility that minimizes environmental impacts to the extent feasible.
- Construct the facility at a location with nearby Interstate access for both ingress and egress and which minimizes the traffic on local communities, and on the regional transportation network.
- Provide a disposal outlet accessible to local waste haulers during non-peak traffic hours with a goal to reduce traffic loading to area roads during peak hours.

The applicant, Athens Services, has stated its objectives for the Proposed Project are:

- Maximize the ability to receive, process and consolidate, for efficient transfer and disposal, municipal solid waste within the San Gabriel Valley; thereby reducing regional vehicle miles traveled by trash collection trucks to the maximum extent feasible.
- Implement a state-of-the art fully enclosed MRF/TS within City limits that reduces environmental impacts through project design (including noise, odors and air emissions) and provides environmental benefits by facilitating consolidation of refuse loads and transfer to other regional landfill sites while diverting recyclable materials for transfer to recyclables processing facilities.
- Provide state-of-the-art recycling methods, cost-effective disposal, and MRF/TS
- services that will assist Los Angeles County and cities within the County to achieve local and state mandated waste diversion goals, including those set forth in the California Integrated Waste Management Act of 1989, and which further the Recycling and Waste/ High Recycling Recommended Actions contained within CARB's Climate Change Scoping Plan (2008).
- Provide expanded capacity to divert and process green and wood waste generated in the San Gabriel Valley in order to promote increased recycling of such materials, and diversion from landfills, consistent with City, County, and State goals.

# 2.5 Intended Uses of This 2020 Recirculated DEIR

The City of Irwindale is the Lead Agency for the Proposed Project. The purpose of this 2020 Recirculated DEIR is to respond to the Los Angeles Superior Court's Writ of Mandate. In addition, the original intended uses of the Project's Final EIR remain:

- To inform the public, decision-makers, elected officials and other stakeholders regarding the Proposed Project.
- To disclose to the public, decision-makers, elected officials and other stakeholders the potential environmental effects associated with short-term construction and long-term operation of the Proposed Project, and to solicit input on the potential environmental effects.
- To identify ways to avoid or minimize potential environmental effects of the Proposed Project and evaluate alternatives to the proposed action(s). and
- To provide the Irwindale Planning Commission, and Irwindale City Council and the Successor Agency to the former Irwindale Community Redevelopment Agency with a technically and legally adequate environmental document to be used as one basis for their decision-making process for the Proposed Project; and to provide regulatory agencies with information necessary to determine if they have jurisdiction over the Proposed Project and, if so, to identify project permitting requirements.

The City of Irwindale has discretionary approval authority over the following entitlements necessary for implementation of the Proposed Project:

#### **General Plan Amendment**

The General Plan Amendment is required to change the land use designation from Regional Commercial to Commercial/Industrial so that both commercial and industrial development uses are allowed.

#### Zoning Ordinance Amendment

The Zoning Code Amendment is required to revise the distance requirement for alcohol sales (Section 17.58.040), and to allow an MRF/TS in the M-2 zone with approval of a Development Agreement.

#### Site Plan & Design Review Permit

A Site Plan and Design Review Permit is required for the construction of buildings and consistency analysis with the City of Irwindale Commercial and Industrial Design Guidelines.

#### **Conditional Use Permit**

A Conditional Use Permit is required for the approval of alcohol sales at the proposed convenience store and operation of a fueling station, unless otherwise covered by the Development Agreement.

#### **Development Agreement**

The Development Agreement is an assurance that the developer may proceed with the MRF/TS in accordance with existing policies, rules and regulations and subject to certain conditions of approval.

#### Disposition and Development Agreement, or other disposition document

The Disposition and Development Agreement defines the financial and development responsibilities of both the City and Applicant in carrying out the Proposed Project, and describes the process for sale of the site (currently owned by the Successor Agency), and which is subject to the approval by the State Department of Finance.

#### Franchise and Facility Operations Agreement

The Franchise and Facility Operations Agreement establishes the terms by which the City will grant a franchise to Athens for the exclusive operation of a MRF/TS within City limits and governs how Athens will operate the Facility and its appurtenant uses and maintain the Site.

In addition to the above approvals and entitlements, approvals from other public agencies may be required to effectuate the Project. The City's approvals and the anticipated approvals of other public agencies are summarized in **Table 2-1: Project Approvals/Agreements/Permits.** 

Agency	Approval / Agreement / Permit	
City of Irwindale	General Plan Amendment; Zoning Ordinance Amendment; Site Plan and Design Review Permit; Conditional Use Permit; Development Agreement; Disposition and Development Agreement; Franchise and Facility Operations Agreement; Storm Water Pollution Prevention Plan; and Standard Urban Storm Water Mitigation Plan	
Los Angeles County Department of Public Works	Building, Plumbing, Electrical, Industrial Wastewater Disposal, and Underground Storage Tanks containing hazardous substances permits	
Los Angeles County Public Health Solid Waste Management Program (acting as the Local Enforcement Agency [LEA]) in conjunction with the California Department of Resources Recycling and Recovery (CalRecycle);	Solid Waste Facility Permit	
Los Angeles County Sanitation District	Industrial Wastewater Discharge Permit	

Agency	Approval / Agreement / Permit
South Coast Air Quality Management District (East San Gabriel Valley)	Permits to construct and operate odor control devices, and gasoline dispensers
California Department of Industrial Relations, Division of Occupational Safety and Health	Work area design approval and compressor air tank permits
California Department of Resources Recycling and Recovery (CalRecycle)	Beverage container recycling certifications
California Environmental Protection Agency, Division of Toxic Substance Control	Hazardous Waste Handler Identification Number, hazardous waste generator/hauler permits, electronic waste handler/hauler permit <sup>2</sup>
California Department of Food and Agriculture Division of Measurement Standards	Weighmaster license
California State Water Resources Control Board, Regional Water Quality Control Board (Los Angeles Region 4)	Waste Discharge Identification Number in compliance with the National Pollution Discharge Elimination System, and Storm Water Pollution Prevention Plan
Southern California Edison	Access right over underground easement along Arrow Highway
United States Army Corp of Engineers	Access easement along Arrow Highway
Los Angeles Department of Water and Power	Access under transmission easement parallel to Live Oak Avenue

<sup>2</sup> Required for incidental hazardous waste that enters the site

# **Chapter 3.0 Fueling Operations**

# **3.1 Introduction**

This chapter addresses questions regarding fueling operations raised in the Superior Court's decision. This discussion is also intended to remedy conflicting statements in the previous administrative record regarding fueling operations for the vehicles using the MRF/TS and distinguish those operations from the vehicles that would occur at the convenience store public gas station located on the project site and part of the Proposed Project.

## **3.2 Fueling Operations for MRF/TS Vehicles**

Athens waste collections trucks fleet is 86 percent CNG-fueled at present and is expected to be 100 percent CNG-fueled in the future as older diesel-fueled truck are replaced. All of Athens transfer trucks are tractor-trailer trucks that will be fueled by CNG. Athens collections and transfer trucks account for 80 percent of incoming trips to the MRF/TS. Self-haul trucks account for the remaining 20 percent. Fueling operations for all the Athens waste collection and hauling trucks would occur off-site. Fueling locations and distances for these vehicles are shown in **Figure 3-1**. **Table 3-1** lists the types of vehicles, fuel type and fueling locations.

No CNG fueling facilities are proposed within the project site at either the MRF/TS or the convenience store public gas station. Athens currently operates two CNG fueling stations for its fleet in this area. These stations are located in the City of Irwindale and City of Industry (see **Figure 3-1**). CNG-fueled waste collection vehicles would fuel at the City of Irwindale and City of Industry CNG fueling stations, which would not be changed with the proposed Project.

Transfer trucks for the Irwindale MRF/TS would all be CNG and would fuel at the Athens "fast fill" station in the City of Industry or third-party retail facilities. There are several fueling location options to choose from. The three most likely fast-fill CNG fuel stations that tractor trailers would have to choose from include: (1) Athens private City of Industry MRF Fuel Station, 14048 Valley Blvd, Industry; (2) SoCal Gas public Azusa Base CNG Fuel Station, 950 N. Todd Avenue, Azusa; and (3) Ontario 76 public CNG Fuel Station, 1850 Holt Avenue, Ontario. When a haul truck dumps its load at Mid Valley Landfill in Rialto, San Timoteo Landfill in Redlands, or American Organics Composting in Victorville, the truck can get fuel if needed in Ontario or Azusa while in route returning to Irwindale.

**Figure 3-1 Truck Fueling Map** 



..... Existing Athens Fleet Fueling Locations .....



Vincent Ave. Irwindale Yard (CNG Slow fill. 2.5 mi. from Irwindale MRF)



Valley Blvd. Industry MRF (Diesel Fuel & CNG Fast fill. 5.9 mi. from Irwindale MRF)

#### Athens Services Fleet Fueling and MRF Locations in Region



Function	Vehicle Type	Fuel Type (2020)	Fueling Location
Waste Collection	Collection Truck	CNG (86%) Diesel (14%)	Off-site <sup>1</sup>
Transfer Trucks	Tractor -Trailer	CNG (100%)	Off-site <sup>2</sup>
Self-Haul Vehicles <sup>6</sup>	Dump trucks, Vans, Pick-Up Trucks, SUVs, Automobiles	Gasoline (79%) Diesel (21%)	Off-site or convenience store public gas station <sup>3</sup>
Employee Vehicles <sup>6</sup>	Pick-Up Trucks, Vans, SUVs, Automobiles, Motorcycles	Gasoline (99.7%) Diesel (0.3%)	Off-site or convenience store public gas station <sup>4</sup>
Convenience Store Gas Station Customers	Pick-Up Trucks, Vans, SUVs, Automobiles, Motorcycles	Gasoline (>98.5%) Diesel (<1.5%) <sup>6</sup>	Off-site or convenience store public gas station <sup>5</sup>

**Table 3-1 Vehicle Types, Fuel Types and Fueling Locations** 

1. Locations at the Vincent Yard in Irwindale, or the City of Industry MRF/TS.

 Three most likely CNG fuel stations include: (1) Athens private City of Industry MRF Fuel Station; (2) SoCal Gas public Azusa Base CNG Fuel Station; and (3) Ontario 76 public CNG Fuel Station.

3. Light duty vehicles that may use the convenience store gas station opportunistically on their way to and from the MRF/TS.

4. Employee vehicles that may use the convenience store gas station opportunistically on their way to and from work.

- 5. Light duty vehicles that may use the convenience store gas station opportunistically in route to and from other locations.
- 6. Source: U.S. Department of Transportation, Bureau of Transportation Statistics, *Fact Sheet, Dieselpowered Passenger Cars and Light Trucks*, by Matthew Chambers and Rolf Schmitt, October 2015

Over the past decade the fleet transition from diesel to CNG fuel started with waste collection trucks for multiple reasons including requirements from CARB, local government, cost effectiveness, and corporate greening. All CNG vehicles are capable of being fueled by either "fast-fill" or "slow-fill". This applies to waste collection trucks and the larger transfer trucks. These fueling methods are described as follows.

#### 3.2.1 Fast-fill

When any truck (including transfer trucks) pulls into a fueling station for CNG it will take 10 or 15 minutes to fill the tank. This is the "fast-fill" process. It generally fills a tank about 75 percent (¾) full, and not completely full, due to the way that temperature and time affect the gaseous fuel in a confined tank. The public fueling stations and the Athens City of Industry MRF/TS private fueling station provide fast-fill CNG service to trucks (including transfer trucks).

#### 3.2.2 Slow-Fill

"Slow-fill" and "Time-fill" are the same thing. Time-fill is the technically correct term for this fueling process, but the term slow-fill is regularly used as it is easier to understand when compared to fast-fill. Slow-fill CNG service is not provided at public fueling stations. Slow-fill is what companies with fleets of vehicles install and utilize at their own truck yards for economic and efficiency reasons since it saves time and money by eliminating a trip to the fueling station, and the tank is filled 100 percent.

The fleet of trucks is parked overnight at either the Vincent yard or Athens' MRF/TS in the City of Industry when not in use. While parked, the CNG fueling hose is connected to the truck. The CNG compressor system slowly pumps fuel into all the connected trucks' fuel tanks over a period of six to eight hours. One of the benefits from this process is that CNG fuel slow-fills a tank more completely to provide a full tank.

# **3.3 Convenience Store Public Gas Station**

The Proposed Project includes a small convenience store gas station (similar to Circle K or AM/PM stores) that does not serve CNG fueled trucks or tractor-trailer size transfer trucks that would bring waste materials into the MF/TS and remove processed materials from the proposed MRF/TS. The convenience store public gas station is intended to serve pass-by vehicles and store customers and has no role in supporting refueling for collection and transfer vehicles serving or using the MRF/TS. The fuel islands are not sized or designed to serve collections trucks or transfer trucks, and will include gasoline and diesel fuel, but no CNG fuel.

The convenience store public gas station would serve primarily gasoline-fueled pass-by traffic and smaller vehicles (cars, SUVs, pickup trucks and motorcycles), and would not serve larger diesel-fueled or CNG-fueled waste collection and transfer trucks. These smaller vehicles will enter the convenience store driveway from Arrow Highway and pull up to the fuel island. After fueling they would exit the convenience store driveway back to Arrow Highway. Employees of the MRF/TS could enter the convenience store parking lot from the MRF/TS employee parking lot.

Some self-haul vehicles using the MRF/TS, including pick-up trucks, dump trucks, SUVs and automobiles, could empty their loads, and upon exiting the MRF/TS, turn right into the convenience store to access the store, and/or the public gas station. As shown in Table 3.1 above, most self-haul drivers and homeowner self-haul vehicles would be serviced by regular gasoline. Contractor self-haul vehicles on average would be 79 percent gasoline pickup trucks and 21 percent would be diesel-fueled vehicles. No tractor-trailer sized vehicles will refuel at the convenience store public gas station. Fueling operations will involve universal pumps found at any "gas station" throughout California dispensing either gasoline or diesel fuel. Customers will pull their vehicle up to the pump, insert the hose nozzle into their fuel tank port, and pull the handle to dispense fuel. After fueling, vehicles will exit the site onto Arrow Highway.

# **3.4 Impact Assessment**

There is no recommended or standard threshold in the CEQA Guidelines for fueling operations associated with project trips or truck fleets. The Irwindale MRF/TS is a waste sorting and processing facility and would not generate new waste materials. Instead, the new MRF/TS would competitively contract to process some of the municipal solid waste now being processed at other MRF/TS facilities or diverted to landfills. Therefore, all the waste hauling and transfer truck trips would be redirected trips of waste collection vehicles that would be collecting solid wastes near the City of Irwindale with or without the Irwindale MRF/TS. Refueling of those vehicles is occurring at present as a baseline condition, although travel routes and refueling locations may be slightly different than they would be with the proposed Project.

**Figure 3-1** above shows the fueling locations that would be primarily used for waste collection and transfer trucks in the surrounding region. Refueling of the Athens fleet is now done at the City of Industry MRF/TS and at the Athens "Vincent Yard" on Vincent Street in Irwindale. Athens trucks would continue to be refueled at the Vincent Yard location with the Proposed Project. The collections trucks fueling at the Vincent Yard would be closer to the Irwindale MRF/TS (2.5 miles) than the current travel distance to the City of Industry MRF/TS CNG fueling facility (5.9 miles).

Off-site CNG fueling emissions impacts are minimal. These would be pass-by trips (or fill-ups at hauling-truck yards) for CNG-fueled self-haul trucks using the MRF/TS. Any fueling emissions would occur at permitted CNG fueling stations. Athens CNG-fueled trucks would continue to refuel at the existing Athens truck yard on Vincent Avenue in Irwindale, as they do at present. CNG-fueled trucks may also occasionally fuel off-site opportunistically as needed and at the nearest possible facility if they are low on fuel in the course of hauling trips throughout the day. When a haul truck dumps its load at Mid Valley Landfill in Rialto, San Timoteo Landfill in Redlands, or American Organics Composting in Victorville, the truck can get fuel if needed in Ontario or Azusa while in route returning to Irwindale.

All Athens truck fueling operations will occur at private facilities and public fueling stations and truck stops where they are fueling now with or without the Proposed Project. These facilities are designed to accommodate large vehicles such as waste collection trucks and transfer trucks. As a part of their development each of these fueling facilities is subject to environmental review, and air emissions, safety, and type of fueling dispensers associated with their operations are accounted for in their respective operational permits. Fueling operations are already accounted for in the regional emissions inventory and fueling will occur at regulated facilities operating in compliance with pertinent rules and regulations. Therefore, the potential impacts of collection and transfer truck fueling are determined to be *less-than-significant*, and no mitigation measures are required.

#### **3.4.1 Threshold of Significance**

The City has developed the following threshold of significance for potential impacts resulting from traffic and safety conflicts that could result from waste collection and transfer trucks driving through the convenience store parking lot and its related public gas station fuel islands, and safety risks associated with fueling at the convenience store fueling station.

**Traffic and Safety Conflicts for Fueling at the Convenience Store Public Gas Station:** The following threshold of significance was developed as a project-specific adaptation of the 2020 CEQA Guidelines Appendix G Environmental Checklist form for transportation, item C:

#### 3.4.2 Threshold Fueling-1

Would the proposed Project's fueling at the convenience store public gas station result in creating traffic and safety hazards due to a design feature (internal traffic circulation pattern) or incompatible uses (waste haulers and transfer trucks circulating through the convenience store parking lot and public gas station fuel islands with smaller cars, pickup trucks, vans and motorcycles)?

#### **No Impact**

The Proposed Project includes a small convenience store gas station (similar to Circle K or AM/PM stores) that is not sized to serve collections trucks or transfer trucks that would bring waste materials into the MF/TS and remove processed materials from the proposed MRF/TS. The convenience store public gas station will only dispense gasoline and diesel fuel and is not designed to serve diesel fueled tractor-trailer sized vehicles. The station will also not dispense any CNG fuel used by the collection trucks and transfer trucks. Collections trucks and transfer trucks will enter the site at the main entry from Arrow Highway and will make a right turn (north) to the scale house before proceeding west into the MRF/TS. Upon exiting east from the main driveway back onto Arrow Highway, these trucks will pass the convenience store and its public gas station in the southeast corner of the property. Fuel tanker trucks (gasoline and diesel) that will supply the fuel to be dispensed at the convenience store gas station will enter the parking lot from the main convenience store driveway on the east side from Arrow Highway, stop at the refill portals to connect and deliver gasoline and diesel fuel, and then proceed northwest to the driveway and turn right (east) on the MRF/TS main driveway to exit back to Arrow Highway.

Some self-haul vehicles using the MRF/TS (including small dump trucks, pick-up trucks, SUVs and automobiles), could empty their trucks, and turn right upon exiting the MRF/TS into the convenience store to access the store, and/or the public gas station. It is not known where self-haul vehicles would typically fuel, but it is reasonable to expect that sometimes (not often) they would be low on fuel and opportunistically use the fuel islands at the convenience store gas station to refuel. Some MRF/TS employees could also opportunistically drive their passenger vehicles (cars, SUVs, pick-up trucks and motorcycles) to the convenience store gas station on their way to and from the employee parking areas.

The Traffic Impact Assessment in the 2014 RDEIR did not analyze the impacts of diesel-fueled collection trucks and transfer trucks entering and leaving the convenience store public gas station, or potential safety impacts caused by simultaneous use of the MRF/TS by waste collection and transfer trucks and the general public because there would be no use of the convenience store public gas station by these large waste collection trucks and even larger/longer tractor-trailer transfer trucks. Because the collection trucks and transfer trucks will not be able to use the convenience store gas station, there will be no conflict between these larger trucks and public use of the convenience store gas station. These factors eliminate potential safety impacts from conflicts with collections trucks and transfer trucks and public use of the convenience store public gas station, and safety concerns are determined to be *no impact*. No mitigation measures are required.

#### 3.4.3 Health Risk Impacts of Fueling at the Convenience Store Public Gas Station

The convenience store gas station would only serve pass-by small vehicle traffic and possibly some of the smaller self-haul vehicles and MRF/TS employee vehicles. The 2014 RDEIR based the assumption of average gasoline and diesel fuel volumes on data from an extensive database of California Retail Fuel Stations that included 7,748 gasoline and 3,847 diesel fuel stations. For purposes of the EIR air quality assessment and related Health Risk Assessment (HRA), the public gas station was assumed to dispense 0.34 million gallons of diesel per year based on 2011 average throughput for diesel fuel dispensing stations in California<sup>3</sup>.

Given the size of the proposed convenience store gas station, and understanding that the convenience store gas station does not include fueling for the larger collection trucks and transfer trucks associated with the MRF/TS operations (and likely only a small percentage of the self-haul vehicles), the average throughput of the reporting California Retail Diesel Fuel Stations (0.34 million gallons of diesel fuel per year) is confirmed to be a reasonable estimate of fuel throughput (2014 RDEIR, p. 3.3-57). For that reason, it is concluded that the diesel fuel assumptions used in the Health Risk Assessment are reasonable, and the overall air emissions health risk assessment impacts of the Proposed Project, including the dispensing of diesel fuel at the convenience store public gas station are *less-than-significant*, as determined in Threshold AQ-5 in the 2014 RDEIR (beginning on page 3.3-55). No mitigation measures are required.

There will be no CNG fuel provided at the convenience store public gas station, and for that reason, there are **no potential impacts** of CNG fueling at the convenience store gas station. No mitigation measures are required.

<sup>3</sup> https://ww2.energy.ca.gov/almanac/transportation\_data/gasoline/piira\_retail\_survey.html

As clarified in the Project Description, the convenience store public gas station is not intended to service any Athens' diesel-fueled waste trucks. The convenience store gas station would serve primarily gasoline-fueled pass-by traffic and smaller vehicles (cars, SUVs, pickup trucks and motorcycles), and would not serve larger diesel-fueled or CNG-fueled waste collection and transfer trucks. The volume of diesel actually pumped at the station (whether it is greater or less than 0.34 million gallons per year) would not affect the outcome of the HRA in any significant way since it is the actual combustion of diesel fuel that generates diesel particulate matter and is the primary driver of potential health impacts from diesel vehicles, not the storage of diesel fuel or fueling of diesel vehicles.

The HRA does account for the health impacts of gasoline fueling activities, which CARB notes within its *Air Quality and Land Use Handbook: A Community Health Perspective* as a specific emission source of concern. The health impacts of gasoline fueling activities were determined based on the California Air Pollution Control Officers Association's *Air Toxics "Hot Spots" Program Gasoline Service Station Industry-wide Risk Assessment Guidelines* and SCAQMD's *Emission Inventory and Risk Assessment Guidelines for Gasoline Dispensing Stations*, each of which does not include diesel fueling activities since diesel fuel has a lower volatility level than gasoline. Within the HRA, diesel <u>combustion</u> contributes the largest portion of the health impacts, with gasoline-fueling activities contributing less than five percent of the potential health impacts. For these reasons, it is concluded that the gasoline fuel assumptions used in the Health Risk Assessment are reasonable, and the potential impacts of dispensing gasoline fuel at the convenience store gas station are *less-than-significant*. No mitigation measures are required.
# **Chapter 4.0 Greenhouse Gas Emissions**

## 4.1 Introduction

The 2014 RDEIR analyzed the potentially significant impacts associated with greenhouse gas emissions ("GHG") in Chapter 3.3, Air Quality, Greenhouse Gas, Odor, and Health Risk Assessment. This analysis was then updated in the 2017 Addendum No. 1 to reflect minor technical changes in the Project's site plan.<sup>4</sup> The GHG analysis considered whether the Project would conflict with implementation of State goals for reducing GHGs (Threshold AQ-7), and determined that with the incorporation of Mitigation Measure AQ-22, impacts related to GHG emissions would be less than significant. The analysis took four approaches to determining whether the Project would conflict with implementation of the State's emissions reductions goals, including comparing the Project's GHG emissions against a quantitative threshold developed by the South Coast Air Quality Management District ("SCAQMD").

This Chapter 4 of the 2020 Recirculated DEIR supersedes those portions of the 2014 RDEIR and Addendum No. 1 that (1) calculated the amount of mobile GHG emissions attributable to waste hauling activities; (2) applied a 10,000 metric ton of CO<sub>2</sub>-equivalent per year ("MTCO<sub>2</sub>e") quantitative significance threshold to the Project's greenhouse gas emissions; and (3) described, incorporated, and applied Mitigation Measure AQ-22. It does not, however, revise or supersede the remainder of the Proposed Project's GHG emissions impact analysis.

This chapter includes an analysis of the redistribution of truck trips transporting waste materials to and from the Proposed Project ("waste hauling activities"). The Proposed Project is a waste materials sorting and transfer facility designed to process municipal solid waste, sort and recover as much recyclable and reusable material as possible, and then transport processed materials to the Port of Long Beach, an organic composting facility, or a landfill. Virtually all of the waste materials transported to the Proposed Project from existing waste generating sources (i.e. "markets") will also be transported from the Proposed Project to other existing facilities (i.e., recycling, composting, and landfill facilities).

This chapter is intended to respond to court directives seeking additional information and support for the chosen GHG significance threshold, and additional information relating to Mitigation Measure AQ-22.

<sup>4</sup> The only change to the 2014 RDEIR's greenhouse gas emissions analysis presented in Addendum No. 1 was a refinement of the Project's construction emissions. Addendum No. 1 determined that the minor technical changes in the site plan resulted in an additional 3 metric tons of construction-related greenhouse gas emissions per year.

## 4.2 Selection of a Quantitative GHG Significance Threshold

Air districts typically act in an advisory capacity to local governments in establishing the framework, and oftentimes the significance thresholds, for environmental review. The SCAQMD is the regulatory agency responsible for improving air quality for large areas of Los Angeles, Orange County, Riverside and San Bernardino counties. Specifically, SCAQMD is responsible for controlling emissions primarily from stationary sources of air pollution, through development and adoption of its Air Quality Management Plan ("AQMP").

Because of its expertise in establishing air quality analysis methodologies and comprehensive efforts to establish regional and localized significance thresholds for criteria air pollutants and toxic air contaminants, local public agencies have asked SCAQMD for guidance in identifying quantitative significance thresholds to assist them with determining whether or not the amount of GHG emissions identified in their CEQA documents result in a potentially significant impact. However, the SCAQMD has declined to adopt any quantitative GHG emissions thresholds, except for one "interim" screening threshold developed to apply only to stationary source industrial projects where the SCAQMD is the lead agency under CEQA.<sup>5</sup> The SCAQMD has not adopted similar interim GHG significance thresholds for residential and commercial projects, or for mobile emissions individually.<sup>6</sup>

#### 4.2.1 Types of GHG Emissions

Land development projects generate direct and indirect GHG emissions, on-site and off-site. The Proposed Project is associated with direct emissions on-site from operation of the new MRF/TS facility, convenience store and service station, and indirect emissions from off-site self-haul trucks, solid waste collection trucks, transfer trucks, and employee passenger vehicles.<sup>7</sup> As with all land use projects, the Proposed Project's transportation-related GHG emissions are a function of two parameters: emissions control technology and vehicle miles traveled (VMT).

<sup>5</sup> SCAQMD, "Staff Report: Interim CEQA GHG Significance Threshold for Stationary Sources, Rules and Plans," December 5, 2008, p.2 [available at: <u>http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2]</u>.

<sup>6</sup> *Ibid.*, at p. 8.

<sup>7 &</sup>quot;Collection truck trips" are trips by Athens vehicles, or other commercial waste hauling company vehicles, that collect waste from waste generators, and bring the waste to the Proposed Project for sorting. "Transfer truck trips" are trips by Athens vehicles that take the sorted waste materials away from the Proposed Project and to existing composting, recycling and landfill facilities. "Self-haul truck trips" are trips made by members of the public, typically in passenger vehicles (e.g., pickup trucks and towed trailers), to the Proposed Project to dispose of solid waste materials.

The California Air Resources Board ("California ARB") is directly responsible for regulating mobile source emissions in the State. Regarding the first parameter, California addresses emissions control technology through a variety of legislation and regulatory schemes, including the state's Low Carbon Fuel Standard (Executive Order S-01-07) ("LCFS"), a regulatory program designed to encourage the use of cleaner low-carbon transportation fuels in California, encourage the production of those fuels, and therefore, reduce GHG emissions and decrease petroleum dependence in the transportation sector. The regulatory standards are expressed in terms of the "carbon intensity" of gasoline and diesel fuel and their substitutes. Different types of fuels are evaluated to determine their "life cycle emissions" which include the emissions associated with producing, transporting, and using the fuels. Each fuel is then given a carbon intensity score, and compared against a declining carbon intensity benchmark for each year. Providers of transportation fuels must demonstrate that the mix of fuels they supply for use in California meets these declining benchmarks for each annual compliance period. In 2018, CARB approved amendments to the LCFS, which strengthened the carbon intensity benchmarks through 2030 to ensure they are inline with California's 2030 GHG emission reduction target enacted through SB 32. This ensures that the transportation sector is meeting its obligations to achieve California's GHG reduction targets.

The state is also implementing legislation and regulations to address the second parameter affecting transportation related GHG emissions: vehicle miles traveled ("VMT"). Examples of this include SB 375, which links land use and transportation funding and provides one incentive for regions to achieve reductions in VMT, and SB 743, which discourages VMT increases for passenger car trips above a region-specific benchmark. These legislative regimes and the regulations adopted to implement them are based in part upon the idea that projects generating new trips that are nonetheless shorter by a given percentage than average trips in the region would have a less than significant transportation impact under CEQA. Further, projects that do not generate any new trips, and instead reduce the length of existing trips, would also have a less than significant transportation impact, and relatedly, a less than significant impact from transportation generated GHG emissions.

In California, local air districts are primarily responsible for controlling stationary sources of pollutants and for regional air quality planning. Specifically, local air districts are responsible for overseeing the siting and operation of new and modified stationary sources. SCAQMD acts as lead agency under CEQA for stationary source projects where the AQMD has primary permitting and approval authority over the project. SCAQMD is not the lead agency for the Proposed Project.

#### 4.2.2 2014 RDEIR's Application of a 10,000 MTCO<sub>2e</sub>/year Threshold

In December 2008, SCAQMD adopted an "interim" screening threshold for stationary source industrial projects where the SCAQMD is the lead agency under CEQA. The threshold is considered "interim" because, at the time, SCAQMD anticipated that the California ARB would be adopting a statewide significance threshold that would inform and provide guidance to SCAQMD in its adoption of a final threshold. However, no statewide threshold was ever adopted and the interim threshold remains in effect.

The interim screening threshold adopted by SCAQMD for stationary source industrial projects for which SCAQMD is the lead agency is 10,000 MTCO<sub>2</sub>e/year. SCAQMD chose this quantitative "bright-line" threshold because it determined that this threshold achieved a capture rate of 90 percent for all new or modified projects. <sup>8</sup> A 90 percent emission capture rate means that 90 percent of total emissions from all new or modified stationary source projects would exceed the 10,000 MTCO<sub>2</sub>e/year threshold and therefore, under CEQA, would be required to identify feasible mitigation measures and project alternatives that would reduce greenhouse emissions.<sup>9</sup>

SCAQMD acknowledges that the threshold is conservative, and likely has a greater than 90 percent capture rate.<sup>10</sup> In developing this threshold, SCAQMD estimated that stationary source industrial projects with GHG emissions below 10,000 MTCO<sub>2</sub>e/year (i.e., projects that would not require additional GHG mitigation measures), would, together, emit slightly less than one percent of the future 2050 statewide GHG emissions target and thus could reasonably be determined to not contribute to a significant environmental impact, or impede the state's ability to reach its 2050 emissions target.<sup>11,12</sup> In addition, the SCAQMD reasonably determined that those projects falling below the screening threshold would likely "be subject to future applicable GHG control regulations that would further reduce their overall future contribution to the statewide GHG inventory."<sup>13</sup>

<sup>8</sup> SCAQMD, "Staff Report: Interim CEQA GHG Significance Threshold for Stationary Sources, Rules and Plans," December 5, 2008, p.4.

<sup>9</sup> Ibid.

<sup>10</sup> SCAQMD, Minutes for the GHG CEQA Significance Threshold Stakeholder Working Group, Meeting #7 (11/20/2008), p. 3.

<sup>11</sup> SCAQMD, "Staff Report: Interim CEQA GHG Significance Threshold for Stationary Sources, Rules and Plans," December 5, 2008, p.4.

<sup>12</sup> Executive Order S-3-05 establishes California's 2050 emissions reduction target. Thus, pursuant to the SCAQMD, stationary source industrial projects that emit GHGs below the screening threshold are consistent with Executive Order S-3-05.

<sup>13</sup> SCAQMD, "Staff Report: Interim CEQA GHG Significance Threshold for Stationary Sources, Rules and Plans," December 5, 2008, p.4.

Irwindale, like many public agencies throughout the region, relied upon the SCAQMD's 10,000 MTCO<sub>2</sub>e/year interim threshold for industrial land uses in its 2014 RDEIR. Examples of other nearby agencies applying the 10,000 MTCO<sub>2</sub>e/year threshold to industrial projects regardless of the percentage of emissions generated by mobile sources, include, but are not limited to: City of Azusa, *Waste Management Material Recovery Facility Transfer Station and Household Hazardous Waste Facility Draft Environmental Impact Report* (March 2011); City of Moreno Valley, *Indian Street Commerce Center Draft Environmental Impact Report* (August 2016); and City of Eastvale, *Homestead Industrial Project Draft Environmental Impact Report* (January 2020).

The City of Irwindale believes use of this threshold to evaluate the MRF/TS Proposed Project was reasonable for multiple reasons:

• When regional efficiencies (i.e., the increase in efficiency within the region, resulting from the presence of a new MRF/TS facility located within an urbanized area) are taken into account, the Project's only net positive emissions are stationary source emissions, making the 10,000 MTCO<sub>2</sub>e/year threshold appropriate. This is because the Project results in a net reduction in actual regional vehicle miles traveled, due to the fact it does not generate new waste hauling trips and it increases regional efficiencies. The Project provides an additional MRF/TS facility in an urban area that will allow the Project Applicant, other commercial waste haulers, and self-haulers to redistribute existing solid waste collection and transfer trips in a more efficient manner. Thus, when mobile emissions are removed from consideration because they are reduced when compared against the existing environmental baseline, the Project's remaining emissions are, in fact, generated by stationary sources (i.e., the MRF/TS itself), rendering a stationary source threshold applicable.

As described below, the Project's mobile emissions net to zero, or below, due to increased regional efficiencies. Further, these already "netted out" mobile emissions are "subject to future applicable GHG control regulations that... further reduce their overall future contribution to the statewide GHG inventory" consistent with SCAQMD's description of projects falling below its 10,000 MTCO<sub>2</sub>e/year threshold for industrial projects. As noted in California's 2017 Climate Change Scoping Plan, California is home to nearly half of the country's zero-emission vehicles, California's climate policies will reduce California's fuel demand by more than 45 percent by 2030, and improvements in clean transportation technology and low carbon fuels have had—and are anticipated to continue having-a significant contribution to reducing statewide GHG emissions.<sup>14</sup> Consistent with this trend, the Project Applicant's waste collection trucks and transfer trucks run primarily on compressed natural gas ("CNG"), as opposed to diesel or gasoline, and as fleet turnover continues into the future, only new CNG trucks will be purchased. This means that the Project's mobile emissions, which are already netted out at zero or below, will continue to be even further reduced in the future. This further indicates that application of a stationary source threshold is appropriate given that the only remaining emissions will be stationary source emissions from the MRF/TS facility itself.

California ARB, the State agency with primary responsibility for ensuring that California reduces its GHG emissions consistent with all state plans, policies and orders, supports application of the 10,000 MTCO<sub>2</sub>e/year threshold to industrial projects, even where the majority of emissions are due to mobile truck trips. For example, the California ARB supported application of the threshold to the World Logistics Center Project, proposed in Moreno Valley, California. That project proposed 41.4 million square feet of high-cube logistics warehouses, and an additional 20,000 square feet of land for logistics support. That project's original Draft Environmental Impact Report estimated that the project would emit 751,787 MTCO<sub>2</sub>e/year, more than half of which (465,994 MTCO<sub>2</sub>e/year) was attributable to mobile emissions.<sup>15</sup> California ARB reviewed and commented upon the World Logistics Center Draft EIR, and took no issue with the application of the 10,000 MTCO<sub>2</sub>e/year threshold to that project.<sup>16</sup> Further, in a later letter to that project's lead agency, the California ARB expressly supported application of the threshold to the project.<sup>17</sup>

<sup>14</sup> California ARB, *California's 2017 Climate Change Scoping Plan*, pp. ES-8, 9, 73 [available at: <u>https://ww3.arb.ca.gov/cc/scopingplan/scoping\_plan\_2017.pdf]</u>.

<sup>15</sup> World Logistics Center Project Environmental Impact Report (SCH # 2012021045), Table 4.7F, p. 4.7-30 [available at: <u>http://www.moval.org/cdd/pdfs/projects/wlc/wcl-deir0213.pdf</u>].

<sup>16</sup> California ARB, Letter to Mr. John Terrell/City of Moreno Valley, April 16, 2013, p. 3 [available at: <u>https://ww2.arb.ca.gov/sites/default/files/classic//toxics/ttdceqalist/worldlogistics0413.pdf]</u>.

<sup>17</sup> California ARB, Letter to Mr. Albert Armijo/City of Moreno Valley, September 7, 2018, p. 10 [available at: <u>https://ww2.arb.ca.gov/sites/default/files/classic//toxics/ttdceqalist/logisticsfeir.pdf?ga=2.194534253.1917172821.</u> 1584642583-1530301191.1580405888].

Nonetheless, the Los Angeles County Superior Court has directed Irwindale to reconsider its reliance on and support for the 10,000 MTCO<sub>2</sub>e/year threshold. In follow-up correspondence with the SCAQMD to assist the City in its selection of an appropriate threshold for this 2020 Recirculated DEIR, SCAQMD staff stated that the 10,000 MTCO<sub>2</sub>e/year threshold may be applied to the total GHG emissions generated by industrial projects, including their mobile emissions, and to projects for which SCAQMD is not the lead agency.<sup>18</sup> Staff indicated that the 10,000 MTCO<sub>2</sub>e/year threshold was derived to apply to industrial projects with the SCAQMD as the Lead or Responsible Agency. It is a project impacts threshold so would include the total of construction, operation, stationary, and mobile emissions.

In light of the above, Irwindale has evaluated whether it should once again proceed with the 10,000 MTCO<sub>2</sub>e/year threshold or whether a more stringent quantitative threshold for the GHG impact analysis should be applied in this 2020 Recirculated DEIR.

## 4.2.3 Selection of a Net Zero MTCO<sub>2e</sub>/year Threshold

Under CEQA, Irwindale recognizes that there are multiple possible pathways available for a lead agency to evaluate the significance of an individual project's GHG emissions. Such evaluations are a matter of lead agency discretion and require judgment on a project-by-project basis.

The lead agency is responsible for determining whether an adverse environmental effect identified in an EIR should be classified as "significant" or "less than significant." (State CEQA Guidelines, § 15064(b).) Significance thresholds may be "project-specific" and tailored to the type, location and context of an individual project. Project-specific thresholds are not required to be formally adopted, as the State CEQA Guidelines only require that thresholds of general application be formally adopted. (State CEQA Guidelines, § 15064(b).)

A zero threshold is lower than all GHG emissions significance thresholds either adopted or recommended by other urban-area air districts in California. To meet a zero threshold, all of a project's emissions must be eliminated or offset, and the status quo of the existing environmental baseline retained.<sup>19</sup> State CEQA Guidelines, section 15064.4(b), addresses the significance of impacts from GHG emissions specifically, and while it does not require or imply a zero emissions threshold, it also does not preclude a lead agency from applying a net zero emissions threshold on a project-specific basis.<sup>20</sup> For example:

<sup>18</sup> Communication between Mr. Michael Krause (SCAQMD) and Mr. Paul Miller, March 26, 2020.

<sup>19</sup> For more information regarding the merits of a zero threshold, see California Air Pollution Control Officers Association ("CAPCOA"), *CEQA and Climate Change*, January 2008, Chapter 6, "CEQA With GHG Threshold of Zero" [available at: <u>https://ww2.energy.ca.gov/2008publications/CAPCOA-1000-2008-010/CAPCOA-1000-2008-010/PDF</u>].

<sup>20</sup> CEQA also does not require that a project mitigate beyond the impacts actually caused by a project. (See Pub. Resources Code, §§ 21068, 21100(d) [CEQA defines significant impacts as a substantial or potentially substantial adverse change in the environment].) (Emphasis added.)

- The Bay Area Air Quality Management District ("BAAQMD") has adopted a 1,100 MTCO<sub>2</sub>e/year threshold for all land development projects, including industrial projects.<sup>21</sup> BAAQMD determined through modeling that projects emitting less than 1,100 MTCO<sub>2</sub>e/year would result in less than significant impacts. The BAAQMD's *California Environmental Quality Act Air Quality Guidelines*, Appendix D "Threshold of Significance Justification," provides the evidence upon which BAAQMD relied in developing and adopting its threshold, including a description of derivation of the state's GHG reduction goals, consideration of foreseeable reductions reasonably anticipated from implementation of the California ARB's Scoping Plan, identification of a targeted percentage reduction for all land use emissions sectors, and modeling for projected development.<sup>22</sup>
- The Sacramento Metropolitan Air Quality Management District ("SMAQMD") recommends that lead agencies apply a similar 1,100 MTCO<sub>2</sub>e/year threshold for all project types, including industrial projects.<sup>23</sup>

While SCAQMD has not adopted a zero threshold, it acknowledges that some members of the SCAQMD's GHG Significance Threshold Working Group have recommended a zero threshold in the past.<sup>24</sup> SCAQMD chose not to adopt a zero threshold because of concerns that it would not be feasible to implement, as too few projects would be able to meet this highly conservative threshold.<sup>25</sup> A zero threshold was not rejected on grounds it would fail to reduce emissions.<sup>26</sup>

Additionally, the California ARB has also not adopted a zero threshold, but its 2017 Scoping Plan Update does encourage its use where feasible, and explains that meeting a zero threshold means a project does not have any GHG emissions-related environmental impact: "Achieving no net additional increase in GHG emissions, resulting in no contribution to GHG impacts, is an appropriate overall objective for new development."<sup>27</sup>

Despite there being no formally adopted zero threshold at either the State or local level, several other lead agencies have voluntarily chosen to apply a zero threshold in other CEQA analyses, after finding the threshold appropriate as a project-specific threshold. Examples of CEQA analyses that have applied a project-specific zero GHG emissions threshold include:

<sup>21</sup> BAAQMD, *California Environmental Quality Act Air Quality Guidelines*, May 2017, pp. 2-2, 2-4, 3-1. 22 *Id.*, at pp. D-1 through D-21.

<sup>23</sup> SMAQMD, *Guide to Air Quality Assessment in Sacramento County*, updated July 2019, Chapter 2 Appendix, Threshold of Significance Table, see also p. 6-11 [available at: <u>http://www.airquality.org/Businesses/CEQA-Land-Use-Planning/CEQA-Guidance-Tools</u>].

<sup>24</sup> SCAQMD, "Staff Report: Interim CEQA GHG Significance Threshold for Stationary Sources, Rules and Plans," December 5, 2008, p. 4.

<sup>25</sup> Id., at p. 5.

<sup>26</sup> Ibid. See also Staff Report, Attachment E, p. 2-7, 2-8.

<sup>27</sup> California ARB, California's 2017 Climate Change Scoping Plan, p.101.

- County of San Diego Otay Ranch Village 14 and Planning Areas 16/19 Draft Environmental Impact Report (February 2018).<sup>28</sup>
- Los Angeles County Landmark Village Project Final Recirculated Portions of the Environmental Impact Report (June 2017).<sup>29</sup>
- California Air Resources Board Southern California Consolidation Project Draft Environmental Impact Report (March 2017).<sup>30</sup>
- California State Lands Commission Venoco Ellwood Marine Terminal Final Environmental Impact Report (November 2014).<sup>31</sup>

Here, as explained in detail below, the Proposed Project does not generate new sources of solid waste, and thus the Proposed Project would not generate new truck trips to transport solid waste. Recognizing that the Project would only redistribute solid waste haul and transfer trips more efficiently within the region is a reasonable expectation of an MRF/TS facility in a highly urbanized area. Thus, the Proposed Project's specific features and environmental setting make application of a net zero threshold appropriate.

Application of a net zero threshold to the Proposed Project is not intended to establish a new benchmark whereby only projects that reduce emissions to zero result in less than significant impacts under CEQA. In fact, the California ARB specifically cautions against such an interpretation in its 2017 Scoping Plan, which reads, "Achieving net zero increases in GHG emissions, resulting in no contribution to GHG impacts, may not be feasible or appropriate for every project... and the inability of a project to mitigate its GHG emissions to net zero does not imply the project results in a substantial contribution to the cumulatively significant environmental impact of climate change under CEQA."<sup>32</sup> As stated above, Irwindale recognizes that there are multiple pathways available under CEQA for a lead agency to evaluate the significance of an individual project's GHG emissions, and such evaluations are a matter of lead agency discretion and require judgment on an individual, project-by-project basis.

<sup>28</sup> The Otay Ranch Village 14 and Planning Areas 16/19 project includes up to 1,119 single family residential units and other land uses on approximately 1,369 acres in San Diego County. The Draft EIR's GHG analysis is available at: <u>https://www.sandiegocounty.gov/content/dam/sdc/pds/ProjectPlanning/OtayRanchVillage14andPlanAreas16-19/DEIR/2.7\_GHG.pdf</u>.

<sup>29</sup> The Landmark Village Project is one of the five villages within the Newhall Ranch Specific Plan, which was litigated in *Center for Biological Diversity v. California Department of Fish and Wildlife* (2015) 62 Cal.4<sup>th</sup> 204 ("*Newhall Ranch*"). The Recirculated Portions of the Landmark Village EIR are available at: http://planning.lacounty.gov/assets/upl/case/tr 53108 section-2-0-revised-pages-of-recirculated-eir.pdf.

<sup>30</sup> The Southern California Consolidation Project is a motor vehicle and emissions testing and research facility. The project intends to reduce its GHG emissions as much as possible through project design, and considers purchasing GHG offsets to reduce the remaining GHG emissions to zero. The project's Draft EIR is available at: https://www.dudek.com/SoCalConsolidationCEQA/ARB\_SCCP\_Draft\_EIR\_March2017.pdf.

<sup>31</sup> The PRC 421 Recommissioning Project is an oil production project operated by Venoco, a private oil and gas company. The project's Final EIR is available at: <u>https://www.slc.ca.gov/wp-</u>content/uploads/2014/11/FEIR\_Full.pdf.

<sup>32</sup> California ARB, California's 2017 Climate Change Scoping Plan, p.102.

## 4.3 Methodology

To assess the significance of the Project's GHG emissions relative to the chosen net zero threshold, both quantitative and qualitive information is provided to support the significance determination presented herein. This approach is consistent with State CEQA Guidelines, section 15064.4(a), which grants lead agencies "discretion to determine, in the context of a particular project, whether to: (1) Quantify greenhouse gas emissions resulting from a project; and/or (2) Rely on a qualitative analysis or performance based standards."

#### 4.3.1 Methodology for Non-Waste Hauling Emissions

Construction emissions, and operational emissions associated with the convenience store / public gas station, area sources, energy use, on-site MRF/TS equipment, and employee vehicle trips, were quantitatively modeled using CalEEMod<sup>33</sup>, EMFAC<sup>34</sup>, and OFFROAD<sup>35</sup>. This modeling was included in the 2014 RDEIR and updated in the Addendum No. 1 (2017) and is not revised or otherwise altered by this 2020 Recirculated DEIR.

#### 4.3.2 Methodology for Waste Hauling Emissions

Greenhouse gas emissions generated by redistributed waste hauling truck trips are also quantitatively modeled using EMFAC. Waste hauling truck trips include waste collection truck trips, which bring solid waste materials from local waste generating markets to the Proposed Project for processing and sorting. Waste hauling truck trips also include transfer truck trips, which bring processed and sorted waste materials from the Proposed Project to landfills, composting facilities, or the Port of Long Beach.

<sup>33</sup> CalEEMod (California Emissions Estimator Model Version) is a California land use emissions computer model that estimates criteria pollutant and GHG emissions associated with both construction and operations from a variety of land use projects. This model was developed for the California Air Pollution Officers Association (CAPCOA) in collaboration with the California Air Districts. Default data (e.g., emission factors, trip lengths, meteorology, source inventory, etc.) have been provided by the various California Air Districts to account for local requirements and conditions.

<sup>34</sup> California Air Resources Board's (CARB) EMFAC emissions inventory model. EMFAC is the latest emission inventory model that calculates emission inventories and emission rates for motor vehicles operating on roads in California. This model reflects CARB's current understanding of how vehicles travel and how much they emit. EMFAC can be used to show how California motor vehicle emissions have changed over time and are projected to change in the future.

<sup>35</sup> CARB OFFROAD emissions inventory model. OFFROAD is the latest emission inventory model that calculates emission inventories and emission rates for off-road equipment such as loaders, excavators, and off-road haul trucks operating in California. This model reflects CARB's current understanding of how equipment operates and how much they emit. OFFROAD can be used to show how California off-road equipment emissions have changed over time and are projected to change in the future.

To quantitatively determine the amount of vehicle miles reduced from the existing condition, and thus the quantity of greenhouse gas emissions reduced from the existing condition, a quantitative regional efficiencies analysis was completed. The regional efficiencies analysis identifies existing nearby waste generating markets, the distances from those markets to existing MRF/TS facilities, and the distances between existing MRF/TS facilities and the landfill, composting, and port facilities that currently accept sorted and processed materials. These distances were then compared against the distances that would be traveled after opening of the Proposed Project, using a weighted average reduction approach.

The analysis considers the location of the following facilities:

- Athens Services Materials Recovery Facility/Transfer Station ("Industry MRF/TS"), located in the City of Industry. This existing facility currently accepts waste materials from several markets in the vicinity of the Proposed Project.
- Grand Central Transfer Station ("Grand Central TS") located in the City of Industry. This existing facility currently accepts waste materials from regional markets from non-Athens Services commercial waste haulers.
- Mid-Valley Landfill located in the City of Rialto. This existing landfill facility currently accepts solid waste materials transferred from the existing MRF/TS facilities in the region.
- Chiquita Canyon Landfill located in the City of Castaic. This existing landfill facility currently accepts solid waste materials transferred from the existing MRF/TS facilities in the region.
- Port of Long Beach. Recyclable materials transferred from the existing Industry MRF/TS are currently brought to the Port.
- American Organics Composting Facility located in the City of Victorville. This composting facility currently accepts composting materials transferred from the existing Industry MRF/TS.

The regional efficiencies analysis in this 2020 Recirculated DEIR differs from the approach applied in the 2014 RDEIR to calculate mobile emissions generated by the Proposed Project. The 2014 RDEIR assumed that all waste hauling truck trips were new truck trips, even though the Proposed Project does not generate new solid waste or new waste hauling truck trips. Instead, the Proposed Project redistributes existing waste hauling trips in a more efficient manner. Treating redistributed existing truck trips as new truck trips may make sense in the context of an air pollutant emissions analysis, because air pollutant impacts on human health, for example, are location specific.

Air pollutant emissions redistributed to occur closer or farther from sensitive receptors may affect the significance of the air pollutant emissions and the extent of the impact. In contrast, GHG emissions impacts do not change based on the specific street, neighborhood, or even city within which they occur. Thus, a redistributed existing truck trip that still occurs in the same region, if not along the same route, would not cause an increase or decrease in the significance of that truck's GHG emissions. On an intraregional basis, the significance or extent of a GHG emissions impact is based solely on the amount of emissions, not their location within the region. For this reason, a different methodology has been applied in this 2020 Recirculated DEIR than was applied in the 2014 RDEIR to analyze GHG emissions impacts.

## 4.4 Impact Analysis

This analysis augments the GHG analysis contained within the 2014 RDEIR, specifically the quantitative emissions threshold.

## 4.4.1 Thresholds of Significance

As discussed in detail above this analysis will use net zero GHG emissions as the significance threshold.

## 4.4.2 THRESHOLD GHG EMISSIONS-1

Would the GHG emissions attributable to project construction and operations be potentially significant?

## Less Than Significant Impact

## 4.4.3 Non-Waste Hauling Trip Emissions

Non-waste hauling trip emissions include all Project-generated emissions with the exception of mobile emissions from waste collection and waste transfer truck trips.

Construction emissions were updated in Addendum No. 1 to account for minor changes in the Proposed Project's site plan. As disclosed in Addendum No. 1, which remains part of the Proposed Project's administrative record, the changes resulted in an incremental increase in GHG emissions from construction. From Addendum No. 1:

The construction emissions associated with the Proposed Project at 32,400 cubic yards of material import during grading would be approximately 1,035 metric tons of CO2e, an increase of 95 metric tons of CO2e compared to the 940 metric tons of CO2e estimated in the [2014] RDEIR for 15,000 cubic yards of material export. This would be an increase of approximately 3 metric tons of CO2e per year when amortized over the life of the project (assumed to be 30 years in the RDEIR). (Addendum No. 1, p. 21.)

The construction emissions of 1,035 MTCO<sub>2</sub>e amortized over 30 years results in 34.5 MTCO<sub>2</sub>e/year. This 2020 Recirculated DEIR does not revise or modify the quantitative calculation of construction related GHG emissions, and it is provided here for informational purposes.

The 2014 RDEIR determined the greenhouse gas emissions associated with area, energy, waste and water; on-site MRF/TS equipment; mobile emissions associated with the convenience store/public gas station; and mobile emissions associated with Project employees (including both the MRF/TS and the convenience store/public gas station). The 2014 RDEIR modeled these emissions using CalEEMod, EMFAC, and OFFROAD. This 2020 Recirculated DEIR does not revise or modify these quantitative calculations, which are presented below, in **Table 4-7**.

## 4.4.4 Waste Hauling Trip Emissions: Collection Trucks

The Proposed Project would not cause the generation of any new waste materials in the region and would instead process waste materials that are, in the baseline condition, currently processed at other existing waste sorting and transferring facilities within the region. Therefore, nearly all, if not all, waste hauling trips to and from the Proposed Project would be redirected existing trips by waste collection vehicles. These vehicles would be (and are, already) collecting solid waste near the City of Irwindale with or without the Proposed Project, and these trips would (and do currently) go to other existing materials processing and sorting facilities, if the Proposed Project were never constructed.

Construction and operation of new MRF/TS facilities in urban areas will generally always result in improved waste hauling trip regional efficiencies. The primary purpose of an MRF/TS is to maximize resource recovery and increase the quantity of compostable and recyclable materials diverted from landfills. Locating more MRF/TS facilities closer to urban waste generation markets (i.e., the neighborhoods and communities from which solid waste is collected), minimizes the travel distance of waste collection vehicles, which in turn, reduces GHG emissions.

More MRF/TS facilities in urban areas provide more opportunities to reduce vehicle fuel consumption in getting materials from generation sources to the processing facility. When fewer MRF/TS facilities are available within a region, waste collection trucks must travel farther distances to processing sites, or instead take all collected waste to distant landfills for material separation. Thus, and as described in more detail below, trip lengths to and from the Proposed Project from the nearby waste generation markets anticipated to be rerouted to the Proposed Project will generally be shorter than the trip lengths to existing MRF/TS facilities.

Waste collection trips bring solid waste materials from surrounding waste-generating markets to MRF/TS facilities. They include both commercial waste collection trucks and self-haulers, which are individuals or small construction contractors who haul their own waste, usually in personal passenger vehicles, pick-up trucks, or small trailers, to the MRF/TS for disposal. Commercial waste haulers utilizing the Project will include both Athens Services' own waste collection truck fleet, and other collection trucks run by other commercial haulers, who choose, for one reason or another, to dispose and process their waste at an Athens Services facility.

Because the Proposed Project does not generate waste, it can be reasonably expected that new contracts—either between other haulers and the Proposed Project, or between other communities and Athens—would not represent new waste hauling trips, given that any market redirected to the Proposed Project in the future, currently exists and currently already generates waste that is hauled to another existing MRF/TS and/or landfill. For the same reasons that Athens will reroute waste collection trips from its existing markets, future markets would also be expected to reroute in the manner that is most efficient and cost effective, and cost savings are typically associated with shorter haul distances.

To determine the impact that rerouting waste collection truck trips will have on miles traveled, and in turn, GHG emissions, a conservative, per trip miles reduction was calculated. This per trip miles reduction was multiplied by the anticipated number of total waste collection truck trips. From here, an anticipated GHG emissions reduction was modeled using EMFAC.

To determine a conservative per trip miles reduction, two separate analyses were done. First, an average total trip reduction was calculated based on the location of current Athens Services markets and routes, and the amount of waste currently collected by Athens from these markets. Then, an average total trip reduction was calculated based on the location of markets anticipated to contract with Athens Services in the future, or that contract with other commercial waste haulers that are anticipated to bring their collected waste to the Proposed Project. As shown below, the average trip reduction based upon general markets is less than the average trip reduction based upon Athens Services' current markets, and so, to present the most conservative analysis, this average trip reduction is used to calculate GHG emissions reductions.

Athens Services currently stations a truck fleet at its Vincent Truck Yard, located within the City of Irwindale, near the Proposed Project site. Currently, this fleet collects waste from surrounding markets, and takes this waste to the existing Industry MRF/TS in the City of Industry. The Applicant will reroute these trucks to the Proposed Project upon its opening to maximize operational efficiency and significantly reduce miles traveled by the existing Athens Services' truck fleet. Currently, a typical Athens Services truck route begins at the Vincent Truck Yard in Irwindale, travels to a specified market, and then carries the collected solid waste materials to the existing Industry MRF/TS. At the end of the day, the truck then travels from the existing Industry MRF/TS to the market more than once before returning to the Vincent Truck Yard at the end of the day, but no more than three times per day.

**Table 4-1** compares the Athens Services collection truck miles traveled under the existing condition, to the Athens collection truck miles traveled under the Proposed Project condition. To do so, the table identifies those markets and Athens waste collection routes that the Applicant will reroute after completion of the Proposed Project. The table identifies the number of miles currently traveled by an Athens waste collection truck from each market to the existing Industry MRF/TS in the City of Industry, as well as the number of miles that will be traveled from each market to the Proposed Project. As shown in **Table 4-1**, for all but two local markets, there will be a reduction in miles traveled between the market and the MRF/TS once the route is redirected to the Proposed Project. As discussed below, for even those local markets with a slight increase in miles shown in **Table 4-1**, the miles saved due to closer proximity to the Vincent Truck Yard will nonetheless result in an overall reduction in miles traveled.

The "Market to Project Miles Reduction" identified in **Table 4-1** is the reduction per one-way trip between the identified market and the Proposed Project. However, frequently a single truck makes multiple trips between the market and the MRF/TS before returning to the Vincent Truck Yard at the end of the day, further increasing the reductions presented in **Table 4-1**. For example, if a waste collection truck traveled from Azusa to the MRF/TS, then back to Azusa, and then back to the MRF/TS before completing its shift, the total miles traveled would be 35.4 under the existing condition (11.8 x 3), and 10.2 (3.4 x 3) under the Proposed Project resulting in a reduction of 25.2 miles (8.4 x 3).

In addition, Athens waste collection truck trips will see further reductions in miles traveled due to the Proposed Project's close proximity to the Vincent Truck Yard, located in the City of Irwindale, approximately 2.5 miles from the Proposed Project. As shown in **Table 4-2**, when accounting for the closer distance of the Vincent Truck Yard, which is the starting and ending location for each Athens Services waste collection truck trip utilizing the Proposed Project, each market, including San Gabriel/San Marino/Monrovia and South Pasadena, sees an overall decrease in miles traveled. The Vincent Truck Yard is located 7.9 miles from the existing Industry MRF/TS, and thus each trip from the Proposed Project to the Vincent Yard will result in a reduction of 5.4 miles traveled.

	Existing Condition	Proposed Condition		
Athens Marketa	(Miles to Industry MRF/TS)	(Miles to Proposed Project)	Market to Project Miles Reduction	
Altadena	21.0	16.0	5.0	
Azusa	11.8	3.4	8.4	
Covina	10.4	3.7	6.7	
Glendora	15.0	6.9	8.1	
Irwindale	6.6	1.0	5.6	
La Canada Flintridge	28.0	23.0	5.0	
Miscellaneous San Gabriel Valley	21.0	16.0	5.0	
Monrovia	11.8	7.7	4.1	
Pasadena	19.7	14.5	5.2	
San Gabriel/Rosemead/Pasadena	16.0	14.0	2.0	
San Gabriel/San Marino/Monrovia	12.4	13.6	-1.2	
Sierra Madre	14.8	9.7	5.1	
South Pasadena	15.0	17.2	-2.2	
Temple City	8.7	7.5	1.2	
West Covina	4.3	2.8	1.5	

## Table 4-1 Athens Market to MRF/TS One-Way Trip Miles Reduction

a. Source: Athens Services, 2020.

**Table 4-2** accounts for each leg of an Athens Services waste collection truck trip, which begins at the Vincent Truck Yard and then proceeds to each individual market. No change in miles traveled from the Vincent Truck Yard to each individual market will occur as a result of the Proposed Project. From each market, the waste collection truck would proceed to the Proposed Project, and, as indicated in **Table 4-1** and in the third column of **Table 4-2**, all but two markets would see a reduction in vehicle miles traveled on this leg. An Athens Services waste collection vehicle may proceed from the Proposed Project back out to the market for additional loads, which for all but two markets, would further increase the reduction indicated in the "One-Way Trip Miles Reduction" column. After dumping its last load at the Proposed Project, the Athens' waste collection truck would result in an additional reduction of 5.4 miles from the existing condition, wherein the collection trucks travel 7.9 miles from the existing Industry MRF/TS to the Vincent Truck Yard.

The "Total Reduction Per Round Trip" column in **Table 4-2** assumes only one, one-way trip between each market and the Proposed Project. While trucks often make more than one trip between the market and the MRF/TS, for all but two markets the total reduction would only increase with each additional trip.

Athens Market <sup>a</sup>	Vincent Yard to Market Reduction	Market to Project Miles Reduction <sup>b</sup>	Project to Vincent Yard Reduction	Total Reduction Per Round Trip
Altadena	0	5.0	5.4	10.4
Azusa	0	8.4	5.4	13.8
Covina	0	6.7	5.4	12.1
Glendora	0	8.1	5.4	13.5
Irwindale	0	5.6	5.4	11
La Canada Flintridge	0	5.0	5.4	10.4
Miscellaneous San Gabriel Valley	0	5.0	5.4	10.4
Monrovia	0	4.1	5.4	9.5
Pasadena	0	5.2	5.4	10.6
San Gabriel/Rosemead/Pasadena	0	2.0	5.4	7.4
San Gabriel/San Marino/Monrovia	0	-1.2	5.4	4.2
Sierra Madre	0	5.1	5.4	10.5
South Pasadena	0	-2.2	5.4	3.2
Temple City	0	1.2	5.4	6.6
West Covina	0	1.5	5.4	6.9

 Table 4-2 Athens Collection Truck Round Trip Miles Reduction

<sup>a</sup> Source: Athens Services, 2020.

<sup>b</sup> See Table 4-1.

For the two markets that do not see a trip reduction for each one-way trip between the market and the MRF/TS—San Gabriel/San Marino/Monrovia and South Pasadena—an overall reduction would still occur, given the reduction in miles traveled as a result of the proximity of the Vincent Truck Yard to the Proposed Project. Trucks often make two trips to a market in a given day, and sometimes three. Trucks do not proceed back to an individual market more than three times in a single day.

To determine an average miles reduction per trip upon which to base the GHG emissions reduction, a weighted average was calculated. This is because some markets are smaller, and require fewer waste collection trips, thus their miles reduction per trip is not as significant as the miles reduction per trip from larger markets requiring more waste collection trips. **Table 4-3** identifies a weighted average reduction per trip, which accounts for the varying sizes of each individual Athens Services market.

As shown in **Table 4-3**, based upon the location of existing Athens Services markets, the Proposed Project results in an average trip reduction of 9.6 miles, when accounting for the relative size of each individual market (and thus, the percentage of truck trips traveling to and from each market).

As described above, an average trip reduction based upon the location of anticipated future markets was also calculated.

Athens Market <sup>a</sup>	Total Reduction Per Round Trip <sup>b</sup>	Market Percentage of Total <sup>a</sup>	Market Percentage x Reduction Per Round Trip
Altadena	10.4	5.2%	0.5
Azusa	13.8	7.9%	1.1
Covina	12.1	12.4%	1.5
Glendora	13.5	11.1%	1.5
Irwindale	11	2.2%	0.2
La Canada Flintridge	10.4	2.0%	0.2
Miscellaneous San Gabriel Valley	10.4	1.1%	0.1
Monrovia	9.5	11.7%	1.1
Pasadena	10.6	9.3%	1.0

Table 4.3 Athens	Collection	Truck	Weighted	<b>A</b> verage	Trin	Miles	Reduction
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Athens Market <sup>a</sup>	Total Reduction Per Round Trip <sup>b</sup>	Market Percentage of Total <sup>a</sup>	Market Percentage x Reduction Per Round Trip
San Gabriel/Rosemead/Pasadena	7.4	1.2%	0.1
San Gabriel/San Marino/Monrovia	4.2	3.5%	0.1
Sierra Madre	10.5	2.4%	0.3
South Pasadena	3.2	5.9%	0.2
Temple City	6.6	6.0%	0.4
West Covina	6.9	18.2%	1.3
Average Weighted Miles Reduction Per Tri	9.6		

<sup>a</sup> Source: Athens Services, 2020.

<sup>b</sup> See Table 4-2.

<sup>c</sup> Average Weighted Miles is the sum of all

"Market Percentage x Reduction Per Round Trip" values.

While the exact locations and quantities of possible future contracts cannot, at this time, be known, **Table 4-4** nonetheless identifies several local markets within the region, some of which currently contract a portion (but not all) of their solid waste collection to Athens, and many of which currently contract with other commercial waste haulers. After construction of the Proposed Project, some of these markets may choose to contract with Athens, or the other commercial haulers serving these markets may choose to bring their solid waste materials to the Proposed Project instead of to other MRF/TS facilities farther away.

While it is too speculative to identify the exact markets and tonnage that may be directed to the Proposed Project in the future, **Table 4-4** illustrates that for local markets that may currently utilize one of two other MRF/TS facilities in the region, providing an additional MRF/TS option within the region results in significant reductions in miles traveled by commercial waste collection trucks. As indicated in **Table 4-4**, the two MRF/TS facilities that currently serve the area are the Grand Central TS<sup>36</sup> and the Industry MRF/TS, both of which are located within the City of Industry. While it cannot be known whether a market is currently sending their waste to the Grand Central TS or the Industry MRF/TS, reductions were calculated for each, and the lowest reduction reported in the "Lowest Trip Reduction" column.

<sup>36</sup> Grand Central TS was not included in the analysis of Athens own waste hauling routes given that the Athens Services MRF/TS is located within the same city—the City of Industry—and Athens sends its own waste collection trucks to the existing Athens Services MRF/TS.

As was done above with Athens Services' existing markets, to determine an average miles reduction per trip, a weighted average was calculated. This weighted average accounts for the different amount of waste generated in different sized markets. **Table 4-5** identifies a weighted average reduction per trip. As shown in **Table 4-5**, based upon the location of regional markets, the Proposed Project results in an average round trip reduction of 8.7 miles. As this reduction is lower than the reduction calculated using Athens Services' existing markets, to provide for the most conservative analysis, an average trip reduction of 8.7 miles is used to calculate anticipated GHG emissions reductions.

The Proposed Project is anticipated to operate at a maximum processing capacity of 6,000 tons of waste material per day, with approximately 80% (or 4,800 tons) of the total coming from commercial waste collection trucks. Applying the reasonable assumption that commercial waste collection trucks on average carry 9 tons (90 percent of the truck's 10-ton capacity), approximately 533 waste collection truck trips per day are expected. This is notably lower than the number of waste collection truck trips assumed in the 2014 RDEIR (1,648) and which provided the basis for the Project's air quality and traffic analyses. This reduction in assumed trips is to provide the most conservative analysis.

Assuming that maximum operating capacity is only reached on weekdays, this results in an annual reduction in miles of approximately 1,205,646 commercial waste collection truck trip miles. The modeled GHG emissions reduction associated with this reduction in annual commercial waste collection truck miles is 4,868 metric tons at project buildout. The remaining 1,200 tons of self-haul waste is anticipated to be brought to the MRF/TS by way of 249 self-haul vehicle trips, which is the number of self-haul trips assumed in the 2014 RDEIR. It is expected that self-haul trips will originate from the same regional markets as are depicted in **Table 4-4**, and with a similar average weighted miles reduction as shown in **Table 4-5**. This results in a self-haul annual miles reduction of 563,238 miles. The modeled GHG emissions reduction associated with this reduction in annual self-haul vehicle miles is 487 metric tons. Together, the GHG emissions reduction associated with commercial waste collection and self-haul waste collection is 5,355 metric tons.

Regional Market	Miles to Proposed Project	Miles to Grand Central TS	One-Way Trip Miles Reduction (Rerouted from Grand Central TS)	Miles to Industry MRF/TS	One-Way Trip Miles Reduction (Rerouted from Industry MRF/TS)	Lowest One- Way Trip Reduction
Irwindale	1.0	9.7	8.7	6.6	5.6	5.6
Azusa	3.4	9.6	6.2	11.8	8.4	6.2
Covina	3.7	7.5	3.8	10.4	6.7	3.8
Arcadia	7.8	18.1	10.3	13.4	5.6	5.6
Duarte	4.1	17.2	13.1	9.4	5.3	5.3
Bradbury	4.5	17.3	12.8	9.5	5.0	5.0
Sierra Madre	9.3	22.0	12.7	14.2	4.9	4.9
Monrovia	7.7	18.5	10.8	11.8	4.1	4.1
San Gabriel	14.0	14.8	0.8	16.0	2.0	.8
Temple City	7.5	14.8	7.3	8.7	1.2	1.2
Pasadena	14.5	27.0	12.5	19.7	5.2	5.2
La Canada Flintridge	23.0	32.3	9.3	28.0	5	5
San Dimas	12.5	14.7	2.2	13.8	1.3	1.3
La Verne	13.9	14.8	0.9	15.6	1.7	0.9

 Table 4-4 One-Way Regional Markets Commercial Collection Truck Miles Reduction

Source: Athens Services, 2020.

## 4.4.5 Waste Hauling Trip Emissions: Transfer Trucks

Once materials are sorted and processed at an MRF/TS facility, transfer trucks carry the solid waste materials to landfills, recyclables to the Port of Long Beach, and compostable materials to a composting facility. Solid waste materials that are currently sorted at the existing Industry MRF/TS are transferred to either the Mid-Valley Landfill, located in the City of Rialto, or the Chiquita Canyon Landfill, located in Castaic. Recyclable materials are taken to the Port of Long Beach, and compostable materials are taken to the American Organics facility, located in the City of Victorville. As described above, due to rerouting, some materials that are currently taken to the existing Industry MRF/TS will be taken to the Proposed Project upon its opening. Solid waste, recyclable, and compostable materials leaving the Proposed Project are anticipated to have the same destinations as materials leaving the Industry MRF/TS. Athens transfer trucks in the Vincent Truck Yard fleet that would serve the Proposed Project, are 100 percent CNG-powered.

Regional Market	Round Trip Reduction <sup>a</sup>	Market Percentage of Total <sup>b</sup>	Market Percentage x Reduction Per Round Trip
Irwindale	11.2	5.8%	0.6
Azusa	12.4	8.1%	1.0
Covina	7.6	8.1%	0.6
Arcadia	11.2	9.0%	1.0
Duarte	10.6	3.7%	0.4
Bradbury	10	0.6%	0.1
Sierra Madre	9.8	1.8%	0.2
Monrovia	8.2	6.4%	0.5
San Gabriel	1.6	7.2%	0.1
Temple City	2.4	3.9%	0.1
Pasadena	10.4	34.3%	3.6
La Canada Flintridge	10	3.2%	0.3
San Dimas	2.6	2.3%	0.1
Las Verna	1.8	5.5%	0.1
Average Weighted Mile	8.7		

<sup>a</sup> Calculated by doubling "Lowest One-Way Trip Reduction" of Table 4-4.

<sup>b</sup> Source: Athens Services, 2020.

<sup>c</sup> Average Weighted Miles is the sum of all "Market Percentage x Reduction Per Round Trip" values.

**Table 4-6** provides the round-trip miles saved as a result of the Proposed Project. Based upon the reasonable assumption that a transfer truck carries an average of 22 tons of material (truck capacity ranges from 22 to 24 tons) to its final destination of landfill, composting facility, or Port of Long Beach, a total of 272 transfer truck trips per day is assumed. This is notably lower than the number of transfer truck trips assumed in the 2014 RDEIR (559) and which provided the basis for the Project's air quality and traffic analyses. This reduction in assumed trips is to provide the most conservative analysis.

The 272 transfer truck trips were divided between the four destination points, based upon the following: Waste materials leaving the Proposed Project are estimated to be 46 percent landfill material, 35 percent recycling material, and 19 percent composting material. Under typical conditions, of the materials leaving the Proposed Project for transfer to a landfill, 99 percent are transferred to the Mid Valley Landfill, and only 1 percent are transferred to the Chiquita Canyon Landfill.<sup>37</sup> However, laws and regulations are likely to increase the required percentage of composting diversion; thus in the future more than 19 percent may be transferred to American Organics, with or without the Proposed Project. As shown in **Table 4-6**, the Proposed Project's location results in an approximately 11 mile per round trip reduction for loads transferred to the American Organics facility, and would result in a total reduction of 2,035 metric tons MTCO<sub>2</sub>e/year generated from transfer trucks over existing conditions.

## 4.4.6 Total Quantified Emissions

**Table 4-7** presents all GHG emissions associated with the Proposed Project, including those emissions previously modeled in the 2014 RDEIR (area/energy, convenience store/public gas station mobile emissions, onsite equipment, and employee trips), refined in Addendum No. 1 (construction) and reassessed as described above (waste collection truck trips, self-haul truck trips, and transfer truck trips).

As shown in **Table 4-7**, the GHG emissions from the Proposed Project would provide a net benefit when compared against the existing condition, and GHG emissions would be below the significance threshold of 0 MTCO<sub>2</sub>e/year. Thus, impacts would be less than significant.

# 4.5 Mitigation Measures

The 2014 RDEIR identified Mitigation Measure AQ-22 to reduce the potentially significant GHG emissions impacts that were identified in that analysis. However, at the direction of the court, the GHG emissions analysis for the Proposed Project has been redone in this 2020 Recirculated RDEIR. The analysis in this chapter supersedes those portions of the 2014 RDEIR and Addendum No. 1 that (1) applied a 10,000 metric tons of CO<sub>2</sub>-equivalent per year ("MTCO<sub>2</sub>e") quantitative significance threshold to the Project's greenhouse gas emissions, and (2) described, incorporated, and applied Mitigation Measure AQ-22. Thus, the applicability of any mitigation to the Proposed Project is based upon the analysis contained herein.

<sup>37</sup> While this is representative of normal operating conditions, sometimes loads are diverted for day-specific reasons, such as when a facility has reached its daily capacity and thus is required to turn away loads, or when a facility may have reached its maximum diversion for a given type of material and thus must turn loads away and direct them to other facilities. While the VMT impacts for such diversions are too speculative to calculate, they are uncommon and would occur equally for Industry MRF/TS or Proposed Project loads. Accordingly, this GHG analysis would not meaningfully change due to such diversions.

The quantitative analysis in the impact analysis above (Section 4.3), indicates that overall GHG emissions would be less than the existing condition with implementation of the Proposed Project. As shown in **Table 4-7**, applying a net zero emissions threshold to the Proposed Project results in a determination that GHG impacts will be less than significant, and no mitigation measures are required.



	Existing Condition Proposed Condition		Daily Trips	
	(Round Trip Miles from Industry MRF/TS)	(Round Trip Miles from Proposed Project)	(Based on 272 Transfer Truck Trips/Day)	Daily Miles Reduction
Mid-Valley Landfill (Solid Waste)	79.4	69.0	124	1,289.6
Chiquita Canyon Landfill (Solid Waste)	111.4	108.2	1	3.2
Port of Long Beach (Recyclable Materials)	60.2	66.2	52	-312.0
American Organics (Compostable Materials)	154.0	143.0	95	1,045
Total Daily Miles Reduction	2,025.8			
Total Annual Miles Reduction (a	526,708			

Source: Athens Services, 2020.

## Table 4-7 Quantified Annual Greenhouse Gas Emissions (6,000 TPD)

Emission Source	MTCO2e/year
Construction (amortized over 30 years)	34.5
Area/energy	1,544
Convenience store/public gas station mobile	1,653
Onsite Equipment	843
Employee trips	1,501
Waste collection truck trips	-4,868
Transfer truck trips	-2,035
Self-Haul trips	-487
Total	-1,814
Significance threshold	0
Significant impact?	No

Source: The RCH Group, 2020.

# **Chapter 5.0 Transportation Energy Use**

# **5.1 Introduction**

This chapter augments the energy evaluation in 2014 RDEIR, to include more detailed analysis of energy use associated with transportation components of the Proposed Project, specifically including transportation energy use associated with passenger vehicles, waste collection trucks, and transfer trucks. While the 2014 RDEIR identified how the project would reduce overall energy consumption by reducing the transfer truck trip mileage within the region and reducing the amount of solid waste material that is ultimately disposed of at a landfill, this chapter and Chapter 4 (Greenhouse Gas Emissions) of the 2020 Recirculated DEIR more thoroughly evaluate the relationship between improved regional efficiencies and overall transportation energy use.

In addition to transportation energy, operation of the Proposed Project would require energy in the form of electricity and natural gas for building heating, cooling, cooking, lighting, water demand and wastewater treatment, consumer electronics, and other energy needs. Those energy demands were analyzed in the 2014 RDEIR and this chapter of the 2020 Recirculated DEIR does not revise or replace that discussion. The Superior Court decision found that the discussion of recycling and energy efficiency measures in the EIR provides sufficient analysis to satisfy CEQA. Thus, the analyses presented in this chapter are focused solely on the Proposed Project's transportation energy use.

## **5.2 Environmental Setting: Energy Demand and Conservation**

CEQA requires that EIRs address the potential energy impacts of proposed projects, and include mitigation measures proposed to minimize a project's significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, or unnecessary consumption of energy. The CEQA Guidelines also provide guidance that an EIR's analysis of wasteful and inefficient energy consumption shall address a project's projected transportation energy use requirements and its overall use of efficient transportation alternatives.

## 5.2.1 Overview of Energy Resources in California

The following discussion describes the different transportation energy resources that would be consumed by the Proposed Project.

## **Electricity and Renewable Energy**

Electricity is a consumptive commodity. The production of electricity requires the consumption or conversion of energy resources, including water, wind, oil, gas, coal, solar, geothermal, and nuclear resources, into energy. The delivery of electricity involves many components, including substations and transformers that lower transmission line power (voltage) to a level appropriate for onsite distribution and use. The electricity generated is distributed through a network of transmission and distribution lines commonly called a power grid.

Conveyance of electricity through transmission lines is typically responsive to market demands. California's electricity generation capacity is composed of multiple fuel sources, including hydroelectric, natural gas, nuclear, oil, petroleum coke, waste heat, biomass, geothermal, solar photovoltaic, solar thermal, wind and coal. The composition of California's in-State generation capacity (in megawatts, or MW) has increasingly shifted toward renewable resources in recent years since the 2002 passage of Senate Bill 1078, which required that 20 percent of electric production come from renewable resources by 2017, referred to as a Renewable Portfolio Standard (RPS). Subsequently, SB X1-2 in 2011 increased the RPS to 33 percent by 2020; and SB 350 in 2015 increased the RPS again to 50 percent renewables by the end of 2030.

Since adoption of the first RPS requirements, the State has significantly increased its portfolio of renewable resources. While natural gas-fired capacity is still the primary source of electricity generation, in the last few years, significant amounts of renewable resources have been brought on-line. Between 2001 and 2018, the generation capacity of electricity from renewable sources (including rooftop solar) has more than quadrupled, rising from 6,800 MW in 2001 to 30,800 MW in 2018<sup>38</sup>. The most significant increase in renewable sources is from utility-scale solar photovoltaic (PV) panels.

In 2018, the statewide generation was 194,727 gigawatt hours (GWh) of electric power.<sup>39</sup> Southern California Edison (SCE) estimates that electricity consumption within the SCE planning area will be approximately 124,287 GWh per year by 2027, when the Proposed Project would be fully operational.<sup>40</sup> SCE expects to have adequate electricity supply and transmission capability to meet the needs of its customers well beyond 2027.

<sup>38</sup> California Energy Commission, 2018 Integrated Energy Policy Report Update, https://ww2.energy.ca.gov/2018\_energypolicy/

<sup>39</sup> California Energy Commission, *California Energy Almanac*, Electric Generation Capacity & Energy, In-State Electric Generation by Fuel Type. <u>http://www.energy.ca.gov/almanac/ electricity\_data/electric\_generation\_capacity.html</u>

<sup>40</sup> California Energy Commission, Demand Analysis Office, "California Energy Demand Updated Forecast, 2017–2027, January 2017, <u>http://www.energy.ca.gov/</u>

## **Natural Gas**

Natural gas represents approximately one-third of the energy consumed in California each year. Its use falls mainly into four sectors—residential, commercial, industrial, and electric power generation—but it is also used as an alternative to petroleum for fuel in cars, trucks, and buses. Nearly 45 percent of the natural gas burned in California is used for electricity generation, with the remaining 55 percent consumed by residential (28%), industrial (53%), commercial (16%), and transportation (3%) uses. California relies on out-of-state imports for nearly 90 percent of all-natural gas consumed in the State. Statewide consumption of natural gas totaled 1,573 trillion Btu in 2018 (2,137 billion cubic feet).<sup>41</sup>

The 2018 California Gas Report indicates that sufficient capacity exists in the utility network to meet demand in Southern California for the foreseeable future. The total gas supply available in 2025 is estimated to be 2,456 million cubic feet per day; Southern California Gas Company (SoCalGas) anticipates it will have sufficient capability to meet future needs.<sup>42</sup> SoCalGas is responsible for providing natural gas supply to the City of Irwindale and is regulated by the California Public Utilities Commission and other state agencies. According to SoCalGas data, natural gas sales have been relatively stable over the past few years with a slight increase from 287 billion cubic feet to 294 billion cubic feet.<sup>43</sup>

## Petroleum

California's production of gasoline in December 2018 was approximately 6.5 million barrels per week, and the State had an inventory of gasoline and blend stocks of about 10.9 million barrels per week. Over the preceding five years, production ranged from about 5.3 to 8.1 million barrels per week, while inventories averaged about 10.7 million barrels per week.<sup>44</sup>

The State's diesel fuel production in December 2018 was approximately 2.3 million barrels per week, with an inventory of about 3.6 million barrels per week. Over the preceding five years, production ranged from roughly 1.6 to 3.3 million barrels per week, while inventories ranged from about 2.7 to 4.7 million barrels per week.<sup>45</sup>

https://www.eia.gov/state/seds/data.php?incfile=/state/seds/sep\_fuel/html/fuel\_use\_ng.html&sid=US&sid=CA 42 California Gas and Electric Utilities, 2018 California Gas Report,

https://www.socalgas.com/regulatory/documents/cgr/2018 California Gas Report.pdf

43 California Gas and Electric Utilities, 2018 California Gas Report,

https://www.energy.ca.gov/almanac/petroleum data/petroleum watch/2018 Petroleum Watch/

45 California Energy Commission, Energy Assessments Division, Supply Analysis Office, *Petroleum Watch December 2018*, Figure 9: Diesel Production and Inventories, 2018, https://www.energy.ca.gov/almanac/petroleum data/petroleum watch/2018 Petroleum Watch/

<sup>41</sup> United States Energy Information Administration, California State Profile and Energy Estimates, Data, Table F18: Natural Gas Consumption Estimates, 2018,

https://www.socalgas.com/regulatory/documents/cgr/2018 California Gas Report.pdf

<sup>44</sup> California Energy Commission, Energy Assessments Division, Supply Analysis Office, *Petroleum Watch December 2018*, Figure 8: Gasoline Production and Inventories, 2018,

The Petroleum Industry Information Reporting Act (PIIRA) requires all retail transportation fueling stations in California to file a Retail Fuel Outlet Annual Report (CEC-A15). These stations report retail sales of gasoline, diesel, and other transportation fuels. The California Energy Commission (CEC) compiles these reports into statewide data, which it compares to California Board of Equalization data, which tracks all gasoline and diesel sales in California for taxation purposes. Based on the results of this data tracking, the CEC reports that retail sales of gasoline throughout the State in 2018 totaled 13.475 billion gallons.<sup>46</sup> Statewide retail diesel sales in 2018 totaled 37.82 million gallons (gasoline gallons equivalent). Sales data reported does not include commercial fleets, government entities, or rental facilities/equipment yards.

According to the CEC, transportation accounts for nearly 37 percent of California's total energy consumption. According to the California Air Resources Board (CARB) On-road Vehicle Emissions Factor Model, the average fuel economy for the fleet-wide mix of vehicles operating in the South Coast Air Basin region is approximately 20.2 miles per gallon for gasoline-fueled vehicles and approximately 7.8 miles per gallon for diesel-fueled vehicles. Gasoline-fueled vehicles account for approximately 96.1 percent of the total vehicles and diesel-fueled vehicles account for approximately 3.6 percent of the total. Electric vehicles account for approximately 0.3 percent of the total vehicles.<sup>48</sup> These vehicle type percentages are continually changing due to availability, buyer preferences and regulations, with a recent trend being a small increase in the percent of electric and hybrid electric vehicles, and a small decrease in diesel vehicles.

## 5.3 Regulatory Setting

Federal and State agencies regulate energy consumption through various policies, standards, and programs. At the federal level, energy standards apply to numerous products (e.g., the U.S. Environmental Protection Agency's [USEPA's] EnergyStar<sup>TM</sup> program) and transportation (e.g., fuel efficiency standards). At the state level, Title 24 of the California Code of Regulations sets forth energy standards for buildings. Further, the State provides rebates/tax credits for installation of renewable energy systems and offers the "Flex Your Power" program that promotes conservation in multiple areas. At the local level, individual cities and counties can establish policies in their general plans and climate action plans (CAPs) related to the energy efficiency of new development and land use planning and to the use of renewable energy sources. Applicable federal, state, and local regulations are discussed below.

47 California Energy Commission, California Retail Fuel Outlet Annual Reporting (CEC-A15) Results, 2018, http://www.energy.ca.gov/almanac/transportation\_data/gasoline/piira\_retail\_survey.html

48 California Air Resources Board, EMFAC2014 User's Guide, April 30, 2014,

<sup>46</sup> California Energy Commission, California Retail Fuel Outlet Annual Reporting (CEC-A15) Results, 2018, http://www.energy.ca.gov/almanac/transportation\_data/gasoline/piira\_retail\_survey.html

http://www.arb.ca.gov/msei/downloads/emfac2014/emfac2014-vol1-users-guide-052015.pdf

## **Federal Energy Policy and Conservation Act**

In 1975, Congress enacted the Federal Energy Policy and Conservation Act, which established the first fuel economy standards for on-road motor vehicles in the U.S. Pursuant to the act, the National Highway Traffic Safety Administration is responsible for establishing additional vehicle standards. In 2010, fuel economy standards were set at 27.5 miles per gallon for new passenger cars and 23.5 miles per gallon for new light trucks. Fuel economy is determined based on each manufacturer's average fuel economy for the fleet of vehicles available for sale in the U.S., referred to as the Corporate Average Fuel Economy (CAFE) standards.

## **Energy Independence and Security Act of 2007**

On December 19, 2007, the Energy Independence and Security Act of 2007 (EISA) was signed into law. In addition to setting increased CAFE standards for motor vehicles, the act includes other provisions related to energy efficiency:

- Renewable fuel standard (RFS) (Section 202)
- Appliance and lighting efficiency standards (Sections 301–325)
- Building energy efficiency (Sections 411–441)

EISA requires increasing use of renewable fuels over time to replace petroleum (Section 202, RFS). The USEPA is responsible for developing and implementing regulations to ensure that transportation fuel sold in the United States contains a minimum volume of renewable fuel. The RFS program regulations were developed in collaboration with refiners, renewable fuel producers, and many other stakeholders. The RFS program was created under the Energy Policy Act of 2005 and established the first renewable fuel volume mandate in the United States. As required under the act, the original RFS program (RFS1) required 7.5 billion gallons of renewable fuel to be blended into gasoline by 2012.

Under EISA, the RFS program was expanded in several key ways that laid the foundation for achieving significant reductions of greenhouse gas (GHG) emissions through the use of renewable fuels, for reducing imported petroleum, and for encouraging the development and expansion of our nation's renewable fuels sector. The updated program is referred to as RFS2 and includes the following:

- Expanded the RFS program to include diesel, in addition to gasoline.
- Increased the volume of renewable fuel required to be blended into transportation fuel from 9 billion gallons in 2008 to 36 billion gallons by 2022.
- Established new categories of renewable fuel and set separate volume requirements for each one.
- Required the USEPA to apply lifecycle GHG performance threshold standards to ensure that each category of renewable fuel emits fewer GHGs than the petroleum fuel it replaces.

## **USEPA and NHTSA Joint Rule for Vehicle Standards**

On April 1, 2010, the USEPA and the National Highway Traffic Safety Administration (NHTSA) announced a joint final rule to establish a national program consisting of new standards for lightduty vehicles for model years 2012 through 2016. The joint rule is intended to reduce GHG emissions and improve fuel economy. The USEPA promulgated the first-ever national GHG emissions standards under the Clean Air Act, and NHTSA promulgated CAFE standards under the Energy Policy and Conservation Act. The final rule became effective on July 6, 2010 (EPA and NHTSA 2010).

The USEPA GHG standards require new passenger cars, light-duty trucks, and medium-duty passenger vehicles to meet an estimated combined average emissions level of 250 grams of carbon dioxide (CO<sub>2</sub>) per mile in model year 2016, equivalent to 35.5 mpg if the automotive industry were to meet this CO<sub>2</sub> level through fuel economy improvements alone. The CAFE standards for passenger cars and light trucks will be phased in between 2012 and 2016, with the final standards equivalent to 37.8 mpg for passenger cars and 28.8 mpg for light trucks, resulting in an estimated combined average of 34.1 mpg. The rules will simultaneously reduce GHG emissions, improve energy security, increase fuel savings, and provide clarity and predictability for manufacturers (EPA and NHTSA 2010).

In August 2012, the USEPA and NHTSA approved a second round of GHG and CAFE standards for model years 2017 and beyond (EPA and NHTSA 2012). These standards will reduce motor vehicle GHG emissions to 163 grams of CO<sub>2</sub> per mile, which is equivalent to 54.5 mpg if this level were achieved solely through improvements in fuel efficiency, for cars and light-duty trucks by model year 2025. A portion of these improvements, however, will likely be made through improvements in air conditioning leakage and through use of alternative refrigerants, which would not contribute to fuel economy, but would reduce GHG emissions. The first phase of the CAFE standards (for model years 2017 to 2021) are projected to require, on an average industry fleet-wide basis, a range from 40.3 to 41.0 mpg in model year 2021.

The second phase of the CAFE program (for model years 2022 to 2025) is projected to require, on an average industry fleet-wide basis, a range from 48.7 to 49.7 mpg in model year 2025. The second phase of standards has not been finalized due to the statutory requirement that NHTSA set average fuel economy standards not more than five model years at a time. The regulations also include targeted incentives to encourage early adoption and introduction into the marketplace of advanced technologies to dramatically improve vehicle performance, including the following:

- Incentives for electric vehicles, plug-in hybrid electric vehicles, and fuel cell vehicles
- Incentives for hybrid technologies for large pickups and for other technologies that achieve high fuel economy levels on large pickups
- Incentives for natural gas vehicles

• Credits for technologies with potential to achieve real-world GHG reductions and fuel economy improvements that are not captured by the standards' test procedures.

## Senate Bill 1389

Senate Bill 1389 (SB 1389, Bowen and Sher, Chapter 568, Statutes of 2002) requires the CEC to "conduct assessments and forecasts of all aspects of energy industry supply, production, transportation, delivery and distribution, demand, and prices. The commission shall use these assessments and forecasts to develop and evaluate energy policies and programs that conserve resources, protect the environment, ensure energy reliability, enhance the State's economy, and protect public health and safety." In compliance with SB 1389, the CEC – in collaboration with federal, State, and local agencies and a wide variety of stakeholders – prepares a biannual Integrated Energy Policy Report (IEPR) that assesses current energy trends and prescribes policies to further the goals established by SB 1389. The most recent IEPR was adopted in February 2017 and updates have been published for 2018 and 2019.

## CARB Heavy-Duty On-Road and Off-Road Vehicle Regulations

In 2004, the CARB adopted an Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling in order to reduce public exposure to diesel particulate matter emissions (Title 13 California CCR Section 2485). The measure applies to diesel-fueled commercial vehicles with gross vehicle weight ratings greater than 10,000 pounds that are licensed to operate on highways, regardless of where they are registered. This measure does not allow diesel-fueled commercial vehicles to idle for more than 5 minutes at any given location. While the goal of this measure is primarily to reduce public health impacts from diesel emissions, compliance with the regulation also results in energy savings in the form of reduced fuel consumption from unnecessary idling.

In addition to limiting exhaust from idling trucks, CARB also promulgated emission standards for off-road diesel construction equipment of greater than 25 horsepower (hp) such as bulldozers, loaders, backhoes and forklifts, as well as many other self-propelled off-road diesel vehicles. The In-Use Off-Road Diesel-Fueled Fleets regulation adopted by CARB on July 26, 2007 aims to reduce emissions by installation of diesel soot filters and encouraging the retirement, replacement, or repower of older, dirtier engines with newer emission-controlled models (13 CCR Section 2449).

The compliance schedule requires full implementation by 2023 in all equipment for large and medium fleets and by 2028 for small fleets. While the goal of this measure is primarily to reduce public health impacts from diesel emissions, compliance with the regulation has shown an increase in energy savings in the form of reduced fuel consumption from more fuel-efficient engines.

## **Irwindale Energy Conservation General Plan Goals**

The Resource Management Element of the Irwindale General Plan (Section 5) meets the State's requirements for an open space element and a conservation element. This Element also identifies those programs that will aid in preventing their loss or wasteful exploitation.<sup>49</sup>

The Resource Management Element Policies included in the Resource Management Element focus on natural resources, open space resources, resource preservation, and mining and reclamation issues. Policy 11 supports the conservation of non-renewable resources that include transportation fuels.

## **Resource Management Element, Resource Management Element Policies, Policy 11**

The City of Irwindale supports the ethic of conservation of non-renewable resources. This includes efforts to reduce energy use (in any form), greenhouse gas (GHG) emissions (consistent with AB 32) and efforts to find new and more energy efficient methods for delivering services. The City supports the development of building standards that enable the community to design energy saving features such as solar energy systems, water efficient landscaping, and sustainable, green, and energy efficient building standards. The Resource Management Element Programs are provided to effectively implement the policies contained in the Resource Management Element, and all programs are implemented following the guidelines contained in the General Plan, Section 7.<sup>50</sup>

## **Resource Management Element, Resource Management Element Programs**

The City shall continue to enforce the energy conservation standards in Title 24 of the California Administrative Code, the Uniform Building Code, and other State laws on energy conservation design, insulation, and appliances. Energy needs shall be evaluated and conservation measures incorporated into new development in accordance with Appendix F of the State CEQA Guidelines. Other measures that would reduce energy consumption during construction and subsequent operation of new development shall be encouraged. The City will continue to work with Sempra and the Southern California Gas Company to promote energy conservation practices.

## **5.4 Impact Assessment**

This analysis augments the energy conservation analysis contained within the 2014 RDEIR, and specifically analyzes the transportation energy impacts of the Proposed Project.

<sup>49</sup> City of Irwindale, 2020 General Plan, *Section 5 Resource Management Element* https://www.irwindaleca.gov/documentcenter/view/38

<sup>50</sup> City of Irwindale, 2020 General Plan, *Section 7 Implementation Element* https://www.irwindaleca.gov/documentcenter/view/38

Transportation energy use impacts would be associated with passenger vehicle trips and solid waste hauling trips. New passenger vehicle trips would include employee trips, and trips generated by the Project's convenience store / public gas station. Solid waste hauling trips would include trips by self-haulers (i.e., individuals or small construction contractors who haul their own waste, usually in personal passenger vehicles, pick-up trucks, or small trailers), commercial waste collection trucks (which pick up waste from various markets in the region and deliver it to the MRF/TS), and commercial transfer truck trips (which transport sorted and processed materials from the MRF/TS to a landfill, recycling processor, or a composting facility).

## 5.4.1 THRESHOLDS OF SIGNIFICANCE

The standards of significance for the analysis of transportation energy impacts are based on energy questions in Appendix G (Environmental Checklist form) and Appendix F (Energy Conservation) of the CEQA Guidelines.

Neither the CEQA Guidelines (Appendix G) nor Public Resources Code Section 21100(b)(3) provide a specific threshold for impacts associated with transportation energy consumption. However, Appendix F of the CEQA Guidelines (14 CCR 15000 et seq.) provides guidance for evaluating whether a development project may result in significant energy impacts. Based on Appendix F of the CEQA Guidelines, the standard of significance for this analysis of transportation energy impacts will evaluate whether the project would:

- Result in wasteful, inefficient, or unnecessary consumption of transportation energy resources.
- Require the construction of new or expanded energy production facilities or infrastructure, the construction of which could cause significant environmental impacts.

## 5.4.2 THRESHOLD TRANSPORTATION ENERGY-1

# Would the Project result in wasteful, inefficient, or unnecessary consumption of transportation energy resources?

## Less Than Significant Impact

Pursuant to the 2014 RDEIR and its Traffic Impact Analysis, the Proposed Project is anticipated to generate 345 new employee trips<sup>51</sup> and 741 new convenience store/public gas station trips.<sup>52</sup> The average one-way travel distances for the Proposed Project are estimated to be 16.6 miles for

<sup>51</sup> Based on CARB's EMFAC, approximately 99.7 percent of employee vehicle trips are gasoline vehicles and 0.3 percent of vehicle trips are diesel vehicles. Employee trips were modeled using the light-duty auto classification. 52 Based on CARB's EMFAC, approximately 99.7 percent of convenience store/service station vehicle trips are gasoline vehicles and 0.3 percent of vehicle trips are diesel vehicles. Convenience store/service station trips were modeled using the light-duty auto classification.

employees, and 8.4 miles for the convenience store/public gas station trips.<sup>53,54</sup> These values were identified in the 2014 RDEIR and are not revised or modified by this 2020 Recirculated DEIR.

The 2016 Final EIR explained that the Proposed Project would not create new waste to be processed, and therefore does not generate new waste hauling truck trips. Instead, the Proposed Project would facilitate redistribution of existing waste hauling trips in a more efficient manner. Treating redistributed existing truck trips as new truck trips may make sense in the context of an air pollutant emissions analysis, because some air pollutant impacts on human health are location specific. Air pollutant emissions redistributed to occur closer or farther from sensitive receptors may affect the significance of the air pollutant emissions and the extent of the impact. However, in the transportation energy use context, location does not matter.<sup>55</sup> This is because a redistributed existing truck trip that still occurs in the same region, if not along the same route, would not cause an increase or decrease in the significance of that truck's energy use, unless it substantially increased the miles travelled (and therefore, the amount of energy expended). Here, as explained in more detail below, the Proposed Project reduces the vehicle miles traveled, and thus reduces the amount of energy expended.

As explained in detail in Chapter 4 (Greenhouse Gas Emissions), of this 2020 Recirculated DEIR, implementation of the Proposed Project is anticipated to result in a reduction of waste hauling truck trip miles. After accounting for the various locations of local markets, the distance between those markets and existing MRF/TS, landfill and composting facilities, and the Port of Long Beach (recycling), existing commercial waste collection truck trips and self-haul truck trips are anticipated to be reduced by approximately 1,205,646 miles annually, and existing commercial transfer truck trips are anticipated to be reduced by approximately 526,708 miles annually.<sup>56</sup> These reductions are from the existing condition, not from a hypothetical baseline.<sup>57</sup> Because CEQA is concerned with the change from existing condition caused by a proposed project, a reduction in vehicle miles traveled (and therefore a reduction in energy consumption) resulting from this

<sup>53</sup> Proposed Irwindale MRF/TS – Regional Efficiency Study, May 28, 2009.

<sup>54</sup> CalEEMod User's Guide, July 2013, http://www.caleemod.com/

<sup>55</sup> Notably, the Los Angeles Superior Court Judgment addressed by this 2020 Recirculated DEIR opined that the City of Irwindale could use a different assumption regarding the number of new trips for transportation energy impacts analysis than was used in the Project's air quality analysis, so long as the discrepancy is explained. (See Judgment, p. 17.)

<sup>56</sup> See Chapter 4 (Greenhouse Gas Emissions), Table 4-5 and Table 4-6.

<sup>57</sup> In *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4<sup>th</sup> 173, 210, the Court of Appeal rejected a lead agency argument that transportation energy impacts were less than significant because mitigation measures would reduce vehicle trips. The court found that the city could not how much less transportation energy is needed and could not conclude that an environmental impact is something less than some previously unknown amount. However, here, this 2020 Recirculated DEIR has quantitatively determined how much less energy would be required to move waste that would now be processed at the Proposed Project, as opposed to the existing condition, where the same waste is processed at facilities further away.

Project indicates that transportation energy use associated with waste hauling trips would not result in the wasteful or inefficient consumption of energy.

However, even if all waste collection trips were new trips (and they are not, as discussed above and as detailed within Chapter 4 Greenhouse Gas Emissions), the energy expended on waste collection trips, together with the new employee and convenience store / public gas station trips, would still not result in wasteful or inefficient energy consumption.

The Proposed Project proposes a maximum throughput of 6,000 tons per day. The maximum number of daily waste haul truck trips analyzed in the 2014 RDEIR was 2,456 truck round trips (including collection trucks, transfer trucks and self-haul trucks). At maximum throughput, the daily truck round trips would include 1,137 packer truck trips, 66 end dump truck trips, 445 roll-off truck trips, and 559 transfer truck trips.<sup>58</sup> The Proposed Project also includes 345 employee round trips,<sup>59</sup> 249 self-haul round trips,<sup>60</sup> and 741 convenience store/service station round trips.<sup>61</sup> As assumed in the 2014 RDEIR, the average one-way travel distances for the Proposed Project are estimated to be 9.1 miles for the collection/roll-off trucks and 8.4 miles for self-haul trucks.<sup>62,63</sup>

Standard fuel consumption estimates and estimates of the project-related trips and mileage were used to determine haul truck, self-haul, employee, and convenience store/public gas station activities. Table 5-1 provides the results of the analysis.

<sup>58</sup> Transfer trucks, roll-off trucks, packer trucks, and end-dump trucks were modeled using the T7 Solid Waste Collection Vehicle classification, which is a worst-case heavy-heavy duty truck classification for solid waste collection vehicles. Approximately 32 percent of haul truck trips would be diesel vehicles and 68 percent of haul truck trips would be CNG vehicles.

<sup>59</sup> Based on CARB's EMFAC, approximately 99.7 percent of employee vehicle trips are gasoline vehicles and 0.3 percent of vehicle trips are diesel vehicles. Employee trips were modeled using the light-duty auto classification.

<sup>60</sup> Based on CARB's EMFAC, approximately 79.2 percent of self-haul vehicle trips are gasoline vehicles and 20.8 percent of vehicle trips are diesel vehicles. Self-haul trucks would have substantially smaller payload capacities and were modeled using light-heavy duty truck classification.

<sup>61</sup> Based on CARB's EMFAC, approximately 99.7 percent of convenience store/service station vehicle trips are gasoline vehicles and 0.3 percent of vehicle trips are diesel vehicles. Convenience store/service station trips were modeled using the light-duty auto classification.

<sup>62</sup> Proposed Irwindale MRF/TS – Regional Efficiency Study, May 28, 2009.

<sup>63</sup> CalEEMod User's Guide, July 2013, http://www.caleemod.com/

Vehicle Type	Miles/ Year	Fuel Use (gallons or MCF)	Fuel Efficiency (mpg)	Diesel fuel Equivalent (gallons)
Diesel	4,347,155	564,670 gal	7.7 mpg	564,670
Gasoline	9,967,033	443,748 gal	22.5 mpg	384,197
CNG	24,580,504	566 MCF	6.1 mpg CNG diesel fuel equivalent	4,062,893
Total	38,894,692			5,011,761



Source: RCH Group, 2020

The analysis determined that transportation would annually require approximately five million gallons of diesel fuel equivalent (or 565,000 gallons of diesel fuel, 444,000 gallons of gasoline, and 566 million cubic feet of CNG)<sup>64</sup>, based on approximately 38,900,000 vehicle miles traveled.<sup>65</sup> This equates to a fuel efficiency of approximately 7.7 miles per gallon for diesel trucks, 22.5 miles per gallon for gasoline vehicles, and approximately 6.1 miles per gallon of diesel fuel equivalent for CNG trucks, which is reasonably consistent with the CEC estimates for the average fuel economy for the fleet-wide mix of vehicles operating in the South Coast Air Basin region.

Because the Proposed Project would develop a new MRF/TS facility within an extremely urbanized area close to existing waste markets, and because the fuel efficiency of the Project's associated passenger and commercial waste hauling vehicles would be similar to average fuel economy in the region, it can reasonably be concluded that the Project would not result in the wasteful or inefficient consumption of transportation-related energy resources. Impacts of transportation energy use would be *less than significant*.

<sup>64</sup> One DGE equals 139.3 cubic feet of natural gas and 1.155 DGE equals one gasoline gallon, https://afdc.energy.gov/fuels/equivalency\_methodology.html

<sup>65</sup>Fuel usage is estimated using a 10.2 kilograms CO<sub>2</sub>/gallon conversion factor for diesel, 8.78 kilograms CO<sub>2</sub>/gallon conversion factor for gasoline, and 120 pounds per cubic feet for CNG, as cited in the *U.S. Energy Information Administration Voluntary Reporting of Greenhouse Gases Program*, https://www.eia.gov/environment/pdfpages/0608s(2009)index.php
Further, according to SoCalGas data, natural gas sales have been relatively stable over the past few years with a slight increase from 287 billion cubic feet to 294 billion cubic feet.<sup>66</sup> The CNG consumption of the Proposed Project – even assuming all CNG truck trips are new trips, and not existing redistributed trips – would account for approximately two-tenths of one percent (0.2 percent) of SoCalGas sales. However, because the waste hauling trips would be redistributed and reduce the length existing trips, the Proposed Project would create a decrease in natural gas supplies of SoCalGas would be sufficient to support the Proposed Project's demand for natural gas from transportation-related operation activities. Therefore, impacts related to natural gas consumption would be a *less-than-significant impact* on energy resources, and no mitigation is required.

Retail sales of gasoline in California in 2018 totaled 13.475 billion gallons.<sup>67</sup> Statewide retail diesel sales in 2018 totaled 1.602 billion gallons.<sup>68</sup> With respect to operational transportation-related fuel usage, the Proposed Project would support statewide efforts to improve transportation energy efficiency because the Proposed Project would offer a facility that would, provide a new, MRF/TS located in closer proximity to many potential market communities (i.e., waste generation) and result in lower energy consummation from the regional efficiencies of adding the new MRF/TS.<sup>69</sup>

The Project's total gasoline consumption (fuel from all gasoline and diesel vehicles) would account for less than one-one-hundredth of one percent (0.01 percent) of regional petroleum sales. Therefore, existing and planned supplies would be sufficient to support the Project's demand for diesel and gasoline and potential impacts related to diesel and gasoline transportation energy use would be a *less-than-significant impact* on transportation energy resources, and no mitigation is required.

Given the regional efficiencies that would occur from the redistribution of waste hauling trips, and the minimal percent of regional fuel use calculated (even when not accounting for the fact that most trips would be reduced in length from the existing condition), it is concluded that the Proposed Project would not result in wasteful, inefficient, or unnecessary consumption of energy resources. Therefore, the project would have a *less-than-significant impact* on transportation energy resources, and no mitigation is required.

68 California Energy Commission, California Retail Fuel Outlet Annual Reporting (CEC-A15) Results, 2018,

http://www.energy.ca.gov/almanac/transportation\_data/gasoline/piira\_retail\_survey.html

69 California Gas and Electric Utilities, 2018 California Gas Report,

<sup>66</sup> California Gas and Electric Utilities, 2018 California Gas Report,

https://www.socalgas.com/regulatory/documents/cgr/2018\_California\_Gas\_Report.pdf

<sup>67</sup> California Energy Commission, California Retail Fuel Outlet Annual Reporting (CEC-A15) Results, 2018, <u>http://www.energy.ca.gov/almanac/transportation\_data/gasoline/piira\_retail\_survey.html</u>

https://www.socalgas.com/regulatory/documents/cgr/2018\_California\_Gas\_Report.pdf

#### 5.4.3 THRESHOLD TRANSPORTATION ENERGY-2

Would the Proposed Project require the construction of new or expanded energy production facilities or infrastructure, the construction of which could cause significant environmental impacts?

#### No Impact

As analyzed in Threshold Transportation Energy-1, the Proposed Project would have a less-thansignificant impact on fuel consumption. Even under the most conservative analysis (assuming all trips are new trips), fuel use would only increase in the range of one-hundredth of one percent for natural gas and petroleum fuels. The analysis indicated that Proposed Project would not require construction of new or expanded energy production facilities or infrastructure. No significant or potential significant transportation energy impacts (or other energy impacts) are anticipated with implementation of the Proposed Project. Therefore, no mitigation measures relative to this resource topic are proposed or required.

# **Chapter 6.0 Project-Specific Health Risks from Air Emissions**

# 6.1 Introduction

This chapter is intended to supplement the assessment of health risks that was presented in Chapter 3.3 of the 2014 RDEIR. According to the Superior Court decision, the EIR should be revised to relate the expected adverse air quality impacts to likely health consequences or explain in meaningful detail why it is not feasible to provide such an analysis. In its Friant Ranch decision, the California Supreme Court conceded that an explanation of the connection between an individual project's air pollutant emissions in excess of thresholds and human health effects may not be possible given the current state of environmental science modeling. However, the California Supreme Court concluded that the Friant Ranch Project EIR itself must explain, in a manner reasonably calculated to inform the public, the scope of what is and is not yet known about the effect of the Project's significant and unavoidable air quality impacts on human health.

As explained in detail below, modeling of the Irwindale MRF/TS Proposed Project's ozone emissions is not feasible and would not provide meaningful information given the magnitude of the emissions and the number of variables that affect ozone formation (e.g., mass of precursor emissions, background concentrations for all other emission sources in the air basin, location of activity and weather on that day that results in conversion of precursor emissions into ozone).

Consistent with the California Supreme Court's Friant Ranch decision, the analyses presented here provides additional details regarding the potential health effects from the proposed Irwindale MRF/TS's significant and unavoidable criteria pollutant emissions of NOx and ROG. It also explains why it is not scientifically feasible to substantively connect this individual Proposed Project's air quality impacts to likely health consequences. The criteria air pollutant emissions of NOx and ROG for the project are too small to model and obtain meaningful regional concentrations of criteria air pollutants and ozone.

The following information is intended to fulfil the requirements of the Superior Court decision related to the health impacts from significant and unavoidable air pollutant emissions of ROG and NOx, and related ozone. This chapter explains the health assessments that were presented in the 2014 RDEIR and describes, in a manner intended to inform the public, why additional modeling is not feasible or meaningful given the details of the Proposed Project and current state of air quality modeling.

# 6.2 Criteria Air Quality Pollutant Emissions and Health Impacts

In response to the California Supreme Court's Sierra Club v. County of Fresno decision (issued on December 24, 2018, and commonly referred to as the "Friant Ranch" decision), this response addresses the potential for adverse health effects from the emissions of criteria air pollutants associated with the proposed Irwindale MRF/TS, based on scientific information and technological methods available at this time. The Friant Ranch decision addresses the relationship between significant and unavoidable pollutant emissions to specific health consequences, where "*The EIR must provide an adequate analysis to inform the public how its bare numbers translate to create potential adverse impacts or it must explain what the agency does know and why, given existing scientific constraints, it cannot translate potential health impacts further.*" (Sierra Club v. County of Fresno, 2018).

Given that the air quality analysis for the Proposed Project identifies a significant and unavoidable project level and cumulative impacts with regard to reactive organic gases (ROG) and nitrogen oxides (NOx) emissions, the following response serves to address the requirements imposed under the Friant Ranch decision. [See 2014 RDEIR Threshold AQ-2 (pp. 3.3-34 to 3.3-47) and Cumulative Impacts (p. 3-3-73)]. As summarized in the 2014 RDEIR and reproduced in **Table 6-1** below, the Proposed Project's operational ROG and NOx emissions would exceed applicable SCAQMD regional mass daily thresholds. Per SCAQMD significance guidance, these impacts at the project level are also considered cumulatively significant and could persist (assuming maximum operations of 6,000 TPD at the MRF/TS) over the life of the Proposed Project. ROG and NOx are ozone precursors and emissions of ROG and NOx have the potential to contribute to existing ozone non-attainment conditions within the South Coast Air Basin (Air Basin)<sup>70</sup>.

As seen in **Table 6-1**, estimated daily emissions of ROG and NOx exceed the SCAQMD Thresholds of Significance for those air pollutants. As explained in more detail in this chapter, it is not possible to correlate the project-specific emissions identified in **Table 6-1** with adverse health impacts distinct from the total of emissions and resulting air quality within the surrounding air basin.

<sup>70</sup> Ozone (O3) is a highly reactive gas composed of three oxygen atoms. It is both a natural and a man-made molecule that occurs in the Earth's upper atmosphere (the stratosphere) and lower atmosphere (the troposphere). Depending on where it is in the atmosphere, ozone affects life on Earth in either good or bad ways. Ozone is formed in the lower atmosphere as a result of sunlight breaking down ROG and NOx molecules, where it is considered a pollutant.

The discussion below provides information on:

- Criteria air pollutants health impacts of O<sub>3</sub>, NO<sub>x</sub>, PM<sub>10</sub> and PM<sub>2.5</sub>, and ROGs
- Health impacts that were thoroughly evaluated in the 2014 RDEIR
- Amicus Brief by the South Coast Air Quality Management District (SCAQMD) in the Friant Ranch decision
- Amicus Brief by the San Joaquin Valley Air Pollution Control District (SJVAPCD) in the Friant Ranch decision
- Conclusions

Appendix 1 – Criteria Air Pollution Regulations and Local Status has been added to this 2020 RDEIR with updated information on:

- USEPA and CARB Ambient Air Quality Standards (NAAQS and CAAQS)
- Criteria air pollutants status and control/regulation in the South Coast Basin

# Table 6-1 Estimated Daily Mitigated Proposed Project Emissions from Project Operation (lbs./day)

Project Phase	ROG	NOx	CO	PM10	PM2.5
Truck Idle	1.92	19.4	10.4	0.08	0.07
Collection Trucks (Local)	22.2	421	88.8	5.57	5.13
Transfer Trucks to Landfill	14.3	327	57.2	4.00	3.68
Transfer Trucks to Recycling	9.82	224	39.2	2.74	2.52
Transfer Trucks to Composting	11.4	261	45.7	3.20	2.94
Self-Haul Trucks	1.73	29.8	15.5	0.40	0.37
Employee Vehicles	0.90	2.79	33.2	0.05	0.05
On-site Equipment	1.66	32.4	54.6	1.66	1.64
Convenience Store	0.99	3.07	36.6	0.06	0.05
Service Station	8.46	-	-	-	-
Area Sources	7.77	1.24	1.08	0.09	0.09
Total Proposed Project	81	1,323	382	18	17
Significant (Yes or No)?	Yes	Yes	No	No	No
SCAQMD Thresholds of Significance	55	55	550	150	55

*Source: Irwindale Materials Recovery Facility and Transfer Station Project 2014 RDEIR* (*Table 3.3-15 on page 3.3-45*)

# **6.3** Criteria Air Pollutant Health Impacts

"Criteria" air pollutants refer to those air pollutants for which the USEPA has established NAAQS under the Federal Clean Air Act, including CO,  $NO_x$ ,  $SO_2$ ,  $PM_{10}$ ,  $PM_{2.5}$ ,  $O_3$  and lead. California has adopted ambient standards (known as CAAQS) that are more stringent than the federal standards for some criteria air pollutants. The following provides a brief summary of the potential health and welfare effects and typical sources of each of the criteria air pollutants and air toxics.

Numerous scientific studies published over the past 50 years point to the harmful effects of air pollution. The AAQS are designed to prevent these effects. The adverse health effects associated with air pollution are diverse and include<sup>71</sup>:

- Premature mortality
- Cardiovascular effects
- Increased health care utilization (hospitalization, physician and emergency room visits)
- Increased respiratory illness and other morbidity (symptoms, infections, and asthma exacerbation
- Decreased lung function (breathing capacity)
- Lung inflammation
- Potential immunological changes
- Increased airway reactivity to a known pharmacological agent exposure a method used in laboratories to evaluate the tendency of airways to have an increased possibility of developing an asthmatic response
- A decreased tolerance for exercise
- Adverse birth outcomes such as low birth weights

The evidence linking these effects to air pollutants is derived from population-based observational and field studies (epidemiological) as well as controlled laboratory studies involving human subjects and animals. There have been an increasing number of studies focusing on the mechanisms (that is, on learning how specific organs, cell types, and biomarkers are involved in the human body's response to air pollution) and specific pollutants responsible for individual effects. Yet the underlying biological pathways for these effects are not always clearly understood.<sup>72</sup>

<sup>71</sup> South Coast Air Quality Management District, 2016 Air Quality Management Plan Appendix I, Health Effects, March 2017, <u>https://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2016-air-quality-management-plan/final-2016-aqmp/appendix-i.pdf?sfvrsn=14</u>

<sup>72</sup> South Coast Air Quality Management District, 2016 Air Quality Management Plan Appendix I, Health Effects, March 2017, <u>https://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2016-air-quality-management-plan/final-2016-aqmp/appendix-i.pdf?sfvrsn=14</u>

Although individuals inhale pollutants as a mixture under ambient conditions, the regulatory framework and the control measures developed are pollutant-specific for six major outdoor pollutants covered under Sections 108 and 109 of the Clean Air Act. This is appropriate, in that different pollutants usually differ in their sources, their times and places of occurrence, the kinds of health effects they may cause, and their overall levels of health risk. Different pollutants, from the same or different sources, oftentimes occur together. Evidence for more than additive effects has not been strong and, as a practical matter, health scientists, as well as regulatory officials, usually must deal with one pollutant at a time in adopting AAQS.<sup>73</sup>

Health effects associated with criteria air pollutants are discussed below. Similar information was provided in the 2014 RDEIR [pp. 3.3-4 to 3.3-7], however, the following descriptions add to the information in the 2014 RDEIR (for O<sub>3</sub>, NO<sub>x</sub>, PM<sub>10</sub>, PM<sub>2.5</sub> and ROGs) with more current health effects references.

#### 6.3.1 Ozone (O<sub>3</sub>)

 $O_3$  is a respiratory irritant and an oxidant that increases susceptibility to respiratory infections and that can cause substantial damage to vegetation and other materials.  $O_3$  is not emitted directly into the atmosphere but is a secondary air pollutant produced in the atmosphere through a complex series of photochemical reactions involving ROG and  $NO_x$ . ROG and  $NO_x$  are therefore known as precursor compounds for  $O_3$ . Substantial ozone production generally requires  $O_3$  precursors to be present in a stable atmosphere with strong sunlight for approximately three hours.  $O_3$  is defined as a regional air pollutant because it is not emitted directly by specific sources but is formed downwind of sources of ROG and  $NO_x$  under the influence of wind and sunlight.  $O_3$  concentrations tend to be higher in the late spring, summer, and fall, when long sunny days combine with regional air subsidence inversions to create conditions conducive to the formation and accumulation of secondary photochemical compounds.

Inhalation of  $O_3$  causes inflammation and irritation of the tissues lining human airways, causing and worsening a variety of symptoms. Exposure to  $O_3$  can reduce the volume of air that the lungs breathe in and cause shortness of breath.  $O_3$  in sufficient doses increases the permeability of lung cells, rendering them more susceptible to toxins and microorganisms. The occurrence and severity of health effects from  $O_3$  exposure vary widely among individuals, even when the dose and the duration of exposure are the same. Research shows adults and children who spend more time outdoors participating in vigorous physical activities are at greater risk from the harmful health effects of  $O_3$  exposure.

<sup>73</sup> South Coast Air Quality Management District, 2016 Air Quality Management Plan Appendix I, Health Effects, March 2017, <u>https://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2016-air-quality-management-plan/final-2016-aqmp/appendix-i.pdf?sfvrsn=14</u>

While there are relatively few studies of ozone's effects on children, the available studies show that children are no more or less likely to suffer harmful effects than adults. However, there are a number of reasons why children may be more susceptible to  $O_3$  and other pollutants. Children and teens spend nearly twice as much time outdoors and engaged in vigorous activities as adults. Children breathe more rapidly than adults and inhale more pollution per pound of their body weight than adults. Also, children are less likely than adults to notice their own symptoms and avoid harmful exposures. Further research may be able to better distinguish between health effects in children and adults. Children, adolescents and adults who exercise or work outdoors, where  $O_3$  concentrations are the highest, are at the greatest risk of harm from this pollutant.<sup>74</sup>

A number of population groups are potentially at increased risk for  $O_3$  exposure effects. In the ongoing review of  $O_3$ , the USEPA has identified populations as having adequate evidence for increased risk from  $O_3$  exposures include individuals with asthma, younger and older age groups, individuals with reduced intake of certain nutrients such as Vitamins C and E, and outdoor workers. There is suggestive evidence for other potential factors, such as variations in genes related to oxidative metabolism or inflammation, gender, socioeconomic status, and obesity. However further evidence is needed.<sup>75</sup> The adverse effects reported with short-term  $O_3$  exposure are greater with increased activity because activity increases the breathing rate and the volume of air reaching the lungs, resulting in an increased amount of  $O_3$  reaching the lungs.<sup>76</sup>

#### 6.2.2 Nitrogen Oxides (NO<sub>x</sub>)

When combustion temperatures are extremely high, as in aircraft, truck and automobile engines, atmospheric nitrogen combines with oxygen to form various oxides of nitrogen. Nitric oxide (NO) and nitrogen dioxide (NO<sub>2</sub>) are the most significant air pollutants generally referred to as  $NO_x$ . Nitric oxide is a colorless and odorless gas that is relatively harmless to humans, quickly converts to  $NO_2$  and can be measured. Nitrogen dioxide has been found to be a lung irritant capable of producing pulmonary edema. Inhaling  $NO_2$  can lead to respiratory illnesses such as bronchitis and pneumonia. Nitrate particles and  $NO_2$  can also block the transmission of light, reducing visibility in urban areas.

<sup>74</sup> California Air Resources Board, Ozone & Health, 2019, <u>https://ww2.arb.ca.gov/resources/ozone-and-health</u> 75 South Coast Air Quality Management District, 2016 Air Quality Management Plan Appendix I, Health Effects, March 2017, <u>https://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2016-air-quality-management-plan/final-2016-aqmp/appendix-i.pdf?sfvrsn=14</u>

<sup>76</sup> South Coast Air Quality Management District, 2016 Air Quality Management Plan Appendix I, Health Effects, March 2017, <u>https://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2016-air-quality-management-plan/final-2016-aqmp/appendix-i.pdf?sfvrsn=14</u>

A large body of health science literature indicates that exposure to  $NO_2$  can induce adverse health effects. The strongest health evidence, and the health basis for the AAQS for  $NO_2$ , results from controlled human exposure studies that show that  $NO_2$  exposure can intensify responses to allergens in allergic asthmatics. In addition, a number of epidemiological studies have demonstrated associations between  $NO_2$  exposure and premature death, cardiopulmonary effects, decreased lung function growth in children, respiratory symptoms, emergency room visits for asthma, and intensified allergic responses.

As with other pollutants, infants and children are particularly at risk because they have disproportionately higher exposure to NO<sub>2</sub> than adults due to their greater breathing rate for their body weight and their typically greater outdoor exposure duration. Several studies have shown that long-term NO<sub>2</sub> exposure during childhood, the period of rapid lung growth, can lead to smaller lungs at maturity in children with higher compared to lower levels of exposure. In addition, children with asthma have a greater degree of airway responsiveness compared with adult asthmatics. In adults, the greatest risk is to people who have chronic respiratory diseases, such as asthma and chronic obstructive pulmonary disease.<sup>77</sup>

#### 6.3.2 Particulate Matter (PM<sub>10</sub> and PM<sub>2.5</sub>)

 $PM_{10}$  and  $PM_{2.5}$  represent fractions of particulate matter that can be inhaled into the air passages and the lungs, causing adverse health effects. Particulate matter in the atmosphere results from many kinds of dust– and fume–producing industrial and agricultural operations, fuel combustion, wood burning stoves and fireplaces, and atmospheric photochemical reactions. Some sources of particulate matter, such as demolition, construction activities and mining, are more local in nature, while others, such as vehicular traffic and wood burning stoves and fireplaces, have a more regional effect.

For  $PM_{2.5}$ , short-term exposures (up to 24-hours duration) have been associated with premature mortality, increased hospital admissions for heart or lung causes, acute and chronic bronchitis, asthma attacks, emergency room visits, respiratory symptoms, and restricted activity days. These adverse health effects have been reported primarily in infants, children, and older adults with preexisting heart or lung diseases. In addition, of all of the common air pollutants,  $PM_{2.5}$  is associated with the greatest proportion of adverse health effects related to air pollution, both in the United States and world-wide based on the World Health Organization's Global Burden of Disease Project. Short-term exposures to  $PM_{10}$  have been associated primarily with worsening of respiratory diseases, including asthma and chronic obstructive pulmonary disease, leading to hospitalization and emergency room visits.<sup>78</sup>

<sup>77</sup> California Air Resources Board, 2019, Nitrogen Dioxide & Health, <u>https://ww2.arb.ca.gov/resources/nitrogen-dioxide-and-health</u>

<sup>78</sup> California Air Resources Board, 2019, Inhalable Particulate Matter Health, https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health

Long-term (months to years) exposure to  $PM_{2.5}$  has been linked to premature death, particularly in people who have chronic heart or lung diseases, and reduced lung function growth in children. The effects of long-term exposure to  $PM_{10}$  are less clear, although several studies suggest a link between long-term  $PM_{10}$  exposure and respiratory mortality.

The International Agency for Research on Cancer published a review in 2015 that concluded that PM in outdoor air pollution causes lung cancer.<sup>79</sup> People with influenza, people with chronic respiratory and cardiovascular diseases, and older adults may suffer worsening illness and premature death as a result of breathing PM. People with bronchitis can expect aggravated symptoms from breathing PM. Children may experience a decline in lung function due to breathing in PM<sub>10</sub> and PM<sub>2.5</sub>.

Very small particles of certain substances (e.g., sulfates and nitrates) can cause lung damage directly, or can contain adsorbed gases (e.g., chlorides or ammonium) that may be injurious to health. Particulates can also damage materials and reduce visibility. Dust comprised of large particles settles out rapidly and is easily filtered by human breathing passages. This dust is of concern more as a soiling nuisance rather than a health hazard. The remaining fractions,  $PM_{10}$  and  $PM_{2.5}$ , are a health concern particularly at levels above the Federal and State ambient air quality standards.  $PM_{2.5}$  (including diesel exhaust particles) is thought to have greater effects on health, because these particles are so small and thus are able to penetrate to the deepest parts of the lungs.

Acute and chronic health effects associated with high particulate levels include the aggravation of chronic respiratory diseases, heart and lung disease, and coughing, bronchitis, and respiratory illnesses in children. Mortality studies since the 1990s have shown a statistically significant direct association between mortality (premature deaths) and daily concentrations of particulate matter in the air. Despite important gaps in scientific knowledge and continued reasons for some skepticism, a comprehensive evaluation of the research findings provides persuasive evidence that exposure to fine particulate air pollution has adverse effects on cardiopulmonary health. The CARB has estimated that achieving the ambient air quality standards for  $PM_{10}$  could reduce premature mortality rates by 6,500 cases per year.<sup>80</sup>

<sup>79</sup> California Air Resources Board, 2019, Inhalable Particulate Matter Health, <a href="https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health">https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health</a>
80 California Air Resources Board, 2019, Inhalable Particulate Matter Health, <a href="https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health">https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health</a>
80 California Air Resources Board, 2019, Inhalable Particulate Matter Health, <a href="https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health">https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health</a>

#### 6.3.3 Reactive Organic Gases (ROGs) / Volatile Organic Compounds (VOCs)

The terms ROG and VOC are often used interchangeably, and the terminology will vary from air district to air district. Volatile organic compounds (VOC) means any compound of carbon, excluding carbon monoxide, carbon dioxide (CO<sub>2</sub>), carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions and thus, a precursor of ozone formation. ROGs are any reactive compounds of carbon, excluding methane, CO, CO<sub>2</sub> carbonic acid, metallic carbides or carbonates, and other exempt compounds.

ROGs include a variety of chemicals, some of which may have short- and long-term adverse health effects. ROGs are emitted by a wide array of products numbering in the thousands. Examples include paints and lacquers, paint strippers, cleaning supplies, building materials and furnishings as well as fuel storage and use.

ROGs can cause eye, nose, and throat irritation, headaches, loss of coordination, nausea, and damage to liver, kidney, and central nervous system. Some organics can cause cancer in animals; some are suspected or known to cause cancer in humans. The ability of organic chemicals to cause health effects varies greatly from those that are highly toxic, to those with no known health effect. As with other pollutants, the extent and nature of the health effect will depend on many factors including level of exposure and length of time exposed. Eye and respiratory tract irritation, headaches, dizziness, visual disorders, and memory impairment are among the immediate symptoms that some people have experienced soon after exposure to some organics.

# 6.4 Health Impacts Evaluations in the 2014 RDEIR

The 2014 RDEIR included two analyses that quantified the air emission and health impacts at receptors near the project site. These were the Health Risk Assessment (HRA) for the Toxic Air Contaminants (TACs) and evaluation of project construction and operation on the AAQS concentrations for criteria pollutants near the Project site (a modified [refined] Local Significance Threshold [LST] analysis).

The 2014 RDEIR included all the air quality modeling recommended by the SCAQMD at the time. The EIR preparation team communicated with the Air District regarding the appropriate baseline assumptions and modeling that was included in the Final EIR. Although the 2014 RDEIR did not include photochemical ozone modeling, or other regional air quality modeling, the 2014 RDEIR air quality analysis does include a Health Risk Assessment (HRA) for toxic air contaminants and a site-specific localized impact analysis that does review the concentrations of criteria air pollutants of concern at sensitive receptor locations, including the nearest residences. The TAC HRA evaluated the potential local health (cancer) impacts to adjacent land uses due to exposure to diesel exhaust from trucks accessing the site; (see Pages 12 through 14 of SCAQMD Amicus Brief).

#### 6.4.1 Toxic Air Contaminant Health Risk Assessment

The 2014 RDEIR Threshold AQ-5 analysis included an HRA that evaluated TACs (beginning on page 3.3-55 and also Appendix C) for construction and operations. The risk level at all receptors was less than the SCAQMD significance threshold of 10 in one million. The 2014 RDEIR also evaluated the non-cancer chronic and acute project health impact risks (with comparisons to the Hazard Index) from the TACs and non-cancer chronic and acute impacts of the Proposed Project were both less than significant (RDEIR p. 3.3-57).

#### 6.4.2 Local Air Quality Impact and Health Risk Assessment

As documented within the 2014 RDEIR, under the unmitigated operational condition, the carbon monoxide (CO) impacts including background concentrations are 3.2 and 1.4 parts per million (ppm) for the 1-hour and 8-hour averaging periods, respectively; well below the thresholds of 20 and 9 ppm, respectively. Under the unmitigated operational condition, the NO<sub>2</sub> impacts including background concentrations are 0.19 and 0.02 ppm for the 1-hour and annual averaging periods, respectively. The unmitigated 1-hour NO<sub>2</sub> impact is above the threshold of 0.18 ppm. The SO<sub>2</sub> impacts are less than 0.01 ppm as a result of ultra-low sulfur diesel. Diesel fuel does not contain lead emissions and gasoline fuel is unleaded.

The project operation incremental  $PM_{10}$  impacts are 2.1 for 24-hour impact and 0.3 microgram per cubic meter ( $\mu g/m^3$ ) for annual impacts. The unmitigated impacts for 24-hour  $PM_{10}$  is above the 24-hour threshold of 2.5  $\mu g/m^3$ . The project operation incremental  $PM_{2.5}$  impacts are 1.9  $\mu g/m^3$  for 24-hour impacts; well below the 24-hour threshold of 2.5  $\mu g/m^3$ .

From the 2014 RDEIR, **MM AQ-12 through MM AQ-18** would reduce the 1-hour NO<sub>2</sub> impacts including background concentrations to 0.15 ppm; which is below the threshold of 0.18 ppm. The 24-hour PM<sub>10</sub> and PM<sub>2.5</sub> impacts would be  $1.1 \,\mu\text{g/m}^3$ ; below the 24-hour threshold of  $2.5 \,\mu\text{g/m}^3$ . Thus, air quality impacts from NOx and PM<sub>10</sub> emissions from the Proposed Project are **less than significant with mitigation**.

## 6.5 South Coast Air Quality Management District (SCAQMD) Amicus Brief<sup>81</sup>

The proposed Irwindale MRF/TS is in the South Coast Air Basin, under the jurisdiction of the SCAQMD. The 2020 Recirculated DEIR includes this information from the SCAQMD because it is the legal brief on the Friant Ranch decision from the local air district for the proposed Irwindale MRF/TS. The SCAQMD brief describes why it is not feasible to accurately model changes in regional air quality concentrations resulting from specific projects or accurately correlate predicted minor air quality changes with specific health outcomes.

<sup>81</sup> South Coast Air Quality Management District Amicus Brief, April 13, 2015, https://www.courts.ca.gov/documents/9-s219783-ac-south-coast-air-quality-mgt-dist-041315.pdf

As noted in the SCAQMD brief (Appendix 2 herein), SCAQMD has among the most sophisticated air quality modeling and health impact evaluation capability of any of the air districts in the State, and thus it is uniquely situated to express an opinion on how lead agencies should correlate air quality impacts with specific health outcomes. SCAQMD receives as many as 60 or more CEQA documents each month (around 500 per year) in its role as commenting agency or an agency with "jurisdiction by law" over air quality. The SCAQMD staff provides comments on as many as 25 or 30 such documents each month (SCAQMD brief, p. 7). Therefore, the 2014 RDEIR Irwindale MRF/TS air quality analysis appropriately relied on SCAQMD expertise, significance thresholds, and guidance to disclose the Proposed Project's air quality impacts, including two types of health risk analyses recommended by SCAQMD as described above (the Local Air Quality Impact and Health Risk Assessment, and the Toxic Air Contaminant Health Risk Assessment).

The SCAQMD brief makes it clear that SCAQMD does not believe that there must be a quantification of a project's health risks in all CEQA documents prepared for individual projects, and in fact, the SCAQMD brief is clear that for individual projects the results of such an assessment would be meaningless. Also, the Proposed Project would not generate anywhere near 6,620 pounds per day of NOx or 89,180 pounds per day of ROG emissions, which SCAQMD stated was a large enough emission to quantify ozone-related health impacts. (SCAQMD brief, page 12) Therefore, the emissions from the Proposed Project are not sufficiently high to use a regional modeling program to correlate health effects on a basin-wide level.

The SCAQMD's numeric regional thresholds of significance (see **Table 6-1**) are based in part on Section 180 (e) of the federal Clean Air Act (CAA). The numeric regional mass daily thresholds have not changed since their adoption as part of the CEQA Air Quality Handbook published by SCAQMD in 1993 (over 20 years ago). The numeric regional mass daily significance thresholds are also intended to provide a means of consistency in significance determination within the environmental review process.

Simply exceeding the SCAQMD's numeric regional mass daily thresholds does not constitute a particular health impact to an individual receptor. The reason for this is that the mass daily thresholds are in pounds per day (lbs./day) emitted into the air whereas health effects are determined based on the concentration of emissions in the air at a particular receptor (e.g., parts per million by volume of air, or micrograms per cubic meter of air) and usually over a longer duration such a one year of an 80-year lifetime. State and federal ambient air quality standards (CAAQS & NAAQS) were developed to protect the most susceptible population groups from adverse health effects and were established in terms of parts per million or micrograms per cubic meter for the applicable emissions.

With regard to the analysis of air quality-related health impacts, the SCAQMD, the air quality authority for the South Coast Air Basin, has stated that "*EIRs must generally quantify a project's pollutant emissions, but in some cases it is not feasible to correlate these emissions to specific, quantifiable health impacts (e.g., premature mortality; hospital admissions).*" In such cases, a general description of the adverse health impacts resulting from the pollutants at issue may be sufficient. (SCAQMD brief, page 1)

The SCAQMD has further stated that from a scientific standpoint,

...it takes a large amount of additional precursor emissions to cause a modeled increase in ambient ozone levels over an entire region. For example, the SCAQMD's 2012 AQMP showed that reducing NOx by 432 tons per day and reducing VOC by 187 tons per day would only reduce ozone levels at the SCAQMD's monitor site with the highest levels by 9 parts per billion.<sup>82</sup> (SCAQMD brief, page 11)

A few comparisons to this SCAQMD brief and the Irwindale MRF/TS are appropriate. The Irwindale MRF/TS calculated total daily NOx emissions are 1,323 lbs./day (see **Table 5-1**) or approximately 0.15 percent of the 432 tons per day in the above example. The Irwindale MRF/TS calculated total daily ROG emissions are 81 lb./day (see **Table 5-1**) or approximately 0.02 percent of the 187 tons per day in the above example.

A ratio comparison will help add perspective to inform the public. Using the higher 0.15 percent value for the change in ozone levels at the SCAQMD's monitor site with the highest levels would change by (0.0015 x 9 parts per billion) or 0.0138 parts per billion of ozone. The lowest ozone standard is the California 8-hour standard of 0.070 ppm or 70 ppb. So, if there were a direct ratio correlation given the Irwindale MRF/TS daily emissions, those emissions would change ozone levels by 0.0138 ppb compared to the most stringent 70 ppb California 8-hour standard or 0.02 percent (0.0138/70).

The extremely small change in the ozone numbers (0.02 percent of the standard) from this approximated calculation is an indication of why the SCAQMD does not require relatively small projects to undertake regional modeling. Even if it were a valid ozone change calculation, the correlation to health impacts from the change would be more impossible to determine. SCAQMD staff does not currently know of a way to accurately quantify ozone-related health impacts caused by NOx or VOC precursor emissions from relatively small projects such as the proposed Irwindale MRF/TS. (SCAQMD brief, page 12)

<sup>82</sup> South Coast Air Quality Management District, Final 2012 AQMP, February 2013, <u>www.aqmd.gov/home/library/clean-air-plans/air-quality-mgt-plan/final-20212-air-quality-management-plan;</u> then follow "Appendix V: Modelling & Attainment Demonstrations" hyperlink, pp. v-4-2, v-7-4, v-7-24

Current scientific, technological, and modeling limitations prevent the relation of expected adverse air quality impacts to likely health consequences. Since SCAQMD staff does not currently know of a way to accurately quantify ozone-related health impacts caused by NOx or VOC emissions from relatively small projects like the Proposed Project, then a general description of the adverse health impacts resulting from the criteria and toxics pollutants (as previously described) is all that can be meaningfully provided at this time.

# 6.6 San Joaquin Valley Air Pollution Control District Amicus Brief<sup>83</sup>

The proposed Friant Specific Plan is in the San Joaquin Valley Air Basin, under the jurisdiction of the SJVAPCD. The San Joaquin Valley Air Pollution Control District Amicus Brief (SJVAPCD brief (Appendix 3 herein) addresses whether it is scientifically feasible to correlate an individual project's air quality emissions of criteria air pollutants to specific health impacts. Human health impacts associated with criteria air pollutants are analyzed and taken into consideration when the USEPA sets the NAAQS for each criteria pollutant. The health impact of a particular criteria pollutant is analyzed on a regional, not a facility level, based on how close the area is to complying with (attaining) the NAAQS. As discussed in the SJVAPCD brief, it is not feasible to conduct a criteria air pollutant analysis detailing health impacts, as currently available computer modeling tools are not equipped for this task.

In requiring a health risk type analysis for criteria air pollutants, it is important to understand how the relevant criteria pollutants (ozone and particulate matter) are formed, dispersed and regulated. Ground level ozone (smog) is not directly emitted into the air but is instead formed when precursor pollutants such as NOx and ROG are emitted into the atmosphere and undergo complex chemical reactions driven by sunlight. Once formed, ozone can be transported long distances by wind. Because of the complexity of ozone formation, a specific tonnage amount of NOx or ROG emitted in a particular area does not equate to a particular concentration of ozone in that area. In fact, even rural areas that have relatively low tonnages of emissions of NOx or ROG can have high levels of ozone concentrations simply due to wind transport. Conversely, areas that have substantially more NOx and ROG emissions.<sup>84</sup> Secondary PM, like ozone, is formed via complex chemicals such as SOx and NOx.<sup>85</sup> Because of the complexity of secondary PM formation, the tonnage of PM-forming precursor emissions in an area does not necessarily result in an equivalent concentration of secondary PM in that area.

<sup>83</sup> San Joaquin Valley Air Pollution Control District Amicus Brief, April 13, 2015,

https://www.courts.ca.gov/documents/7-s219783-ac-san-joaquin-valley-unified-air-pollution-control-dist-041315.pdf

<sup>84</sup> San Joaquin Valley Air Pollution Control District, 2007 Ozone Plan, www.valleyair.org/Air\_Quality\_Plans/AQ\_Final\_Adopted\_Ozone2007.htm

<sup>85</sup> USEPA, Particulate Matter: Basic Information, <u>www.epa.gov/airquality/particlepollution/basic.html</u>

The disconnect between the tonnage of precursor pollutants and the concentration of ozone or PM formed is important because it is not necessarily the tonnage of precursor pollutants that causes health effects; rather, it is the concentration of resulting ozone or PM that causes these effects. As such, the NAAQS, which are statutorily required to be set by USEPA at levels that are requisite to protect the public health, are established as concentrations of ozone and not as tonnages of their precursor pollutants. Because the NAAQS are focused on achieving a particular concentration region-wide, the SJVAPCD's tools and plans for attaining the NAAQS are regional in nature.

In regard to regional concentrations and air basin attainment, the SJVAPCD emphasized that attempting to identify a change in background pollutant concentrations that can be attributed to a single project, even one as large as the entire Friant Ranch Specific Plan, is a theoretical exercise. The SJVAPCD brief noted that it "would be extremely difficult to model the impact on NAAQS attainment that the emissions from the Friant Ranch project may have". The situation is further complicated by the fact that background concentrations of regional pollutants are not uniform either temporally or geographically throughout an air basin but are constantly fluctuating based upon wind speed and direction, precipitation, and topography. The currently available modeling tools are equipped to model the impact of all emission sources in the San Joaquin Valley Air Basin on attainment. The SJVAPCD indicated that, "Running the photochemical grid model used for predicting O<sub>3</sub> attainment with the emissions solely from the Friant Ranch project (which equate to less than one-tenth of one percent of the total NOx and VOC [ROG] in the Valley) is not likely to yield valid information given the relative scale involved". (SQVAPCD brief, p. 9-10)

The computer models used to simulate and predict an attainment date for ozone are based on regional inventories of precursor pollutants, atmospheric chemistry and meteorology within the air basin. At a very basic level, the models simulate future ozone levels based on predicted changes in precursor emissions basin wide. The computer models are not designed to determine whether the emissions generated by an individual development project will affect the date that the air basin attains the NAAQS. Instead, the models help inform regional planning strategies based on the extent to which all of the emission-generating sources within the air basin must be controlled in order to reach attainment.

# 6.7 Conclusions

In the case of the Irwindale MRF/TS, operational emissions exceed the SCAQMD's recommended daily significance thresholds for NOx and ROG. However, this does determine the concentration of ozone that will be occur at or near the Project Site or within the region on a particular day or month of the year, or the specific health impacts that may occur as a result of that concentration. Wind speed and direction, and the presence or absence of sunlight, and other complex chemical factors all combine to determine the ultimate concentrations and locations of ozone. This is especially true for a project like the Irwindale MRF/TS, where most of the criteria pollutant emissions derive not from a single "point source," but from mobile sources driving to, from and around the Project Site.

The air quality analysis for the Irwindale MRF/TS includes a site-specific localized impact analysis and a toxic air contaminant (TAC) health risk assessment, both of which found less than significant impacts. These were focused on the impacts locally on receptors adjacent to the Project site. Models such a USEPA's AERMOD have been used for years to estimate local concentrations for air permitting and environmental planning. However, even these dispersion models are not suited for the chemical transformation related to the formation of ozone due to emissions of NOx and ROG and the interaction with sunlight. Ozone concentrations are dependent upon a variety of complex factors, including the presence of sunlight and precursor pollutants, natural topography, atmospheric stability, atmospheric chemistry and wind patterns. Because of the dynamic nature of ozone formation and the complexities of predicting ground-level ozone concentrations in relation to ambient standards, air districts instead develop mass emissions thresholds for ROG and NOx that are used to make significance determinations. Air districts also recommend mitigation measures for projects that exceed the significance thresholds.

On a regional scale, it is not be possible to accurately model the impact on NAAQS attainment that emissions from the MRF/TS may have. The currently available tools are equipped to model the impact of all emission sources in the air basin on attainment, not to evaluate an individual project. Both the SCAQMD and SJVAPCD have expressed serious concerns that the regional modeling for individual projects such as the MRF/TS project, will not generate meaningful results.

In summary, modeling of the Irwindale MRF/TS Proposed Project's ozone emissions is not feasible and would not provide meaningful information given the magnitude of the emissions and the number of variables that affect ozone formation (e.g., mass of precursor emissions, background concentrations for all other emission sources in the air basin, location of activity and weather on that day that results in conversion of precursor emissions into ozone).

Consistent with the California Supreme Court's Friant Ranch decision, the analyses presented here provide additional details regarding the potential health effects from the proposed Irwindale MRF/TS's significant and unavoidable criteria pollutant emissions of NOx and ROG. It also explains why it is not scientifically feasible to substantively connect this individual Proposed Project's air quality impacts to likely health consequences. The criteria air pollutant emissions of NOx and ROG for the project are too small to model and obtain meaningful regional concentrations of criteria air pollutants and ozone, which makes it infeasible to more precisely correlate these future unknown minor concentration changes to resulting health effects.

The 2014 RDEIR also identified health effects from NO<sub>x</sub> and ROG emissions. Threshold AQ-2 from the 2014 RDEIR (p. 3.3-34) identified the impact of ROG and NO<sub>x</sub> emissions as Significant and Unavoidable based on the mass emissions thresholds of the SCAQMD. Mitigation Measures MM AQ-12 – MM AQ-18 were recommended to reduce this impact.

# **Chapter 7.0 List of Preparers of This 2020 RDEIR**

The list below identifies personnel who contributed to preparation of this 2020 RDEIR.

#### Lead Agency

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- Michael Ratte, Senior Air Quality Specialist
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- Luis Rosas, Technical Associate

## Introduction

The Proposed Project is located in Los Angeles County within the South Coast Air Basin. The Basin is bounded by the Pacific Ocean to the west and the San Gabriel, San Bernardino, and San Jacinto Mountains to the north and east. The Basin includes all of Orange County and the non-desert portions of Los Angeles, Riverside, and San Bernardino counties.

The SCAQMD has jurisdiction over an area of approximately 10,743 square miles. This area includes all of Orange County, all of Los Angeles County except for the Antelope Valley, the nondesert portion of western San Bernardino County, and the western and Coachella Valley portions of Riverside County. The Basin is a subregion of the SCAQMD jurisdiction. While air quality in this area has improved compared to past decades, the Basin requires continued diligence to meet air quality standards. The SCAQMD has adopted a series of Air Quality Management Plans (AQMPs) to meet the California Ambient Air Quality Standards (CAAQS) and National Ambient Air Quality Standards (NAAQS). These plans require control technology for existing sources, control programs for area sources and indirect sources, a SCAQMD permitting system designed to allow no net increase in emissions from any new or modified permitted emission sources, and transportation control measures.

In March of 2017, the SCAQMD adopted the 2016 AQMP which includes strategies and measures needed to meet the NAAQS. The AQMP demonstrates attainment of the ozone NAAQS as well as the latest PM<sub>2.5</sub> standards.<sup>1</sup> The SCAQMD also adopts rules and regulations to implement portions of the AQMP.

Part of the control process of the SCAQMD's duty to improve the air quality in the Basin is the uniform CEQA review procedures required by SCAQMD's CEQA Handbook. The thresholds of significance used to assess a project's direct and cumulative impacts have contributed to improving air quality within the Basin over the past decades. The District's thresholds of significance are based on factual and scientific data and are therefore appropriate thresholds of significance to use for the Proposed Irwindale MRF/TS Project.

<sup>1</sup> South Coast Air Quality Management District, 2016 Air Quality Management Plan, March 1, 2017, http://www.aqmd.gov/home/air-quality/clean-air-plans/air-quality-mgt-plan

## Existing Air Quality in the Irwindale Study Area Vicinity

The SCAQMD maintains a network of monitoring stations within Los Angeles County that monitor air quality and compliance with applicable ambient standards. Carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), ozone (O<sub>3</sub>), particulate matter equal to or greater than 10 micrometers (coarse particulate or  $PM_{10}$ ), and particulate matter equal to or greater than 2.5 micrometers (fine particulate or  $PM_{2.5}$ ) data from the Azusa air quality monitoring station, located approximately two miles northeast of the Proposed Project site, were evaluated. This monitoring data for 2016 through 2018 from the Azusa air quality monitoring station (i.e., East San Gabriel Valley 1) is summarized in **Table K-1**.

## **Regional Air Quality Trends**

SCAQMD rule development and implementation through the 1970s and 1980s resulted in dramatic improvement in Basin air quality. Nearly all control programs developed through the early 1990s relied on (i) the development and application of cleaner technology; (ii) add-on emission controls, and (iii) uniform CEQA review throughout the Basin. Industrial emission sources have been significantly reduced by this approach and vehicular emissions have been reduced by technologies implemented at the State level by the California Air Resources Board (CARB).

Ozone, NOx, VOC, and CO have been decreasing in the Basin since 1975 and are projected to continue to decrease. These decreases result primarily from motor vehicle controls and reductions in evaporative emissions. Although vehicle miles traveled in the Basin continue to increase, NOx and VOC levels are decreasing because of the mandated controls on motor vehicles and the replacement of older polluting vehicles with lower-emitting vehicles. NOx emissions from electric utilities have also decreased due to use of cleaner fuels and development of renewable energy sources.

The overall trends of  $PM_{10}$  and  $PM_{2.5}$  levels (total concentrations) in the air represent substantial improvement in air quality since 1975. Direct emissions of  $PM_{10}$  have remained somewhat constant in the Basin and direct emissions of  $PM_{2.5}$  have decreased slightly since 1975. Area wide sources, including fugitive dust from roads, dust from construction and demolition, and other sources, contribute the greatest amount of direct particulate matter emissions.

**Figures 1 through 7** show the ambient concentrations of  $PM_{10}$ ,  $PM_{2.5}$ , CO, and NO<sub>2</sub> at the San Gabriel Valley No. 1 monitoring station which is the closest monitoring station within the Basin to the Proposed Project site. **Figures 8 through 12** show the ambient concentrations and other data associated with ozone at the San Gabriel Valley No. 1 monitoring station.

	Monitoring Data by Year			
Pollutant	Standard <sup>a</sup>	2016	2017	2018
Ozone				
Highest 1 Hour Average (ppm) <sup>b</sup>	0.09	0.146	0.152	0.139
Days over State Standard		30	38	24
Highest 8 Hour Average (ppm) <sup>b</sup>	0.075	0.095	0.107	0.097
Days over National Standard		25	43	23
Carbon Monoxide	• •	<u>.</u>	<u>.</u>	<u>.</u>
Highest 1 Hour Average (ppm) <sup>b</sup>	9.0	1.3	1.8	1.4
Days over State Standard		0	0	0
Highest 8 Hour Average (ppm) <sup>b</sup>	20	1.2	0.9	1.0
Days over State Standard		0	0	0
Nitrogen Dioxide	•	•		
Highest 1 Hour Average (ppb) <sup>b</sup>	180	58.3	65.6	70.8
Days over State Standard		0	0	0
State Annual Average (ppb) <sup>b</sup>	30	16.6	15.8	14.9
Particulate Matter (PM <sub>10</sub> )				
Highest 24-Hour Average (µg/m <sup>3</sup> ) <sup>b</sup>	50	74	83	78
Days over State Standard		12	6	10
State Annual Average (µg/m <sup>3</sup> ) <sup>b</sup>	20	33.7	31.4	32.2
Particulate Matter (PM <sub>2.5</sub> )	·			
Highest 24-Hour Average (µg/m <sup>3</sup> ) <sup>b</sup>	35	29.0	21.2	25.9
Days over National Standard		0	0	0
State Annual Average (µg/m <sup>3</sup> ) <sup>b</sup>	12	10.2	10.4	10.4

## Table K-1: Air Quality Data Summary (2016 - 2018)

Notes: Values in **bold** are in excess of at least one applicable standard. NA = Not Available.

a. Generally, state standards and national standards are not to be exceeded more than once per year.

b.  $ppm = parts per million; \mu g/m^3 = micrograms per cubic meter.$ 

<sup>c.</sup> PM<sub>10</sub> is not measured every day of the year. Number of estimated days over the standard is based on 365 days per year.

*Source: SCAQMD Air Quality Data Statistics* (<u>https://www.aqmd.gov/home/air-quality/historical-air-quality-data/historical-data-by-year</u>), 2016–2018.

Recent PM<sub>10</sub> statistics (2000 through 2018) in the Basin show overall improvement as illustrated in **Figures 1 through 3**. As shown in **Figure 1**, the maximum 24-hour average concentration for PM<sub>10</sub> decreased by approximately 17 percent, from 94  $\mu$ g/m<sup>3</sup> in 2000 to 78  $\mu$ g/m<sup>3</sup> in 2018, with a peak of 120  $\mu$ g/m<sup>3</sup> in 2003. Although the values are above the State standard of 50  $\mu$ g/m<sup>3</sup>, there were only 10 days in 2018 where the 24-hour maximum measurement exceeded the state standard (approximately 17 percent of the number of days of recorded data [60]). As shown in **Figure 2**, the maximum 24-hour concentration for PM<sub>10</sub> did not exceed the national standard throughout the time period (2000-2018).



Figure 1: Maximum 24-Hour PM<sub>10</sub> Concentration (µg/m<sup>3</sup>) Compared to State Standard

Source: SCAQMD, Historical Data By Year, <u>http://www.aqmd.gov/home/air-quality/historical-air-quality-data/historical-data-by-year</u>

Figure 2: Maximum 24-Hour PM<sub>10</sub> Concentration (µg/m<sup>3</sup>) Compared to National Standard



Source: SCAQMD, Historical Data By Year, <u>http://www.aqmd.gov/home/air-quality/historical-air-quality-data/historical-data-by-year</u>

As shown in **Figure 3**, the annual average for  $PM_{10}$  has decreased by approximately 30 percent, from 46.3 µg/m<sup>3</sup> in 2000 to 32.3 µg/m<sup>3</sup> in 2018. Although data between 2014 and 2015 show a temporary increase likely due to regional wildfires that occurred in those years, **Figures 1 through 3** show an overall shown a decrease in both the maximum 24-hour concentrations and the annual average for  $PM_{10}$ .



Figure 3: Annual Average PM<sub>10</sub> Concentration (µg/m<sup>3</sup>)

Source: SCAQMD, Historical Data By Year, <u>http://www.aqmd.gov/home/air-quality/historical-air-quality-data/historical-data-by-year</u>

**Figures 4 and 5** show the most recent 24-hour average  $PM_{2.5}$  concentrations in the Basin (2000 through 2018). As shown in **Figure 4**, the 24-hour (98<sup>th</sup> percentile) concentration has decreased 51 percent from 53.2 µg/m<sup>3</sup> in 2005 to 25.9 µg/m<sup>3</sup> in 2018. As shown in **Figure 5**, the annual average trend has decreased by 51 percent from 20.1 µg/m<sup>3</sup> in 2000 to 10.4 µg/m<sup>3</sup> in 2018. The South Coast Air Basin is currently designated as nonattainment for the State and federal  $PM_{2.5}$  standards.

**Figure 6** shows the most recent maximum 8-hour CO concentrations in the Basin (2000-2018). The 2018 maximum 8-hour CO concentration in the Basin has decreased approximately 80 percent from 2000 concentration. The entire Basin is now designated as attainment for both the state and national CO standards. Ongoing reductions from motor vehicle control programs are expected to continue the downward trend in ambient CO concentrations.



Figure 4: 24-Hour PM<sub>2.5</sub> Concentration (µg/m<sup>3</sup>)

Figure 5: Annual Average PM<sub>2.5</sub> Concentration (µg/m<sup>3</sup>)



Source: SCAQMD, Historical Data By Year, <u>http://www.aqmd.gov/home/air-quality/historical-air-quality-data/historical-data-by-year</u>

Source: SCAQMD, Historical Data By Year, <u>http://www.aqmd.gov/home/air-quality/historical-air-quality-data/historical-data-by-year</u>



Figure 6: Maximum 8-Hour CO Concentration (ppm)

Source: SCAQMD, Historical Data By Year, <u>http://www.aqmd.gov/home/air-quality/historical-air-quality-data/historical-data-by-year</u>

The most recent NO<sub>2</sub> data for the Basin is shown in **Figure 7**. Over the last 50 years, NO<sub>2</sub> values have decreased significantly; the peak 1-hour national and state averages for 2017 is approximately 77 percent lower than what it was during 1963. The Basin attained the State 1-hour NO<sub>2</sub> standard in 1994, bringing the entire State into attainment. NO<sub>2</sub> is formed from NOx emissions, which also contribute to ozone. As a result, the majority of the future emission control measures will be implemented as part of the overall ozone control strategy. Many of these control measures will target mobile sources, which account for more than three-quarters of California's NOx emissions. These measures are expected to bring the South Coast into attainment of the State annual average standard.

Recent NO<sub>2</sub> data (2000 through 2018) indicate decreasing NO<sub>2</sub> emissions. As shown in **Figure 7**, there was a 52 percent decrease from 150 parts per billion (ppb) in 2000 to 70.8 ppb in 2018 for maximum 1-hour concentrations of NO<sub>2</sub>. Records indicate the lowest NO<sub>2</sub> 1-hour maximum concentrations in the past 18 years (65.6 ppb) occurred in 2017.



Figure 7: Maximum 1-Hour NO<sub>2</sub> Concentration (µg/m<sup>3</sup>)

Source: SCAQMD, Historical Data By Year, <u>http://www.aqmd.gov/home/air-quality/historical-air-quality-data/historical-data-by-year</u>

The American Lung Association website includes data collected from State air quality monitors that are used to compile an annual State of the Air. As noted in this report, air quality in the Basin has significantly improved in terms of both pollution levels and high pollution days over the past three decades. The area's average number of high ozone days dropped from 230 days regionally in 2000 to 142 days in the 2017 and continues to decrease the number of days. The region has also seen dramatic reduction in particle pollution from 107 days regionally in 2004 to 14 days in the 2017.

The 2016 AQMP<sup>2</sup> includes the integrated strategies and measures needed to meet the NAAQS. The 2016 AQMP demonstrates attainment of the 1-hour and 8-hour ozone. Recent Ozone concentration data (2000 through 2018) for 1-hour and 8-hour trends are shown in **Figures 8 and 9**. As shown in **Figure 8**, an 18 percent decrease in the maximum 1-hour ozone trend from 0.17 parts per million (ppm) to 0.139 ppm occurred. **Figure 9** illustrates a 29 percent decrease in the maximum 8-hour ozone trend that decreased from 0.141 ppm to 0.099 ppm.

<sup>2</sup> South Coast Air Quality Management District, 2016 Air Quality Management Plan, March 1, 2017, http://www.aqmd.gov/home/air-quality/clean-air-plans/air-quality-mgt-plan



Figure 8: Maximum 1-Hour Ozone Concentration (ppm)

Source: SCAQMD, Historical Data By Year, <u>http://www.aqmd.gov/home/air-quality/historical-air-quality-data/historical-data-by-year</u>





Source: SCAQMD, Historical Data By Year, <u>http://www.aqmd.gov/home/air-quality/historical-air-quality-data/historical-data-by-year</u>

Since 1980, the Basin has experienced a decrease in 1 and 8-hour Ozone exceedances and in 1-hour Ozone advisories. **Figures 10, 11 and 12** show reductions in these historical Ozone air quality trends. As shown in **Figure 10**, the number of Basin-days exceeding the 1-hour ozone exceedances decreased from 167 days to 11 days (approximately 93 percent). As shown in **Figure 12**, the number of Basin-days exceeding health standard levels for 8-hour ozone exceedances decreased from 211 days to 141 days (approximately 33 percent). As shown in **Figure 12**, the number of Basin-days exceeding 1-hour health advisories and 1-hour stage one episodes were both zero for 2018

Ozone contour maps show that the number of days exceeding the national 8-hour standard has decreased between 1997 and 2007. In the 2007 period, there was an overall decrease in exceedance days compared with the 1997 period. Ozone levels in the Basin have decreased substantially over the last 30 years. Today, the maximum measured concentrations are approximately one-third of concentrations within the late 1970's.



#### Figure 10: Trend in 1-Hour Ozone Exceedances

Source: SCAQMD, Historic Ozone Air Quality Trends, <u>https://www.aqmd.gov/home/air-quality/historical-air-quality-data/historic-ozone-air-quality-trends</u>





Source: SCAQMD, Historic Ozone Air Quality Trends, <u>https://www.aqmd.gov/home/air-quality/historical-air-quality-data/historic-ozone-air-quality-trends</u>

Figure 12: Trend in 1-Hour Ozone Advisories and Episodes



Source: SCAQMD, Historic Ozone Air Quality Trends, <u>https://www.aqmd.gov/home/air-quality/historical-air-quality-data/historic-ozone-air-quality-trends</u>

#### IN THE SUPREME COURT OF C ALIFORNIA

#### SIERRA CLUB, REVIVE THE SAN JOAQUIN, and LEAGUE OF WOMEN VOTERS OF FRESNO,

Plaintiffs and Appellants,

V.

COUNTY OF FRESNO,

Defendant and Respondent,

and,

SUPREME COL40

APR 1 3 2015

Frank A. Missione Clerk

Jeputy

FRIANT RANCH, L.P.,

Real Party in Interest and Respondent.

After a Published Decision by the Court of Appeal, filed May 27, 2014 Fifth Appellate District Case No. F066798

Appeal from the Superior Court of California, County of Fresno Case No. 11CECG00726 Honorable Rosendo A. Pena, Jr.

#### APPLICATION OF THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF NEITHER PARTY AND [PROPOSED] BRIEF OF AMICUS CURIAE

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# TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT:

#### **APPLICATION FOR LEAVE TO FILE** AMICUS CURIAE BRIEF

Pursuant to Rule 8.520(f) of the California Rules of Court, the South Coast Air Quality Management District (SCAQMD) respectfully requests leave to file the attached *amicus curiae* brief. Because SCAQMD's position differs from that of either party, we request leave to submit this amicus brief in support of neither party.

#### HOW THIS BRIEF WILL ASSIST THE COURT

SCAQMD's proposed amicus brief takes a position on two of the issues in this case. In both instances, its position differs from that of either party. The issues are:

- Does the California Environmental Quality Act (CEQA) require an environmental impact report (EIR) to correlate a project's air pollution emissions with specific levels of health impacts?
- 2) What is the proper standard of review for determining whether an EIR provides sufficient information on the health impacts caused by a project's emission of air pollutants?

This brief will assist the Court by discussing the practical realities of correlating identified air quality impacts with specific health outcomes. In short, CEQA requires agencies to provide detailed information about a project's air quality impacts that is sufficient for the public and decisionmakers to adequately evaluate the project and meaningfully understand its impacts. However, the level of analysis is governed by a rule of reason; CEQA only requires agencies to conduct analysis if it is reasonably feasible to do so. With regard to health-related air quality impacts, an analysis that correlates a project's air pollution emissions with specific levels of health impacts will be feasible in some cases but not others. Whether it is feasible depends on a variety of factors, including the nature of the project and the nature of the analysis under consideration. The feasibility of analysis may also change over time as air districts and others develop new tools for measuring projects' air quality related health impacts. Because SCAQMD has among the most sophisticated air quality modeling and health impact evaluation capability of any of the air districts in the State, it is uniquely situated to express an opinion on the extent to which the Court should hold that CEQA requires lead agencies to correlate air quality impacts with specific health outcomes.

SCAQMD can also offer a unique perspective on the question of the appropriate standard of review. SCAQMD submits that the proper standard of review for determining whether an EIR is sufficient as an informational document is more nuanced than argued by either party. In our view, this is a mixed question of fact and law. It includes determining whether additional analysis is feasible, which is primarily a factual question that should be reviewed under the substantial evidence standard. However, it also involves determining whether the omission of a particular analysis renders an EIR insufficient to serve CEQA's purpose as a meaningful, informational document. If a lead agency has not determined that a requested analysis is infeasible, it is the court's role to determine whether the EIR nevertheless meets CEQA's purposes, and courts should not defer to the lead agency's conclusions regarding the legal sufficiency of an EIR's analysis. The ultimate question of whether an EIR's analysis is "sufficient" to serve CEQA's informational purposes is predominately a question of law that courts should review de novo.

This brief will explain the rationale for these arguments and may assist the Court in reaching a conclusion that accords proper respect to a lead agency's factual conclusions while maintaining judicial authority over the ultimate question of what level of analysis CEQA requires.

#### STATEMENT OF INTEREST OF AMICUS CURIAE

The SCAQMD is the regional agency primarily responsible for air pollution control in the South Coast Air Basin, which consists of all of Orange County and the non-desert portions of the Los Angeles, Riverside, and San Bernardino Counties. (Health & Saf. Code § 40410; Cal. Code Regs., tit. 17, § 60104.) The SCAQMD participates in the CEQA process in several ways. Sometimes it acts as a lead agency that prepares CEQA documents for projects. Other times it acts as a responsible agency when it has permit authority over some part of a project that is undergoing CEQA review by a different lead agency. Finally, SCAQMD also acts as a commenting agency for CEQA documents that it receives because it is a public agency with jurisdiction by law over natural resources affected by the project.

In all of these capacities, SCAQMD will be affected by the decision in this case. SCAQMD sometimes submits comments requesting that a lead agency perform an additional type of air quality or health impacts analysis. On the other hand, SCAQMD sometimes determines that a particular type of health impact analysis is not feasible or would not produce reliable and informative results. Thus, SCAQMD will be affected by the Court's resolution of the extent to which CEQA requires EIRs to correlate emissions and health impacts, and its resolution of the proper standard of review.

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# **CERTIFICATION REGARDING AUTHORSHIP AND FUNDING**

No party or counsel in the pending case authored the proposed amicus curiae brief in whole or in part, or made any monetary contribution intended to fund the preparation or submission of the brief. No person or entity other than the proposed *Amicus Curiae* made any monetary contribution intended to fund the preparation or submission of the brief.

Respectfully submitted,

DATED: April 3, 2015

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT KURT R. WIESE, GENERAL COUNSEL BARBARA BAIRD, CHIEF DEPUTY COUNSEL

By:

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# BRIEF OF AMICUS CURIAE SUMMARY OF ARGUMENT

The South Coast Air Quality Management District (SCAOMD) submits that this Court should not try to establish a hard-and-fast rule concerning whether lead agencies are required to correlate emissions of air pollutants with specific health consequences in their environmental impact reports (EIR). The level of detail required in EIRs is governed by a few, core CEQA (California Environmental Quality Act) principles. As this Court has stated, "[a]n EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." (Laurel Heights Improvement Assn. v. Regents of the Univ of Cal. (1988) 47 Cal.3d 376, 405 ["Laurel Heights 1"]) Accordingly, "an agency must use its best efforts to find out and disclose all that it reasonably can." (Vinevard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 428 (quoting CEOA Guidelines § 15144)<sup>1</sup>.). However, "[a]nalysis of environmental effects need not be exhaustive, but will be judged in light of what is reasonably feasible." (Association of Irritated Residents v. County of Madera (2003) 107 Cal.App.4th 1383, 1390; CEQA Guidelines §§ 15151, 15204(a).)

With regard to analysis of air quality related health impacts, EIRs must generally quantify a project's pollutant emissions, but in some cases it is not feasible to correlate these emissions to specific, quantifiable health impacts (e.g., premature mortality; hospital admissions). In such cases, a general description of the adverse health impacts resulting from the pollutants at issue may be sufficient. In other cases, due to the magnitude

<sup>&</sup>lt;sup>1</sup> The CEQA Guidelines are found at Cal. Code Regs., tit. 14 §§ 15000, *et seq*.

or nature of the pollution emissions, as well as the specificity of the project involved, it may be feasible to quantify health impacts. Or there may be a less exacting, but still meaningful analysis of health impacts that can feasibly be performed. In these instances, agencies should disclose those impacts.

SCAQMD also submits that whether or not an EIR complies with CEQA's informational mandates by providing sufficient, feasible analysis is a mixed question of fact and law. Pertinent here, the question of whether an EIR's discussion of health impacts from air pollution is sufficient to allow the public to understand and consider meaningfully the issues involves two inquiries: (1) Is it feasible to provide the information or analysis that a commenter is requesting or a petitioner is arguing should be required?; and (2) Even if it is feasible, is the agency relying on other policy or legal considerations to justify not preparing the requested analysis? The first question of whether an analysis is feasible is primarily a question of fact that should be judged by the substantial evidence standard. The second inquiry involves evaluating CEQA's information disclosure purposes against the asserted reasons to not perform the requested analysis. For example, an agency might believe that its EIR meets CEQA's informational disclosure standards even without a particular analysis, and therefore choose not to conduct that analysis. SCAQMD submits that this is more of a legal question, which should be reviewed de novo as a question of law.

#### ARGUMENT

# I. RELEVANT FACTUAL AND LEGAL FRAMEWORK.

#### A. Air Quality Regulatory Background

The South Coast Air Quality Management District (SCAQMD) is one of the local and regional air pollution control districts and air quality

management districts in California. The SCAQMD is the regional air pollution agency for the South Coast Air Basin, which consists of all of Orange County and the non-desert portions of Los Angeles, Riverside, and San Bernardino Counties. (Health & Saf. Code § 40410, 17 Cal. Code Reg. § 60104.) The SCAQMD also includes the Coachella Valley in Riverside County (Palm Springs area to the Salton Sea). (SCAQMD, *Final 2012 AQMP (Feb. 2013)*, http://www.aqmd.gov/home/library/clean-air-plans/airquality-mgt-plan/final-2012-air-quality-management-plan; then follow "chapter 7" hyperlink; pp 7-1, 7-3 (last visited Apr. 1, 2015).) The SCAQMD's jurisdiction includes over 16 million residents and has the worst or nearly the worst air pollution levels in the country for ozone and fine particulate matter. (SCAQMD, *Final 2012 AQMP (Feb. 2013)*, http://www.aqmd.gov/home/library/clean-air-plans/airplan/final-2012-air-quality-management-plan; then follow "Executive Summary" hyperlink p. ES-1 (last visited Apr. 1, 2015).)

Under California law, the local and regional districts are primarily responsible for controlling air pollution from all sources except motor vehicles. (Health & Saf. Code § 40000.) The California Air Resources Board (CARB), part of the California Environmental Protection Agency, is primarily responsible for controlling pollution from motor vehicles. (*Id.*) The air districts must adopt rules to achieve and maintain the state and federal ambient air quality standards within their jurisdictions. (Health & Saf. Code § 40001.)

The federal Clean Air Act (CAA) requires the United States Environmental Protection Agency (EPA) to identify pollutants that are widely distributed and pose a threat to human health, developing a so-called "criteria" document. (42 U.S.C. § 7408; CAA § 108.) These pollutants are frequently called "criteria pollutants." EPA must then establish "national ambient air quality standards" at levels "requisite to protect public health",

allowing "an adequate margin of safety." (42 U.S.C. § 7409; CAA § 109.) EPA has set standards for six identified pollutants: ozone, nitrogen dioxide, sulfur dioxide, carbon monoxide, particulate matter (PM), and lead. (U.S. EPA, National Ambient Air Quality Standards (NAAQS), http://www.epa.gov/air/criteria.html (last updated Oct. 21, 2014).)<sup>2</sup>

Under the Clean Air Act, EPA sets emission standards for motor vehicles and "nonroad engines" (mobile farm and construction equipment, marine vessels, locomotives, aircraft, etc.). (42 U.S.C. §§ 7521, 7547; CAA §§ 202, 213.) California is the only state allowed to establish emission standards for motor vehicles and most nonroad sources; however, it may only do so with EPA's approval. (42 U.S.C. §§ 7543(b), 7543(e); CAA  $\S$  209(b), 209(c).) Sources such as manufacturing facilities, power plants and refineries that are not mobile are often referred to as "stationary sources." The Clean Air Act charges state and local agencies with the primary responsibility to attain the national ambient air quality standards. (42 U.S.C. § 7401(a)(3); CAA § 101(a)(3).) Each state must adopt and implement a plan including enforceable measures to achieve and maintain the national ambient air quality standards. (42 U.S.C. § 7410; CAA § 110.) The SCAQMD and CARB jointly prepare portion of the plan for the South Coast Air Basin and submit it for approval by EPA. (Health & Saf. Code §§ 40460, et seq.)

The Clean Air Act also requires state and local agencies to adopt a permit program requiring, among other things, that new or modified "major" stationary sources use technology to achieve the "lowest achievable emission rate," and to control minor stationary sources as

<sup>2</sup> Particulate matter (PM) is further divided into two categories: fine particulate or  $PM_{2.5}$  (particles with a diameter of less than or equal to 2.5 microns) and coarse particulate ( $PM_{10}$ ) (particles with a diameter of 10 microns or less). (U.S. EPA, Particulate Matter (PM), <u>http://www.epa.gov/airquality/particlepollution/ (last visited Apr. 1, 2015).</u>)

needed to help attain the standards. (42 U.S.C. §§ 7502(c)(5), 7503(a)(2), 7410(a)(2)(C); CAA §§ 172(c)(5), 173(a)(2), 110(a)(2)(C).) The air districts implement these permit programs in California. (Health & Saf. Code §§ 42300, et seq.)

The Clean Air Act also sets out a regulatory structure for over 100 so-called "hazardous air pollutants" calling for EPA to establish "maximum achievable control technology" (MACT) for sources of these pollutants. (42 U.S.C. § 7412(d)(2); CAA § 112(d)(2).) California refers to these pollutants as "toxic air contaminants" (TACs) which are subject to two state-required programs. The first program requires "air toxics control measures" for specific categories of sources. (Health & Saf. Code § 39666.) The other program requires larger stationary sources and sources identified by air districts to prepare "health risk assessments" for impacts of toxic air contaminants. (Health & Saf. Code §§ 44320(b), 44322, 44360.) If the health risk exceeds levels identified by the district as "significant," the facility must implement a "risk reduction plan" to bring its risk levels below "significant" levels. Air districts may adopt additional more stringent requirements than those required by state law, including requirements for toxic air contaminants. (Health & Saf. Code § 41508; Western Oil & Gas Assn. v. Monterey Bay Unified APCD (1989) 49 Cal.3d 408, 414.) For example, SCAQMD has adopted a rule requiring new or modified sources to keep their risks below specified levels and use best available control technology (BACT) for toxics. (SCAQMD, Rule 1401-New Source Review of Toxic Air Contaminants,

http://www.aqmd.gov/home/regulations/rules/scaqmd-rule-book/regulationxiv; then follow "Rule 1401" hyperlink (last visited Apr. 1, 2015).)

#### **B.** The SCAQMD's Role Under CEQA

The California Environmental Quality Act (CEQA) requires public agencies to perform an environmental review and appropriate analysis for projects that they implement or approve. (Pub. Resources Code § 21080(a).) The agency with primary approval authority for a particular project is generally the "lead agency" that prepares the appropriate CEQA document. (CEQA Guidelines §§ 15050, 15051.) Other agencies having a subsequent approval authority over all or part of a project are called "responsible" agencies that must determine whether the CEQA document is adequate for their use. (CEQA Guidelines §§ 15096(c), 15381.) Lead agencies must also consult with and circulate their environmental impact reports to "trustee agencies" and agencies "with jurisdiction by law" including "authority over resources which may be affected by the project." (Pub. Resources Code §§ 21104(a), 21153; CEQA Guidelines §§ 15086(a)(3), 15073(c).) The SCAQMD has a role in all these aspects of CEQA.

Fulfilling its responsibilities to implement its air quality plan and adopt rules to attain the national ambient air quality standards, SCAQMD adopts a dozen or more rules each year to require pollution reductions from a wide variety of sources. The SCAQMD staff evaluates each rule for any adverse environmental impact and prepares the appropriate CEQA document. Although most rules reduce air emissions, they may have secondary environmental impacts such as use of water or energy or disposal of waste—e.g., spent catalyst from control equipment.<sup>3</sup>

<sup>&</sup>lt;sup>3</sup> The SCAQMD's CEQA program for its rules is a "Certified Regulatory Program" under which it prepares a "functionally equivalent" document in lieu of a negative declaration or EIR. (Pub. Resources Code § 21080.5, CEQA Guidelines § 15251(l).)

The SCAQMD also approves a large number of permits every year to construct new, modified, or replacement facilities that emit regulated air pollutants. The majority of these air pollutant sources have already been included in an earlier CEQA evaluation for a larger project, are currently being evaluated by a local government as lead agency, or qualify for an exemption. However, the SCAQMD sometimes acts as lead agency for major projects where the local government does not have a discretionary approval. In such cases, SCAQMD prepares and certifies a negative declaration or environmental impact report (EIR) as appropriate.<sup>4</sup> SCAQMD evaluates perhaps a dozen such permit projects under CEQA each year. SCAQMD is often also a "responsible agency" for many projects since it must issue a permit for part of the projects (e.g., a boiler used to provide heat in a commercial building). For permit projects evaluated by another lead agency under CEQA, SCAQMD has the right to determine that the CEQA document is inadequate for its purposes as a responsible agency, but it may not do so because its permit program already requires all permitted sources to use the best available air pollution control technology. (SCAQMD, Rule 1303(a)(1) - Requirements, http://www.aqmd.gov/home/regulations/rules/scaqmd-rule-book/regulationxiii; then follow "Rule 1303" hyperlink (last visited Apr. 1, 2015).)

Finally, SCAQMD receives as many as 60 or more CEQA documents each month (around 500 per year) in its role as commenting agency or an agency with "jurisdiction by law" over air quality—a natural resource affected by the project. (Pub. Resources Code §§ 21104(a), 21153; CEQA Guidelines § 15366(a)(3).) The SCAQMD staff provides comments on as many as 25 or 30 such documents each month.

<sup>&</sup>lt;sup>4</sup> The SCAQMD's permit projects are not included in its Certified Regulatory Program, and are evaluated under the traditional local government CEQA analysis. (Pub. Resources Code §§ 21150-21154.)

(SCAQMD Governing Board Agenda, Apr. 3, 2015, Agenda Item 16, Attachment A, <u>http://www.aqmd.gov/home/library/meeting-agendas-</u> <u>minutes/agenda?title=governing-board-meeting-agenda-april-3-2015</u>; then follow "16. Lead Agency Projects and Environmental Documents Received by SCAQMD" hyperlink (last visited Apr. 1, 2015).) Of course, SCAQMD focuses its commenting efforts on the more significant projects.

Typically, SCAQMD comments on the adequacy of air quality analysis, appropriateness of assumptions and methodology, and completeness of the recommended air quality mitigation measures. Staff may comment on the need to prepare a health risk assessment detailing the projected cancer and noncancer risks from toxic air contaminants resulting from the project, particularly the impacts of diesel particulate matter, which CARB has identified as a toxic air contaminant based on its carcinogenic effects. (California Air Resources Board, Resolution 98-35, Aug. 27, 1998, <u>http://www.arb.ca.gov/regact/diesltac/diesltac.htm</u>; then follow Resolution 98-35 hyperlink (last visited Apr. 1, 2015).) Because SCAQMD already requires new or modified stationary sources of toxic air contaminants to use the best available control technology for toxics and to keep their risks below specified levels, (SCAQMD Rule 1401, supra, note 15), the greatest opportunity to further mitigate toxic impacts through the CEQA process is by reducing emissions—particularly diesel emissions—from vehicles.

# II. THIS COURT SHOULD NOT SET A HARD-AND-FAST RULE CONCERNING THE EXTENT TO WHICH AN EIR MUST CORRELATE A PROJECT'S EMISSION OF POLLUTANTS WITH RESULTING HEALTH IMPACTS.

Numerous cases hold that courts do not review the correctness of an EIR's conclusions but rather its sufficiency as an informative document. (*Laurel Heights 1, supra*, 47 Cal.3d at p. 392; *Citizens of Goleta Valley v.* 

Bd. of Supervisors (1990) 52 Cal.3d 553, 569; Bakersfield Citizens for Local Control v. City of Bakersfield (2004) 124 Cal.App.4th 1184, 1197.)

As stated by the Court of Appeal in this case, where an EIR has addressed a topic, but the petitioner claims that the information provided about that topic is insufficient, courts must "draw[] a line that divides *sufficient* discussions from those that are *insufficient*." (*Sierra Club v*. *County of Fresno* (2014) 226 Cal.App.4<sup>th</sup> 704 (superseded by grant of review) 172 Cal.Rptr.3d 271, 290.) The Court of Appeal readily admitted that "[t]he terms themselves – sufficient and insufficient – provide little, if any, guidance as to where the line should be drawn. They are simply labels applied once the court has completed its analysis." (*Id*.)

The CEQA Guidelines, however, provide guidance regarding what constitutes a sufficient discussion of impacts. Section 15151 states that "the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible." Case law reflects this: "Analysis of environmental effects need not be exhaustive, but will be judged in light of what was reasonably feasible." (*Association of Irritated Residents v. County of Madera, supra,* 107 Cal.App.4th at p. 1390; see also CEQA Guidelines § 15204(a).)

Applying this test, this Court cannot realistically establish a hardand-fast rule that an analysis correlating air pollution impacts of a project to quantified resulting health impacts is always required, or indeed that it is never required. Simply put, in some cases such an analysis will be "feasible"; in some cases it will not.

For example, air pollution control districts often require a proposed new source of toxic air contaminants to prepare a "health risk assessment" before issuing a permit to construct. District rules often limit the allowable cancer risk the new source may cause to the "maximally exposed individual" (worker and residence exposures). (*See, e.g.*, SCAQMD Rule 1401(c)(8); 1401(d)(1), *supra* note 15.) In order to perform this analysis, it

is necessary to have data regarding the sources and types of air toxic contaminants, location of emission points, velocity of emissions, the meteorology and topography of the area, and the location of receptors (worker and residence). (SCAQMD, *Supplemental Guidelines for Preparing Risk Assessments for the Air Toxics "Hot Spots" Information and Assessment Act (AB2588), pp. 11-16*; (last visited Apr. 1, 2015) http://www.aqmd.gov/home/library/documents-support-material; "Guidelines" hyperlink; AB2588; then follow AB2588 Risk Assessment Guidelines hyperlink.)

Thus, it is feasible to determine the health risk posed by a new gas station locating at an intersection in a mixed use area, where receptor locations are known. On the other hand, it may not be feasible to perform a health risk assessment for airborne toxics that will be emitted by a generic industrial building that was built on "speculation" (i.e., without knowing the future tenant(s)). Even where a health risk assessment can be prepared, however, the resulting maximum health risk value is only a calculation of risk—it does not necessarily mean anyone will contract cancer as a result of the project.

In order to find the "cancer burden" or expected additional cases of cancer resulting from the project, it is also necessary to know the numbers and location of individuals living within the "zone of impact" of the project: i.e., those living in areas where the projected cancer risk from the project exceeds one in a million. (SCAQMD, Health Risk Assessment Summary form, <u>http://www.aqmd.gov/home/forms</u>; filter by "AB2588" category; then "Health Risk Assessment" hyperlink (last visited Apr. 1, 2015).) The affected population is divided into bands of those exposed to at least 1 in a million risk, those exposed to at least 10 in a million risk, etc. up to those exposed at the highest levels. (*Id*.) This data allows agencies to calculate an approximate number of additional cancer cases expected from

the project. However, it is not possible to predict which particular individuals will be affected.

For the so-called criteria pollutants<sup>5</sup>, such as ozone, it may be more difficult to quantify health impacts. Ozone is formed in the atmosphere from the chemical reaction of the nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) in the presence of sunlight. (U.S. EPA, Ground Level Ozone, <u>http://www.epa.gov/airquality/ozonepollution/</u> (last updated Mar. 25, 2015).) It takes time and the influence of meteorological conditions for these reactions to occur, so ozone may be formed at a distance downwind from the sources. (U.S. EPA, *Guideline on Ozone Monitoring Site Selection* (Aug. 1998) EPA-454/R-98-002 § 5.1.2, <u>http://www.epa.gov/ttnamti1/archive/cpreldoc.html</u> (last visited Apr. 1, 2015).) NO<sub>x</sub> and VOC are known as "precursors" of ozone.

Scientifically, health effects from ozone are correlated with increases in the ambient level of ozone in the air a person breathes. (U.S. EPA, *Health Effects of Ozone in the General Population*, Figure 9, <u>http://www.epa.gov/apti/ozonehealth/population.html#levels</u> (last visited Apr. 1, 2015).) However, it takes a large amount of additional precursor emissions to cause a modeled increase in ambient ozone levels over an entire region. For example, the SCAQMD's 2012 AQMP showed that reducing NO<sub>x</sub> by 432 tons per day (157,680 tons/year) and reducing VOC by 187 tons per day (68,255 tons/year) would reduce ozone levels at the SCAQMD's monitor site with the highest levels by only 9 parts per billion. (South Coast Air Quality Management District, *Final 2012 AQMP (February 2013)*, <u>http://www.aqmd.gov/home/library/clean-air-plans/airquality-mgt-plan/final-2012-air-quality-management-plan; then follow "Appendix V: Modeling & Attainment Demonstrations" hyperlink,</u>

<sup>&</sup>lt;sup>5</sup> See discussion of types of pollutants, supra, Part I.A.

pp. v-4-2, v-7-4, v-7-24.) SCAQMD staff does not currently know of a way to accurately quantify ozone-related health impacts caused by  $NO_x$  or VOC emissions from relatively small projects.

On the other hand, this type of analysis may be feasible for projects on a regional scale with very high emissions of NO<sub>x</sub> and VOCs, where impacts are regional. For example, in 2011 the SCAQMD performed a health impact analysis in its CEQA document for proposed Rule 1315, which authorized various newly-permitted sources to use offsets from the districts "internal bank" of emission reductions. This CEQA analysis accounted for essentially all the increases in emissions due to new or modified sources in the District between 2010 and 2030.<sup>6</sup> The SCAQMD was able to correlate this very large emissions increase (e.g., 6,620 pounds per day  $NO_x$  (1,208 tons per year), 89,180 pounds per day VOC (16,275 tons per year)) to expected health outcomes from ozone and particulate matter (e.g., 20 premature deaths per year and 89,947 school absences in the year 2030 due to ozone).<sup>7</sup> (SCAQMD Governing Board Agenda, February 4, 2011, Agenda Item 26, Assessment for: Re-adoption of Proposed Rule 1315 – Federal New Source Review Tracking System (see hyperlink in fn 6) at p. 4.1-35, Table 4.1-29.)

<sup>6</sup> (SCAQMD Governing Board Agenda, February 4, 2011, Agenda Item 26, Attachment G, Assessment for: Re-adoption of Proposed Rule 1315 – Federal New Source Review Tracking System, Vol. 1, p.4.0-6, http://www.aqmd.gov/home/library/meeting-agendasminutes/agenda?title=governing-board-meeting-agenda-february-4-2011;

the follow "26. Adopt Proposed Rule 1315 – Federal New Source Review Tracking System" (last visited April 1, 2015).)

<sup>&</sup>lt;sup>7</sup> The SCAQMD was able to establish the location of future  $NO_x$  and VOC emissions by assuming that new projects would be built in the same locations and proportions as existing stationary sources. This CEQA document was upheld by the Los Angeles County Superior Court in *Natural Res. Def. Council v SCAQMD*, Los Angeles Superior Court No. BS110792).

However, a project emitting only 10 tons per year of NO<sub>x</sub> or VOC is small enough that its regional impact on ambient ozone levels may not be detected in the regional air quality models that are currently used to determine ozone levels. Thus, in this case it would not be feasible to directly correlate project emissions of VOC or NO<sub>x</sub> with specific health impacts from ozone. This is in part because ozone formation is not linearly related to emissions. Ozone impacts vary depending on the location of the emissions, the location of other precursor emissions, meteorology and seasonal impacts, and because ozone is formed some time later and downwind from the actual emission. (EPA Guideline on Ozone Monitoring Site Selection (Aug. 1998) EPA-454/R-98-002, § 5.1.2; https://www.epa.gov/ttnamti1/archive/cpreldoc.html; then search "Guideline on Ozone Monitoring Site Selection" click on pdf) (last viewed

Apr. 1, 2015).)

SCAQMD has set its CEQA "significance" threshold for NO<sub>x</sub> and VOC at 10 tons per year (expressed as 55 lb/day). (SCAQMD, *Air Quality Analysis Handbook*, <u>http://www.aqmd.gov/home/regulations/ceqa/air-</u> <u>quality-analysis-handbook</u>; then follow "SCAQMD Air Quality Significance Thresholds" hyperlink (last visited Apr. 1, 2015).) This is because the federal Clean Air Act defines a "major" stationary source for "extreme" ozone nonattainment areas such as SCAQMD as one emitting 10 tons/year. (42 U.S.C. §§ 7511a(e), 7511a(f); CAA §§ 182(e), 182(f).) Under the Clean Air Act, such sources are subject to enhanced control requirements (42 U.S.C. §§ 7502(c)(5), 7503; CAA §§ 172(c)(5), 173), so SCAQMD decided this was an appropriate threshold for making a CEQA "significance" finding and requiring feasible mitigation. Essentially, SCAQMD takes the position that a source that emits 10 tons/year of NO<sub>x</sub> or VOC would contribute cumulatively to ozone formation. Therefore, lead agencies that use SCAQMD's thresholds of significance may determine

that many projects have "significant" air quality impacts and must apply all feasible mitigation measures, yet will not be able to precisely correlate the project to quantifiable health impacts, unless the emissions are sufficiently high to use a regional modeling program.

In the case of particulate matter  $(PM_{2.5})^8$ , another "criteria" pollutant, SCAQMD staff is aware of two possible methods of analysis. SCAQMD used regional modeling to predict expected health impacts from its proposed Rule 1315, as mentioned above. Also, the California Air Resources Board (CARB) has developed a methodology that can predict expected mortality (premature deaths) from large amounts of  $PM_{25}$ (California Air Resources Board, Health Impacts Analysis: PM Premature Death Relationship, http://www.arb.ca.gov/research/health/pm-mort/pmmort arch.htm (last reviewed Jan. 19, 2012).) SCAQMD used the CARB methodology to predict impacts from three very large power plants (e.g., 731-1837 lbs/day). (Final Environmental Assessment for Rule 1315, supra, pp 4.0-12, 4.1-13, 4.1-37 (e.g., 125 premature deaths in the entire SCAQMD in 2030), 4.1-39 (0.05 to 1.77 annual premature deaths from power plants.) Again, this project involved large amounts of additional PM<sub>2.5</sub> in the District, up to 2.82 tons/day (5,650 lbs/day of PM<sub>2.5</sub>, or, or 1029 tons/year. (Id. at table 4.1-4, p. 4.1-10.)

However, the primary author of the CARB methodology has reported that this PM<sub>2.5</sub> health impact methodology is not suited for small projects and may yield unreliable results due to various uncertainties.<sup>9</sup> (SCAQMD, *Final Subsequent Mitigated Negative Declaration for: Warren* 

<sup>&</sup>lt;sup>8</sup> SCAQMD has not attained the latest annual or 24-hour national ambient air quality standards for " $PM_{2.5}$ " or particulate matter less than 2.5 microns in diameter.

<sup>&</sup>lt;sup>9</sup> Among these uncertainties are the representativeness of the population used in the methodology, and the specific source of PM and the corresponding health impacts. (*Id.* at p. 2-24.)

*E&P, Inc. WTU Central Facility, New Equipment Project (certified July 19, 2011)*, <u>http://www.aqmd.gov/home/library/documents-support-</u>material/lead-agency-permit-projects/permit-project-documents---year-2011; then follow "Final Subsequent Mitigated Negative Declaration for Warren E&P Inc. WTU Central Facility, New Equipment Project" hyperlink, pp. 2-22, 2-23 (last visited Apr. 1, 2015).) Therefore, when SCAQMD prepared a CEQA document for the expansion of an existing oil production facility, with very small PM<sub>2.5</sub> increases (3.8 lb/day) and a very small affected population, staff elected not to use the CARB methodology for using estimated PM<sub>2.5</sub> emissions to derive a projected premature mortality number and explained why it would be inappropriate to do so. (*Id.* at pp 2-22 to 2-24.) SCAQMD staff concluded that use of this methodology for such a small source could result in unreliable findings and would not provide meaningful information. (*Id.* at pp. 2-23, 2-25.) This CEQA document was not challenged in court.

In the above case, while it may have been technically possible to plug the data into the methodology, the results would not have been reliable or meaningful. SCAQMD believes that an agency should not be required to perform analyses that do not produce reliable or meaningful results. This Court has already held that an agency may decline to use even the "normal" "existing conditions" CEQA baseline where to do so would be misleading or without informational value. (*Neighbors for Smart Rail v. Exposition Metro Line* (2013) 57 Cal.4th 439, 448, 457.) The same should be true for a decision that a particular study or analysis would not provide reliable or meaningful results.<sup>10</sup>

<sup>&</sup>lt;sup>10</sup> Whether a particular study would result in "informational value" is a part of deciding whether it is "feasible." CEQA defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and

Therefore, it is not possible to set a hard-and-fast rule on whether a correlation of air quality impacts with specific quantifiable health impacts is required in all cases. Instead, the result turns on whether such an analysis is reasonably feasible in the particular case.<sup>11</sup> Moreover, what is reasonably feasible may change over time as scientists and regulatory agencies continually seek to improve their ability to predict health impacts. For example, CARB staff has been directed by its Governing Board to reassess and improve the methodology for estimating premature deaths. (California Air Resources Board, *Health Impacts Analysis: PM Mortality Relationship*, http://www.arb.ca.gov/research/health/pm-mort/pm-mort.htm (last reviewed Dec. 29, 2010).) This factor also counsels against setting any hard-and-fast rule in this case.

# III. THE QUESTION OF WHETHER AN EIR CONTAINS SUFFICIENT ANALYSIS TO MEET CEQA'S REQUIREMENTS IS A MIXED QUESTION OF FACT AND LAW GOVERNED BY TWO DIFFERENT STANDARDS OF REVIEW.

# A. Standard of Review for Feasibility Determination and Sufficiency as an Informative Document

A second issue in this case is whether courts should review an EIR's informational sufficiency under the "substantial evidence" test as argued by Friant Ranch or the "independent judgment" test as argued by Sierra Club.

technological factors." (Pub. Resources Code § 21061.1.) A study cannot be "accomplished in a *successful* manner" if it produces unreliable or misleading results.

<sup>&</sup>lt;sup>11</sup> In this case, the lead agency did not have an opportunity to determine whether the requested analysis was feasible because the comment was nonspecific. Therefore, SCAQMD suggests that this Court, after resolving the legal issues in the case, direct the Court of Appeal to remand the case to the lead agency for a determination of whether the requested analysis is feasible. Because Fresno County, the lead agency, did not seek review in this Court, it seems likely that the County has concluded that at least some level of correlation of air pollution with health impacts is feasible.

As this Court has explained, "a reviewing court must adjust its scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a dispute over the facts." (*Vineyard Area Citizens v. City of Rancho Cordova, supra,* 40 Cal.4th at 435.) For questions regarding compliance with proper procedure or other legal questions, courts review an agency's action de novo under the "independent judgment" test. (*Id.*) On the other hand, courts review factual disputes only for substantial evidence, thereby "accord[ing] greater deference to the agency's substantive factual conclusions." (*Id.*)

Here, Friant Ranch and Sierra Club agree that the case involves the question of whether an EIR includes sufficient information regarding a project's impacts. However, they disagree on the proper standard of review for answering this question: Sierra Club contends that courts use the independent judgment standard to determine whether an EIR's analysis is sufficient to meet CEQA's informational purposes,<sup>12</sup> while Friant Ranch contends that the substantial evidence standard applies to this question.

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<sup>&</sup>lt;sup>12</sup> Sierra Club acknowledges that courts use the substantial evidence standard when reviewing predicate factual issues, but argues that courts ultimately decide as a matter of law what CEQA requires. (Answering Brief, pp. 14, 23.)

SCAQMD submits that the issue is more nuanced than either party contends. We submit that, whether a CEQA document includes sufficient analysis to satisfy CEQA's informational mandates is a mixed question of fact and law,<sup>13</sup> containing two levels of inquiry that should be judged by different standards.<sup>14</sup>

The state CEQA Guidelines set forth standards for the adequacy of environmental analysis. Guidelines Section 15151 states:

An EIR should be prepared with 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. 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 light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection, but for adequacy, completeness, and a good-faith effort at full disclosure.

In this case, the basic question is whether the underlying analysis of air quality impacts made the EIR "sufficient" as an informative document. However, whether the EIR's analysis was sufficient is judged in light of what was reasonably feasible. This represents a mixed question of fact and law that is governed by two different standards of review.

<sup>&</sup>lt;sup>13</sup> Friant Ranch actually states that the claim that an EIR lacks sufficient relevant information is, "most properly thought of as raising mixed questions of fact and law." (Opening Brief, p. 27.) However, the remainder of its argument claims that the court should apply the substantial evidence standard of review to all aspects of the issue.

<sup>&</sup>lt;sup>14</sup> Mixed questions of fact and law issues may implicate predominantly factual subordinate questions that are reviewed under the substantial evidence test even though the ultimate question may be reviewed by the independent judgment test. *Crocker National Bank v. City and County of San Francisco* (1989) 49 Cal.3d 881, 888-889.

SCAQMD submits that an EIR's sufficiency as an informational document is ultimately a legal question that courts should determine using their independent judgment. This Court's language in Laurel Heights I supports this position. As this Court explained: "The court does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document." (Laurel Heights I, supra, 47 Cal.3d at 392-393) (emphasis added.) As described above, the Court in Vineyard Area Citizens v. City of Rancho Cordova, supra, 40 Cal.4th at 431, also used its independent judgment to determine what level of analysis CEQA requires for water supply impacts. The Court did not defer to the lead agency's opinion regarding the law's requirements; rather, it determined for itself what level of analysis was necessary to meet "[t]he law's informational demands." (Id. at p. 432.) Further, existing case law also holds that where an agency fails to comply with CEQA's information disclosure requirements, the agency has "failed to proceed in the manner required by law." (Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors (2001) 87 Cal.App.4th 99, 118.)

However, whether an EIR satisfies CEQA's requirements depends in part on whether it was reasonably feasible for an agency to conduct additional or more thorough analysis. EIRs must contain "a detailed statement" of a project's impacts (Pub. Res. Code § 21061), and an agency must "use its best efforts to find out and disclose all that it reasonably can." (CEQA Guidelines § 15144.) Nevertheless, "the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible." (CEQA Guidelines § 15151.)

SCAQMD submits that the question of whether additional analysis or a particular study suggested by a commenter is "feasible" is generally a question of fact. Courts have already held that whether a particular alternative is "feasible" is reviewed by the substantial evidence test.

(Uphold Our Heritage v. Town of Woodside (2007) 147 Cal.App.4th 587, 598-99; Center for Biological Diversity v. County of San Bernardino (2010) 185 Cal.App.4th 866, 883.) Thus, if a lead agency determines that a particular study or analysis is infeasible, that decision should generally be judged by the substantial evidence standard. However, SCAQMD urges this Court to hold that lead agencies must explain the basis of any determination that a particular analysis is infeasible in the EIR itself. An EIR must discuss information, including issues related to the feasibility of particular analyses "in sufficient detail to enable meaningful participation and criticism by the public. '[W]hatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report." (Laurel Heights I, supra, 47 Cal.3d at p. 405 (quoting Santiago County Water District v. County of Orange (1981) 118 Cal.App.3d 818, 831) (discussing analysis of alternatives).) The evidence on which the determination is based should also be summarized in the EIR itself, with appropriate citations to reference materials if necessary. Otherwise commenting agencies such as SCAQMD would be forced to guess where the lead agency's evidence might be located, thus thwarting effective public participation.

Moreover, if a lead agency determines that a particular study or analysis would not result in reliable or useful information and for that reason is not feasible, that determination should be judged by the substantial evidence test. (See *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority, supra*, 57 Cal.4th 439, 448, 457:

whether "existing conditions" baseline would be misleading or uninformative judged by substantial evidence standard.<sup>15</sup>)

If the lead agency's determination that a particular analysis or study is not feasible is supported by substantial evidence, then the agency has not violated CEQA's information disclosure provisions, since it would be infeasible to provide additional information. This Court's decisions provide precedent for such a result. For example, this Court determined that the issue of whether the EIR should have included a more detailed discussion of future herbicide use was resolved because substantial evidence supported the agency's finding that "the precise parameters of future herbicide use could not be predicted." *Ebbetts Pass Forest Watch v. California Dept. of Forestry & Fire Protection* (2008) 43 Cal.4th 936, 955.

Of course, SCAQMD expects that courts will continue to hold lead agencies to their obligations to consult with, and not to ignore or misrepresent, the views of sister agencies having special expertise in the area of air quality. (*Berkeley Keep Jets Over the Bay v. Board of Port Commissioners* (2007) 91 Cal.App.4<sup>th</sup> 1344, 1364 n.11.) In some cases, information provided by such expert agencies may establish that the purported evidence relied on by the lead agency is not in fact "substantial". (*Id.* at pp. 1369-1371.)

In sum, courts retain ultimate responsibility to determine what CEQA requires. However, the law does not require exhaustive analysis, but only what is reasonably feasible. Agencies deserve deference for their factual determinations regarding what type of analysis is reasonably feasible. On the other hand, if a commenter requests more information, and the lead agency declines to provide it but does *not* determine that the

<sup>&</sup>lt;sup>15</sup> The substantial evidence standard recognizes that the courts "have neither the resources nor the scientific expertise" to weigh conflicting evidence on technical issues. (*Laurel Heights I, supra,* 47 Cal.3d 376, 393.)

requested study or analysis would be infeasible, misleading or uninformative, the question becomes whether the omission of that analysis renders the EIR inadequate to satisfy CEQA's informational purposes. (*Id.* at pp. 1370-71.) Again, this is predominantly a question of law and should be judged by the de novo or independent judgment standard of review. Of course, this Court has recognized that a "project opponent or reviewing court can always imagine some additional study or analysis that might provide helpful information. It is not for them to design the EIR. That further study...might be helpful does not make it necessary." (*Laurel Heights I, supra,* 47 Cal.3d 376, 415 – see also CEQA Guidelines § 15204(a) [CEQA "does not require a lead agency to conduct every test. . . recommended or demanded by commenters."].) Courts, then, must adjudicate whether an omission of particular information renders an EIR inadequate to serve CEQA's informational purposes.<sup>16</sup>

<sup>16</sup> We recognize that there is case law stating that the substantial evidence standard applies to "challenges to the scope of an EIR's analysis of a topic" as well as the methodology used and the accuracy of the data relied on in the document "because these types of challenges involve factual questions." (Bakersfield Citizens for Local Control v. City of Bakersfield, supra, 124 Cal.App.4<sup>th</sup> 1184, 1198, and cases relied on therein.) However, we interpret this language to refer to situations where the question of the scope of the analysis really is factual—that is, where it involves whether further analysis is feasible, as discussed above. This interpretation is supported by the fact that the Bakersfield court expressly rejected an argument that a claimed "omission of information from the EIR should be treated as inquiries whether there is substantial evidence supporting the decision approving the project." Bakersfield, supra, 124 Cal.App.4th at p. 1208. And the *Bakersfield* court ultimately decided that the lead agency must analyze the connection between the identified air pollution impacts and resulting health impacts, even though the EIR already included some discussion of air-pollution-related respiratory illnesses. Bakersfield, supra, 124 Cal.App.4th at p. 1220. Therefore, the court must not have interpreted this question as one of the "scope of the analysis" to be judged by the substantial evidence standard.

# B. Friant Ranch's Rationale for Rejecting the Independent Judgment Standard of Review is Unsupported by Case Law.

In its brief, Friant Ranch makes a distinction between cases where a required CEQA topic is not discussed at all (to be reviewed by independent judgment as a failure to proceed in the manner required by law) and cases where a topic is discussed, but the commenter claims the information provided is insufficient (to be judged by the substantial evidence test). (Opening Brief, pp. 13-17.) The Court of Appeal recognized these two types of cases, but concluded that both raised questions of law. (*Sierra Club v. County of Fresno* (2014) 226 Cal.App.4th 704 (superseded by grant of review) 172 Cal.Rptr.3d 271, 290.) We believe the distinction drawn by Friant Ranch is unduly narrow, and inconsistent with cases which have concluded that CEQA documents are insufficient. In many instances, CEQA's requirements are stated broadly, and the courts must interpret the law to determine what level of analysis satisfies CEQA's mandate for providing meaningful information, even though the EIR discusses the issue to some extent.

For example, the CEQA Guidelines require discussion of the existing environmental baseline. In *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 954-955, the lead agency had discussed the environmental baseline by describing historic month-end water levels in the affected lakes. However, the court held that this was not an adequate baseline discussion because it failed to discuss the timing and amounts of past actual water releases, to allow comparison with the proposed project. The court evidently applied the independent judgment test to its decision, even though the agency discussed the issue to some extent.

Likewise, in *Vineyard Area Citizens* (2007) 40 Cal.4th 412, this Court addressed the question of whether an EIR's analysis of water supply impacts complied with CEQA. The parties agreed that the EIR was required to analyze the effects of providing water to the development project, "and that in order to do so the EIR had, in some manner, to identify the planned sources of that water." (*Vineyard Area Citizens, supra,* at p. 428.) However, the parties disagreed as to the level of detail required for this analysis and "what level of uncertainty regarding the availability of water supplies can be tolerated in an EIR . . . ." (*Id.*) In other words, the EIR had analyzed water supply impacts for the project, but the petitioner claimed that the analysis was insufficient.

This Court noted that neither CEQA's statutory language or the CEQA Guidelines specifically addressed the question of how precisely an EIR must discuss water supply impacts. (Id.) However, it explained that CEQA "states that '[w]hile foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can." (Id., [Guidelines § 15144].) The Court used this general principle, along with prior precedent, to elucidate four "principles for analytical adequacy" that are necessary in order to satisfy "CEQA's informational purposes." (Vineyard Area Citizens, supra, at p. 430.) The Court did not defer to the agency's determination that the EIR's analysis of water supply impacts was sufficient. Rather, this Court used its independent judgment to determine for itself the level of analysis required to satisfy CEQA's fundamental purposes. (Vineyard Area Citizens, supra, at p. 441: an EIR does not serve its purposes where it neglects to explain likely sources of water and "... leaves long term water supply considerations to later stages of the project.")

Similarly, the CEQA Guidelines require an analysis of noise impacts of the project. (Appendix G, "Environmental Checklist Form."<sup>17</sup>) In *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1123, the court held that the lead agency's noise impact analysis was inadequate even though it had addressed the issue and concluded that the increase would not be noticeable. If the court had been using the substantial evidence standard, it likely would have upheld this discussion.

Therefore, we do not agree that the issue can be resolved on the basis suggested by Friant Ranch, which would apply the substantial evidence standard to *every* challenge to an analysis that addresses a required CEQA topic. This interpretation would subvert the courts' proper role in interpreting CEQA and determining what the law requires.

Nor do we agree that the Court of Appeal in this case violated CEQA's prohibition on courts interpreting its provisions "in a manner which imposes procedural or substantive requirements beyond those explicitly stated in this division or in the state guidelines." (Pub. Resources Code § 21083.1.) CEQA requires an EIR to describe *all* significant impacts of the project on the environment. (Pub. Resources Code § 21100(b)(2); *Vineyard Area Citizens, supra,* at p. 428.) Human beings are part of the environment, so CEQA requires EIRs to discuss a project's significant impacts on human health. However, except in certain particular circumstances,<sup>18</sup> neither the CEQA statute nor Guidelines specify the precise level of analysis that agencies must undertake to satisfy the law's requirements. (see, e.g., CEQA Guidelines § 15126.2(a) [EIRs must describe "health and safety problems caused by {a project's} physical changes"].) Accordingly, courts must interpret CEQA as a whole to

<sup>&</sup>lt;sup>17</sup> Association of Environmental Professionals, 2015 CEQA Statute and Guidelines (2015) p.287.

<sup>&</sup>lt;sup>18</sup> E.g., Pub. Resources Code § 21151.8(C)(3)(B)(iii) (requiring specific type of health risk analysis for siting schools).

determine whether a particular EIR is sufficient as an informational document. A court determining whether an EIR's discussion of human health impacts is legally sufficient does not constitute imposing a new substantive requirement.<sup>19</sup> Under Friant Ranch's theory, the above-referenced cases holding a CEQA analysis inadequate would have violated the law. This is not a reasonable interpretation.

# IV. COURTS MUST SCRUPULOUSLY ENFORCE THE REQUIREMENTS THAT LEAD AGENCIES CONSULT WITH AND OBTAIN COMMENTS FROM AIR DISTRICTS

Courts must "scrupulously enforce" CEQA's legislatively mandated requirements. (*Vineyard Area Citizens, supra*, 40 Cal.4<sup>th</sup> 412, 435.) Case law has firmly established that lead agencies must consult with the relevant air pollution control district before conducting an initial study, and must provide the districts with notice of the intention to adopt a negative declaration (or EIR). (*Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 958.) As *Schenck* held, neither publishing the notice nor providing it to the State Clearinghouse was a sufficient substitute for sending notice directly to the air district. (*Id.*) Rather, courts "must be satisfied that [administrative] agencies have fully complied with the procedural requirements of CEQA, since only in this way can the important public purposes of CEQA be protected from subversion." *Schenck*, 198 Cal.App.4th at p. 959 (citations omitted).<sup>20</sup>

<sup>&</sup>lt;sup>19</sup> We submit that Public Resources Code Section 21083.1 was intended to prevent courts from, for example, holding that an agency must analyze economic impacts of a project where there are no resulting environmental impacts (see CEQA Guidelines § 15131), or imposing new procedural requirements, such as imposing additional public notice requirements not set forth in CEQA or the Guidelines.

 $<sup>^{20}</sup>$  Lead agencies must consult air districts, as public agencies with jurisdiction by law over resources affected by the project, *before* releasing an EIR. (Pub. Resources Code §§ 21104(a); 21153.) Moreover, air

Lead agencies should be aware, therefore, that failure to properly seek and consider input from the relevant air district constitutes legal error which may jeopardize their project approvals. For example, the court in *Fall River Wild Trout Foundation v. County of Shasta*, (1999)

70 Cal.App.4th 482, 492 held that the failure to give notice to a trustee agency (Department of Fish and Game) was prejudicial error requiring reversal. The court explained that the lack of notice prevented the Department from providing any response to the CEQA document. (*Id.* at p. 492.) It therefore prevented relevant information from being presented to the lead agency, which was prejudicial error because it precluded informed decision-making. (*Id.*)<sup>21</sup>

districts should be considered "state agencies" for purposes of the requirement to consult with "trustee agencies" as set forth in Public Resources Code § 20180.3(a). This Court has long ago held that the districts are not mere "local agencies" whose regulations are superseded by those of a state agency regarding matters of statewide concern, but rather have concurrent jurisdiction over such issues. (Orange County Air Pollution Control District v. Public Util. Com. (1971) 4 Cal.3d 945, 951, 954.) Since air pollution is a matter of statewide concern, Id at 952, air districts should be entitled to trustee agency status in order to ensure that this vital concern is adequately protected during the CEQA process. <sup>21</sup> In Schenck, the court concluded that failure to give notice to the air district was not prejudicial, but this was partly because the trial court had already corrected the error before the case arrived at the Court of Appeal. The trial court issued a writ of mandate requiring the lead agency to give notice to the air district. The air district responded by concurring with the lead agency that air impacts were not significant. (Schenck, 198 Cal.App.4th 949, 960.) We disagree with the Schenck court that the failure to give notice to the air district would not have been prejudicial (even in the absence of the trial court writ) merely because the lead agency purported to follow the air district's published CEQA guidelines for significance. (Id., 198 Cal.App.4th at p. 960.) In the first place, absent notice to the air district, it is uncertain whether the lead agency properly followed those guidelines. Moreover, it is not realistic to expect that an air district's published guidelines would necessarily fully address all possible air-quality related issues that can arise with a CEQA project, or that those

Similarly, lead agencies must obtain additional information requested by expert agencies, including those with jurisdiction by law, if that information is necessary to determine a project's impacts. (*Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236-37.) Approving a project without obtaining that information constitutes a failure to proceed in the manner prescribed by CEQA. (*Id.* at p. 1236.)

Moreover, a lead agency can save significant time and money by consulting with the air district early in the process. For example, the lead agency can learn what the air district recommends as an appropriate analysis on the facts of its case, including what kinds of health impacts analysis may be available, and what models are appropriate for use. This saves the lead agency from the need to do its analysis all over again and possibly needing to recirculate the document after errors are corrected, if new significant impacts are identified. (CEQA Guidelines § 15088.5(a).) At the same time, the air district's expert input can help the lead agency properly determine whether another commenter's request for additional analysis or studies is reasonable or feasible. Finally, the air district can provide input on what mitigation measures would be feasible and effective.

Therefore, we suggest that this Court provide guidance to lead agencies reminding them of the importance of consulting with the relevant air districts regarding these issues. Otherwise, their feasibility decisions may be vulnerable to air district evidence that establishes that there is no substantial evidence to support the lead agency decision not to provide specific analysis. (*See Berkeley Keep Jets Over the Bay, supra*, 91 Cal.App.4th 1344, 1369-1371.)

guidelines would necessarily be continually modified to reflect new developments. Therefore we believe that, had the trial court not already ordered the lead agency to obtain the air district's views, the failure to give notice would have been prejudicial, as in *Fall River, supra*, 70 Cal.App.4th 482, 492.

### **CONCLUSION**

The SCAQMD respectfully requests this Court *not* to establish a hard-and-fast rule concerning whether CEQA requires a lead agency to correlate identified air quality impacts of a project with resulting health outcomes. Moreover, the question of whether an EIR is "sufficient as an informational document" is a mixed question of fact and law containing two levels of inquiry. Whether a particular proposed analysis is feasible is predominantly a question of fact to be judged by the substantial evidence standard of review. Where the requested analysis is feasible, but the lead agency relies on legal or policy reasons not to provide it, the question of whether the EIR is nevertheless sufficient as an informational document is predominantly a question of law to be judged by the independent judgment standard of review.

DATED: April 3, 2015

Respectfully submitted,

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT KURT R. WIESE, GENERAL COUNSEL BARBARA BAIRD, CHIEF DEPUTY COUNSEL

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# **CERTIFICATE OF WORD COUNT**

Pursuant to Rule 8.520(c)(1) of the California Rules of Court, I hereby certify that this brief contains 8,476 words, including footnotes, but excluding the Application, Table of Contents, Table of Authorities, Certificate of Service, this Certificate of Word Count, and signature blocks. I have relied on the word count of the Microsoft Word Vista program used to prepare this Certificate.

DATED: April 3, 2015

Respectfully submitted,

1 Surbara Brind Barbara Baird

### **PROOF OF SERVICE**

I am employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is 21865 Copley Drive, Diamond Bar, California 91765.

On April 3, 2015 I served true copies of the following document(s) described as APPLICATION OF THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF NEITHER PARTY AND [PROPOSED] BRIEF OF AMICUS CURIAE by placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth on the attached service list as follows:

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this District's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service, with postage thereon fully prepaid at Diamond Bar, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 3, 2015 at Diamond Bar, California.

a Ander Sr

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Attorney for Plaintiffs and Appellants Sierra Club, et al

Attorneys for Respondents County of Fresno
**Appendix 3 Friant Case: San Joaquin Valley Unified Air Pollution Control District Amicus Brief, April 13, 2015** 

# SUPPLEME COURT COPY

### CASE NO. S219783

## IN THE SUPREME COURT OF CALIFORNIA

# SIERRA CLUB, REVIVE THE SAN JOAQUIN, and LEAGUE OF WOMEN VOTERS OF FRESNO, Plaintiffs and Appellants

v.

COUNTY OF FRESNO, Defendant and Respondent SUPREME CONVEX FILED

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FRIANT RANCH, L.P., Real Party in Interest and Respondent

Deputy

After a Decision by the Court of Appeal, filed May 27, 2014 Fifth Appellate District Case No. F066798

Appeal from the Superior Court of California, County of Fresno Case No. 11CECG00726

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT IN SUPPORT OF DEFENDANT AND RESPONDENT, COUNTY OF FRESNO AND REAL PARTY IN INTEREST AND RESPONDENT, FRIANT RANCH, L.P.

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## CASE NO. S219783 IN THE SUPREME COURT OF CALIFORNIA

# SIERRA CLUB, REVIVE THE SAN JOAQUIN, and LEAGUE OF WOMEN VOTERS OF FRESNO, Plaintiffs and Appellants

v.

# COUNTY OF FRESNO, Defendant and Respondent

# FRIANT RANCH, L.P., Real Party in Interest and Respondent

## After a Decision by the Court of Appeal, filed May 27, 2014 Fifth Appellate District Case No. F066798

# Appeal from the Superior Court of California, County of Fresno Case No. 11CECG00726

# APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT IN SUPPORT OF DEFENDANT AND RESPONDENT, COUNTY OF FRESNO AND REAL PARTY IN INTEREST AND RESPONDENT, FRIANT RANCH, L.P.

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Counsel for San Joaquin Valley Unified Air Pollution Control District

#### APPLICATION

Pursuant to California Rules of Court 8.520(f)(1), proposed Amicus Curiae San Joaquin Valley Unified Air Pollution Control District hereby requests permission from the Chief Justice to file an amicus brief in support of Defendant and Respondent, County of Fresno, and Defendant and Real Parties in Interest Friant Ranch, L.P. Pursuant to Rule 8.520(f)(5) of the California Rules of Court, the proposed amicus curiae brief is combined with this Application. The brief addresses the following issue certified by this Court for review:

Is an EIR adequate when it identifies the health impacts of air pollution and quantifies a project's expected emissions, or does CEQA further require the EIR to *correlate* a project's air quality emissions to specific health impacts?

As of the date of this filing, the deadline for the final reply brief on the merits was March 5, 2015. Accordingly, under Rule 8.520(f)(2), this application and brief are timely.

## 1. Background and Interest of San Joaquin Valley Unified Air Pollution Control District

The San Joaquin Valley Unified Air Pollution Control District ("Air District") regulates air quality in the eight counties comprising the San Joaquin Valley ("Central Valley"): Kern, Tulare, Madera, Fresno, Merced, San Joaquin, Stanislaus, and Kings, and is primarily responsible for attaining air quality standards within its jurisdiction. After billions of dollars of investment by Central Valley businesses, pioneering air quality regulations, and consistent efforts by residents, the Central Valley air basin has made historic improvements in air quality.

The Central Valley's geographical, topographical and meteorological features create exceptionally challenging air quality

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conditions. For example, it receives air pollution transported from the San Francisco Bay Area and northern Central Valley communities, and the southern portion of the Central Valley includes three mountain ranges (Sierra, Tehachapi, and Coastal) that, under some meteorological conditions, effectively trap air pollution. Central Valley air pollution is only a fraction of what the Bay Area and Los Angeles produce, but these natural conditions result in air quality conditions that are only marginally better than Los Angeles, even though about ten times more pollution is emitted in the Los Angeles region. Bay Area air quality is much better than the Central Valley's, even though the Bay Area produces about six times more pollution. The Central Valley also receives air pollution transported from the Bay Area and northern counties in the Central Valley, including Sacramento, and transboundary anthropogenic ozone from as far away as China.

Notwithstanding these challenges, the Central Valley has reduced emissions at the same or better rate than other areas in California and has achieved unparalleled milestones in protecting public health and the environment:

- In the last decade, the Central Valley became the first air basin classified by the federal government under the Clean Air Act as a "serious nonattainment" area to come into attainment of healthbased National Ambient Air Quality Standard ("NAAQS") for coarse particulate matter (PM10), an achievement made even more notable given the Valley's extensive agricultural sector. Unhealthy levels of particulate matter can cause and exacerbate a range of chronic and acute illnesses.
- In 2013, the Central Valley became the first air basin in the country to improve from a federal designation of "extreme" nonattainment to

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actually attain (and quality for an attainment designation) of the 1hour ozone NAAQS; ozone creates "smog" and, like PM10, causes adverse health impacts.

- The Central Valley also is in full attainment of federal standards for lead, nitrogen dioxide, sulfur dioxide, and carbon monoxide.
- The Central Valley continues to make progress toward compliance with its last two attainment standards, with the number of exceedences for the 8-hour ozone NAAQS reduced by 74% (for the 1997 standard) and 38% (for the 2008 standard) since 1991, and for the small particulate matter (PM2.5) NAAQS reduced by 85% (for the 1997 standard) and 61% (for the 2006 standard).

Sustained improvement in Central Valley air quality requires a rigorous and comprehensive regulatory framework that includes prohibitions (e.g., on wood-burning fireplaces in new residences), mandates (e.g., requiring the installation of best available pollution reduction technologies on new and modified equipment and industrial operations), innovations (e.g., fees assessed against residential development to fund pollution reduction actions to "offset" vehicular emissions associated with new residences), incentive programs (e.g., funding replacements of older, more polluting heavy duty trucks and school buses)<sup>1</sup>, ongoing planning for continued air quality improvements, and enforcement of Air District permits and regulations.

The Air District is also an expert air quality agency for the eight counties and cities in the San Joaquin Valley. In that capacity, the Air District has developed air quality emission guidelines for use by the Central

<sup>&</sup>lt;sup>1</sup> San Joaquin's incentive program has been so successful that through 2012, it has awarded over \$ 432 million in incentive funds and has achieved 93,349 tons of lifetime emissions reductions. See SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT, 2012 PM2.5 PLAN, 6-6 (2012) available at <u>http://www.valleyair.org/Workshops/postings/2012/12-20-12PM25/FinalVersion/06%20Chapter%206% 20Incentives.pdf</u>.

Valley counties and cities that implement the California Environment Quality Act (CEQA).<sup>2</sup> In its guidance, the Air District has distinguished between toxic air contaminants and criteria air pollutants.<sup>3</sup> Recognizing this distinction, the Air District's CEQA Guidance has adopted distinct thresholds of significance for *criteria* pollutants (i.e., ozone, PM2.5 and their respective precursor pollutants) based upon scientific and factual data which demonstrates the level that can be accommodated on a cumulative basis in the San Joaquin Valley without affecting the attainment of the applicable NAAQS.<sup>4</sup> For *toxic air* pollutants, the District has adopted different thresholds of significance which scientific and factual data demonstrates has the potential to expose sensitive receptors (i.e., children, the elderly) to levels which may result in localized health impacts.<sup>5</sup>

The Air District's CEQA Guidance was followed by the County of Fresno in its environment review of the Friant Ranch project, for which the Air District also served as a commenting agency. The Court of Appeal's holding, however, requiring correlation between the project's criteria

<sup>&</sup>lt;sup>2</sup> See, e.g., SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT, PLANNING DIVISION, GUIDE FOR ASSESSING AND MITIGATING AIR QUALITY IMPACTS (2015), available at http://www.valleyair.org/transportation/GAMAQ1\_3-19-15.pdf ("CEQA Guidance").

<sup>&</sup>lt;sup>3</sup> Toxic air contaminants, also known as hazardous air pollutants, are those pollutants that are known or suspected to cause cancer or other serious health effects, such as birth defects. There are currently 189 toxic air contaminants regulated by the United States Environmental Protection Agency ("EPA") and the states pursuant to the Clean Air Act. 42 U.S.C. § 7412. Common TACs include benzene, perchloroethylene and asbestos. *Id.* at 7412(b).

In contrast, there are only six (6) criteria air pollutants: ozone, particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide and lead. Although criteria air pollutants can also be harmful to human health, they are distinguishable from toxic air contaminants and are regulated separately. For instance, while criteria pollutants are regulated by numerous sections throughout Title I of the Clean Air Act, the regulation of toxic air contaminants occurs solely under section 112 of the Act. Compare 42 U.S.C. §§ 7407 – 7411 & 7501 – 7515 with 42 U.S.C. § 7411.

<sup>&</sup>lt;sup>4</sup> See, e.g., CEQA Guidance at <u>http://www.valleyair.org/transportation/GAMAQI\_3-19-15.pdf</u>, pp. 64-66, 80.

<sup>&</sup>lt;sup>5</sup> See, e.g., CEQA Guidance at <u>http://www.valleyair.org/transportation/GAMAQI\_3-19-</u> 15.pdf, pp. 66, 99-101.

pollutants and local health impacts, departs from the Air District's Guidance and approved methodology for assessing criteria pollutants. A close reading of the administrative record that gave rise to this issue demonstrates that the Court's holding is based on a misunderstanding of the distinction between toxic air contaminants (for which a local health risk assessment is feasible and routinely performed) and criteria air pollutants (for which a local health risk assessment is not feasible and would result in speculative results). <sup>6</sup> The Air District has a direct interest in ensuring the lawfulness and consistent application of its CEQA Guidance, and will explain how the Court of Appeal departed from the Air District's longstanding CEQA Guidance in addressing criteria pollutants and toxic air contaminants in this amicus brief.

# 2. How the Proposed Amicus Curiae Brief Will Assist the Court

As counsel for the proposed amicus curiae, we have reviewed the briefs filed in this action. In addition to serving as a "commentary agency" for CEQA purposes over the Friant Ranch project, the Air District has a strong interest in assuring that CEQA is used for its intended purpose, and believes that this Court would benefit from additional briefing explaining the distinction between criteria pollutants and toxic air contaminants and the different methodologies employed by local air pollution control agencies such as the Air District to analyze these two categories of air pollutants under CEQA. The Air District will also explain how the Court of Appeal's opinion is based upon a fundamental misunderstanding of these two different approaches by requiring the County of Fresno to correlate the project's *criteria* pollution emissions with *local* health impacts. In doing

<sup>&</sup>lt;sup>6</sup> CEQA does not require speculation. See, e.g., Laurel Heights Improvement Ass 'n v. Regents of Univ. of Cal., 6 Cal. 4th 1112, 1137 (1993) (upholding EIR that failed to evaluate cumulative toxic air emission increases given absence of any acceptable means for doing so).

so, the Air District will provide helpful analysis to support its position that at least insofar as criteria pollutants are concerned, CEQA does not require an EIR to correlate a project's air quality emissions to specific health impacts, because such an analysis is not reasonably feasible.

### Rule 8.520 Disclosure

Pursuant to Cal. R. 8.520(f)(4), neither the Plaintiffs nor the Defendant or Real Party In Interest or their respective counsel authored this brief in whole or in part. Neither the Plaintiffs nor the Defendant or Real Party in Interest or their respective counsel made any monetary contribution towards or in support of the preparation of this brief.

#### CONCLUSION

On behalf of the San Joaquin Valley Unified Air Pollution Control District, we respectfully request that this Court accept the filing of the attached brief.

Dated: April 2, 2015

Annette A. Ballatore-Williamson District Counsel Attorney for Proposed Amicus Curiae

SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT

## CASE NO. S219783

#### IN THE SUPREME COURT OF CALIFORNIA

# SIERRA CLUB, REVIVE THE SAN JOAQUIN, and LEAGUE OF WOMEN VOTERS OF FRESNO, *Plaintiffs and Appellants*

v.

## COUNTY OF FRESNO, Defendant and Respondent

# FRIANT RANCH, L.P., Real Party in Interest and Respondent

## After a Decision by the Court of Appeal, filed May 27, 2014 Fifth Appellate District Case No. F066798

Appeal from the Superior Court of California, County of Fresno Case No. 11CECG00726

# AMICUS CURIAE BRIEF OF SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT IN SUPPORT OF DEFENDANT AND RESPONDENT, COUNTY OF FRESNO AND REAL PARTY IN INTEREST AND RESPONDENT, FRIANT RANCH, L.P.

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#### I. INTRODUCTION.

The San Joaquin Valley Unified Air Pollution Control District ("Air District") respectfully submits that the Court of Appeal erred when it held that the air quality analysis contained in the Environmental Impact Report ("EIR") for the Friant Ranch development project was inadequate under the California Environmental Quality Act ("CEQA") because it did not include an analysis of the correlation between the project's criteria air pollutants and the potential adverse human health impacts. A close reading of the portion of the administrative record that gave rise to this issue demonstrates that the Court's holding is based on a misunderstanding of the distinction between toxic air contaminants and criteria air pollutants.

Toxic air contaminants, also known as hazardous air pollutants, are those pollutants that are known or suspected to cause cancer or other serious health effects, such as birth defects. There are currently 189 toxic air contaminants (hereinafter referred to as "TACs") regulated by the United States Environmental Protection Agency ("EPA") and the states pursuant to the Clean Air Act. 42 U.S.C. § 7412. Common TACs include benzene, perchloroethylene and asbestos. *Id.* at 7412(b).

In contrast, there are only six (6) criteria air pollutants: ozone, particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide and lead. Although criteria air pollutants can also be harmful to human health,

they are distinguishable from TACs and are regulated separately. For instance, while criteria pollutants are regulated by numerous sections throughout Title I of the Clean Air Act, the regulation of TACs occurs solely under section 112 of the Act. *Compare* 42 U.S.C. § 7407 – 7411 & 7501 – 7515 with 42 U.S.C. § 7411.

The most relevant difference between criteria pollutants and TACs for purposes of this case is the manner in which human health impacts are accounted for. While it is common practice to analyze the correlation between an individual facility's TAC emissions and the expected localized human health impacts, such is not the case for criteria pollutants. Instead, the human health impacts associated with criteria air pollutants are analyzed and taken into consideration when EPA sets the national ambient air quality standard ("NAAQS") for each criteria pollutant. 42 U.S.C. § 7409(b)(1). The health impact of a particular criteria pollutant is analyzed on a regional and not a facility level based on how close the area is to complying with (attaining) the NAAQS. Accordingly, while the type of individual facility / health impact analysis that the Court of Appeal has required is a customary practice for TACs, it is not feasible to conduct a similar analysis for criteria air pollutants because currently available computer modeling tools are not equipped for this task.

It is clear from a reading of both the administrative record and the Court of Appeal's decision that the Court did not have the expertise to fully appreciate the difference between TACs and criteria air pollutants. As a result, the Court has ordered the County of Fresno to conduct an analysis that is not practicable and not likely yield valid information. The Air District respectfully requests that this portion of the Court of Appeal's decision be reversed.

# II. THE COURT OF APPEAL ERRED IN FINDING THE FRIANT RANCH EIR INADEQUATE FOR FAILING TO ANALYZE THE SPECIFIC HUMAN HEALTH IMPACTS ASSOCIATED CRITERIA AIR POLLUTANTS.

Although the Air District does not take lightly the amount of air emissions at issue in this case, it submits that the Court of Appeal got it wrong when it required Fresno County to revise the Friant Ranch EIR to include an analysis correlating the criteria air pollutant emissions associated with the project with specific, localized health-impacts. The type of analysis the Court of Appeal has required will not yield reliable information because currently available modeling tools are not well suited for this task. Further, in reviewing this issue de novo, the Court of Appeal failed to appreciate that it lacked the scientific expertise to appreciate the significant differences between a health risk assessment commonly performed for toxic air contaminants and a similar type of analysis it felt should have been conducted for criteria air pollutants.

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## A. Currently Available Modeling Tools are not Equipped to Provide a Meaningful Analysis of the Correlation between an Individual Development Project's Air Emissions and Specific Human Health Impacts.

In order to appreciate the problematic nature of the Court of Appeals' decision requiring a health risk type analysis for criteria air pollutants, it is important to understand how the relevant criteria pollutants (ozone and particulate matter) are formed, dispersed and regulated.

Ground level ozone (smog) is not directly emitted into the air, but is formed when precursor pollutants such as oxides of nitrogen (NOx) and volatile organic compounds (VOCs) are emitted into the atmosphere and undergo complex chemical reactions in the process of sunlight.<sup>1</sup> Once formed, ozone can be transported long distances by wind.<sup>2</sup> Because of the complexity of ozone formation, a specific tonnage amount of NOx or VOCs emitted in a particular area does not equate to a particular concentration of ozone in that area. In fact, even rural areas that have relatively low tonnages of emissions of NOx or VOCs can have high levels of ozone concentration simply due to wind transport.<sup>3</sup> Conversely, the San Francisco Bay Area has six times more NOx and VOC emissions per square mile than the San Joaquin Valley, but experiences lower

 <sup>&</sup>lt;sup>1</sup> See United States Environmental Protection Agency, Ground-level Ozone: Basic Information, available at: <u>http://www.epa.gov/airguality/ozonepollution/basic.html</u> (visited March 10, 2015).
<sup>2</sup> Id.
<sup>3</sup> Id.

concentrations of ozone (and better air quality) simply because sea breezes disperse the emissions.<sup>4</sup>

Particulate matter ("PM") can be divided into two categories: directly emitted PM and secondary PM.<sup>5</sup> While directly emitted PM can have a localized impact, the tonnage emitted does not always equate to the local PM concentration because it can be transported long distances by wind.<sup>6</sup> Secondary PM, like ozone, is formed via complex chemical reactions in the atmosphere between precursor chemicals such as sulfur dioxides (SOx) and NOx.<sup>7</sup> Because of the complexity of secondary PM formation, the tonnage of PM-forming precursor emissions in an area does not necessarily result in an equivalent concentration of secondary PM in that area.

The disconnect between the *tonnage* of precursor pollutants (NOx, SOx and VOCs) and the *concentration* of ozone or PM formed is important because it is not necessarily the tonnage of precursor pollutants that causes human health effects, but the concentration of resulting ozone or PM. Indeed, the national ambient air quality standards ("NAAQS"), which are statutorily required to be set by the United States Environmental Protection

<sup>&</sup>lt;sup>4</sup> San Joaquin Valley Air Pollution Control District 2007 Ozone Plan, Executive Summary p. ES-6, available at:

http://www.valleyair.org/Air\_Quality\_Plans/docs/AO\_Ozone\_2007\_Adopted/03%20Executive%2 OSummary.pdf (visited March 10, 2015). <sup>5</sup> United States Environmental Protection Agency, Particulate Matter: Basic Information,

<sup>&</sup>lt;sup>3</sup> United States Environmental Protection Agency, *Particulate Matter: Basic Information*, available at: <u>http://www.epa.gov/airquality/particlepollution/basic.html</u> (visited March 10, 2015). <sup>6</sup> Id.

<sup>7</sup> Id.

Agency ("EPA") at levels that are "requisite to protect the public health," 42 U.S.C. § 7409(b)(1), are established as concentrations of ozone or particulate matter and not as tonnages of their precursor pollutants.<sup>8</sup>

Attainment of a particular NAAQS occurs when the concentration of the relevant pollutant remains below a set threshold on a consistent basis throughout a particular region. For example, the San Joaquin Valley attained the 1-hour ozone NAAQS when ozone concentrations remained at or below 0.124 parts per million Valley-wide on 3 or fewer days over a 3year period.<sup>9</sup> Because the NAAQS are focused on achieving a particular concentration of pollution region-wide, the Air District's tools and plans for attaining the NAAQS are regional in nature.

For instance, the computer models used to simulate and predict an attainment date for the ozone or particulate matter NAAQS in the San Joaquin Valley are based on regional inputs, such as regional inventories of precursor pollutants (NOx, SOx and VOCs) and the atmospheric chemistry and meteorology of the Valley.<sup>10</sup> At a very basic level, the models simulate future ozone or PM levels based on predicted changes in precursor

<sup>&</sup>lt;sup>8</sup> See, e.g., United States Environmental Protection Agency, *Table of National Ambient Air Quality Standards*, available at: <u>http://www.epa.gov/air/criteria.html#3</u> (visited March 10, 2015). <sup>9</sup> San Joaquin Valley Unified Air Pollution Control District 2013 Plan for the Revoked 1-Hour Ozone Standard, Ch. 2 p. 2-16, available at:

http://www.valleyair.org/Air\_Quality\_Plans/OzoneOneHourPlan2013/02Chapter2ScienceTrends Modeling.pdf (visited March 10, 2015).

<sup>&</sup>lt;sup>10</sup> Id. at Ch. 2 p. 2-19 (visited March 12, 2015); San Joaquin Valley Unified Air Pollution Control District 2008 PM2.5 Plan, Appendix F, pp. F-2 – F-5, available at:

http://www.valleyair.org/Air\_Quality\_Plans/docs/AQ\_Final\_Adopted\_PM2.5/20%20Appendix%2\_0F.pdf

<sup>(</sup>visited March 19, 2015).

emissions Valley wide.<sup>11</sup> Because the NAAQS are set levels necessary to protect human health, the closer a region is to attaining a particular NAAQS, the lower the human health impact is from that pollutant.

The goal of these modeling exercises is not to determine whether the emissions generated by a particular factory or development project will affect the date that the Valley attains the NAAQS. Rather, the Air District's modeling and planning strategy is regional in nature and based on the extent to which *all* of the emission-generating sources in the Valley (current and future) must be controlled in order to reach attainment.<sup>12</sup>

Accordingly, the Air District has based its thresholds of significance for CEQA purposes on the levels that scientific and factual data demonstrate that the Valley can accommodate without affecting the attainment date for the NAAQS.<sup>13</sup> The Air District has tied its CEQA significance thresholds to the level at which stationary pollution sources permitted by the Air District must "offset" their emissions.<sup>14</sup> This "offset"

<sup>11</sup> Id.

<sup>&</sup>lt;sup>12</sup> Although the Air District does have a dispersion modeling tool used during its air permitting process that is used to predict whether a particular project's directly emitted PM will either cause an exceedance of the PM NAAQS or contribute to an existing exceedance, this model bases the prediction on a worst case scenario of emissions and meteorology and has no provision for predicting any associated human health impacts. Further, this analysis is only performed for stationary sources (factories, oil refineries, etc.) that are required to obtain a New Source Review permit from the Air District and not for development projects such as Friant Ranch over which the Air District has no preconstruction permitting authority. See San Joaquin Valley Unified Air Pollution Control District Rule 2201 §§ 2.0; 3.3.9; 4.14.1, available at:

http://www.valleyair.org/rules/currntrules/Rule22010411.pdf (visited March 19, 2015). San Joaquin Valley Unified Air Pollution Control District Guide to Assessing and Mitigating Air Quality Impacts, (March 19, 2015) p. 22, available at:

http://www.valleyair.org/transportation/CEOA%20Rules/GAMAOI%20Jan%202002%20Rev.pdf (visited March 30, 2015). <sup>14</sup> *Id.* at pp. 22, 25.

level allows for growth while keeping the cumulative effects of all new sources at a level that will not impede attainment of the NAAQS.<sup>15</sup> In the Valley, these thresholds are 15 tons per year of PM, and 10 tons of NOx or VOC per year. *Sierra Club, supra*, 172 Cal.Rptr.3d at 303; AR 4554. Thus, the CEQA air quality analysis for criteria pollutants is not really a localized, project-level impact analysis but one of regional, "cumulative impacts."

Accordingly, the significance thresholds applied in the Friant Ranch EIR (15 tons per year of PM and 10 tons of NOx or VOCs) are not intended to be indicative of any localized human health impact that the project may have. While the health effects of air pollution are of primary concern to the Air District (indeed, the NAAQS are established to protect human health), the Air District is simply not equipped to analyze whether and to what extent the criteria pollutant emissions of an individual CEQA project directly impact human health in a particular area. This is true even for projects with relatively high levels of emissions of criteria pollutant precursor emissions.

For instance, according to the EIR, the Friant Ranch project is estimated to emit 109.52 tons per year of ROG (VOC), 102.19 tons per year of NOx, and 117.38 tons per year of PM. Although these levels well

<sup>&</sup>lt;sup>15</sup> <sup>15</sup> San Joaquin Valley Unified Air Pollution Control District Environmental Review Guidelines (Aug. 2000) p. 4-11, available at: <u>http://www.valleyair.org/transportation/CEOA%20Rules/ERG%20Adopted%20\_August%202000</u>\_.pdf (visited March 12, 2015).

exceed the Air District's CEQA significance thresholds, this does not mean that one can easily determine the concentration of ozone or PM that will be created at or near the Friant Ranch site on a particular day or month of the year, or what specific health impacts will occur. Meteorology, the presence of sunlight, and other complex chemical factors all combine to determine the ultimate concentration and location of ozone or PM. This is especially true for a project like Friant Ranch where most of the criteria pollutant emissions derive not from a single "point source," but from area wide sources (consumer products, paint, etc.) or mobile sources (cars and trucks) driving to, from and around the site.

In addition, it would be extremely difficult to model the impact on NAAQS attainment that the emissions from the Friant Ranch project may have. As discussed above, the currently available modeling tools are equipped to model the impact of *all* emission sources in the Valley on attainment. According to the most recent EPA-approved emission inventory, the NOx inventory for the Valley is for the year 2014 is 458.2 tons per day, or 167,243 tons per year and the VOC (or ROG) inventory is 361.7 tons per day, or 132,020.5 tons per year.<sup>16</sup> Running the photochemical grid model used for predicting ozone attainment with the

<sup>&</sup>lt;sup>16</sup> San Joaquin Valley Unified Air Pollution Control District 2007 Ozone Plan, Appendix B pp. B-6, B-9, available at:

http://www.valleyair.org/Air\_Quality\_Plans/docs/AQ\_Ozone\_2007\_Adopted/19%20Appendix%2 0B%20April%202007.pdf (visited March 12, 2015).

emissions solely from the Friant Ranch project (which equate to less than one-tenth of one percent of the total NOx and VOC in the Valley) is not likely to yield valid information given the relative scale involved.

Finally, even once a model is developed to accurately ascertain local increases in concentrations of photochemical pollutants like ozone and some particulates, it remains impossible, using today's models, to correlate that increase in concentration to a specific health impact. The reason is the same: such models are designed to determine regional, population-wide health impacts, and simply are not accurate when applied at the local level.

For these reasons, it is not the norm for CEQA practitioners, including the Air District, to conduct an analysis of the localized health impacts associated with a project's criteria air pollutant emissions as part of the EIR process. When the accepted scientific method precludes a certain type of analysis, "the court cannot impose a legal standard to the contrary." *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 717 n. 8. However, that is exactly what the Court of Appeal has done in this case. Its decision upends the way CEQA air quality analysis of criteria pollutants occurs and should be reversed.

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# B. The Court of Appeal Improperly Extrapolated a Request for a Health Risk Assessment for Toxic Air Contaminants into a Requirement that the EIR contain an Analysis of Localized Health Impacts Associated with Criteria Air Pollutants.

The Court of Appeal's error in requiring the new health impact analysis for criteria air pollutants clearly stems from a misunderstanding of terms of art commonly used in the air pollution field. More specifically, the Court of Appeal (and Appellants Sierra Club et al.) appear to have confused the health risk analysis ("HRA") performed to determine the health impacts associated with a project's toxic air contaminants ("TACs"), with an analysis correlating a project's criteria air pollutants (ozone, PM and the like) with specific localized health impacts.

The first type of analysis, the HRA, is commonly performed during the Air District's stationary source permitting process for projects that emit TACs and is, thus, incorporated into the CEQA review process. An HRA is a comprehensive analysis to evaluate and predict the dispersion of TACs emitted by a project and the potential for exposure of human populations. It also assesses and quantifies both the individual and population-wide health risks associated with those levels of exposure. There is no similar analysis conducted for criteria air pollutants. Thus, the second type of analysis (required by the Court of Appeal), is not currently part of the Air District's process because, as outlined above, the health risks associated

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with exposure to criteria pollutants are evaluated on a regional level based on the region's attainment of the NAAQS. ł

The root of this confusion between the types of analyses conducted for TACs versus criteria air pollutants appears to stem from a comment that was presented to Fresno County by the City of Fresno during the administrative process.

In its comments on the draft EIR, the City of Fresno (the only party to raise this issue) stated:

[t]he EIR must disclose the human health related effects of the Project's air pollution impacts. (CEQA Guidelines section 15126.2(a).) The EIR fails completely in this area. The EIR should be revised to disclose and determine the significance of TAC impacts, and of human health risks due to exposure to Project-related air emissions.

(AR 4602.)

In determining that the issue regarding the correlation between the Friant Ranch project's criteria air pollutants and adverse health impacts was adequately exhausted at the administrative level, the Court of Appeal improperly read the first two sentences of the City of Fresno's comment in isolation rather than in the context of the entire comment. *See Sierra Club v. County of Fresno* (2014) 172 Cal.Rptr.3d 271, 306. Although the comment first speaks generally in terms of "human health related effects" and "air pollution," it requests only that the EIR be revised to disclose "the significance of TACs" and the "human health risks due to exposure."

The language of this request in the third sentence of the comment is significant because, to an air pollution practitioner, the language would only have indicated only that a HRA for TACs was requested, and not a separate analysis of the health impacts associated with the project's criteria air pollutants. Fresno County clearly read the comment as a request to perform an HRA for TACs and limited its response accordingly. (AR 4602.)<sup>17</sup> The Air District submits that it would have read the City's comment in the same manner as the County because the City's use of the terms "human health risks" and "TACs" signal that an HRA for TACs is being requested. Indeed, the Air District was also concerned that an HRA be conducted, but understood that it was not possible to conduct such an analysis until the project entered the phase where detailed site specific information, such as the types of emission sources and the proximity of the sources to sensitive receptors became available. (AR 4553.)<sup>18</sup> The City of Fresno was apparently satisfied with the County's discussion of human health risks, as it did not raise the issue again when it commented on the final EIR. (AR 8944 – 8960.)

<sup>&</sup>lt;sup>17</sup> Appellants do not challenge the manner in which the County addressed TACs in the EIR. (Appellants' Answer Brief p. 28 fn. 7.)

<sup>&</sup>lt;sup>18</sup> Appellants rely on the testimony of Air District employee, Dan Barber, as support for their position that the County should have conducted an analysis correlating the project's criteria air pollutant emissions with localized health impacts. (Appellants Answer Brief pp. 10-11; 28.) However, Mr. Barber's testimony simply reinforces the Air District's concern that a risk assessment (HRA) be conducted once the actual details of the project become available. (AR 8863.) As to criteria air pollutants, Mr. Barber's comments are aimed at the Air District's concern about the amount of emissions and the fact that the emissions will make it "more difficult for Fresno County and the Valley to reach attainment which means that the health of Valley residents maybe [sic] adversely impacted." Mr. Barber says nothing about conducting a separate analysis of the localized health impacts the project's emissions may have.

The Court of Appeal's holding, which incorrectly extrapolates a request for an HRA for TACs into a new analysis of the localized health impacts of the project's criteria air pollutants, highlights two additional errors in the Court's decision.

First, the Court of Appeal's holding illustrates why the Court should have applied the deferential substantial evidence standard of review to the issue of whether the EIR's air quality analysis was sufficient. The regulation of air pollution is a technical and complex field and the Court of Appeal lacked the expertise to fully appreciate the difference between TACs and criteria air pollutants and tools available for analyzing each type of pollutant.

Second, it illustrates that the Court likely got it wrong when it held that the issue regarding the criteria pollutant / localized health impact analysis was properly exhausted during the administrative process. In order to preserve an issue for the court, '[t]he "exact issue" must have been presented to the administrative agency....' [Citation.] *Citizens for Responsible Equitable Environmental Development v. City of San Diego*, (2011) 196 Cal.App.4th 515, 527 129 Cal.Rptr.3d 512, 521; *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 535, 78 Cal.Rptr.3d 1, 13. ""[T]he objections must be sufficiently specific so that the agency has the opportunity to evaluate and respond to them.' [Citation.]" Sierra Club v. City of Orange,163 Cal.App.4<sup>th</sup> at 536.<sup>19</sup>

As discussed above, the City's comment, while specific enough to request a commonly performed HRA for TACs, provided the County with no notice that it should perform a new type of analysis correlating criteria pollutant tonnages to specific human health effects. Although the parties have not directly addressed the issue of failure to exhaust administrative remedies in their briefs, the Air District submits that the Court should consider how it affects the issues briefed by the parties since "[e]xhaustion of administrative remedies is a jurisdictional prerequisite to maintenance of a CEQA action." *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1199, 22 Cal.Rptr.3d 203.

## **III. CONCLUSION**

For all of the foregoing reasons, the Air District respectfully requests that the portion of the Court of Appeal's decision requiring an analysis correlating the localized human health impacts associated with an individual project's criteria air pollutant emissions be reversed.

<sup>&</sup>lt;sup>19</sup> Sierra Club v. City of Orange, is illustrative here. In that case, the plaintiffs challenged an EIR approved for a large planned community on the basis that the EIR improperly broke up the various environmental impacts by separate project components or "piecemealed" the analysis in violation of CEQA. In evaluating the defense that the plaintiffs had failed to adequately raise the issue at the administrative level, the Court held that comments such as "the use of a single document for both a project-level and a program-level EIR [is] 'confusing'," and "[t]he lead agency should identify any potential adverse air quality impacts that could occur from all phases of the project and all air pollutant sources related to the project," were too vague to fairly raise the argument of piecemealing before the agency. Sierra Club v. City of Orange, 163 Cal.App.4<sup>th</sup> at 537.

correlating the localized human health impacts associated with an

individual project's criteria air pollutant emissions be reversed.

Respectfully submitted,

Dated: April 2, 2015

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Catherine T. Redmond Attorney for Proposed Amicus Curiae

SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT

#### **CERTIFICATE OF WORD COUNT**

Pursuant to Rule 8.204 of the California Rules of Court, I hereby certify that this document, based on the Word County feature of the Microsoft Word software program used to compose and print this document, contains, exclusive of caption, tables, certificate of word count, signature block and certificate of service, 3806 words.

Dated: April 2, 2015

Annette A. Ballatore-Williamson District Counsel (SBN 192176)

## Sierra Club et al, v. County of Fresno, et al Supreme Court of California Case No.: S219783 Fifth District Court of Appeal Case No.: F066798 Fresno County Superior Court Case No.: 11CECG00726

#### **PROOF OF SERVICE**

I am over the age of 18 years and not a p[arty to the above-captioned action; that my business address is San Joaquin Valley Unified Air Pollution Control District located at 1990 E. Gettysburg Avenue, Fresno, California 93726.

On April 2, 2015, I served the document described below:

## APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT IN SUPPORT OF DEFENDANT AND RESPONDENT, COUNTY OF FRESNO

On all parties to this action at the following addresses and in the following manner:

#### PLEASE SEE ATTACHED SERVICE LIST

- (XX) (**BY MAIL**) I caused a true copy of each document(s) to be laced in a sealed envelope with first-class postage affixed and placed the envelope for collection. Mail is collected daily at my office and placed in a United State Postal Service collection box for pick-up and delivery that same day.
- (BY ELECTRONIC MAIL) I caused a true and correct scanned image (.PDF file) copy to be transmitted via electronic mail transfer system in place at the San Joaquin Valley Unified Air Pollution Control District ("District"), originating from the undersigned at 1990 E. Gettysburg Avenue, Fresno, CA, to the address(es) indicated below.
- () (BY OVERNIGHT MAIL) I caused a true and correct copy to be delivered via Federal Express to the following person(s) or their representative at the address(es) listed below.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I executed this document on April 2, 2015, at Fresno, California.

Esthela Soto

# SERVICE LIST

## Sierra Club et al, v. County of Fresno, et al Supreme Court of California Case No.: S219783 Fifth District Court of Appeal Case No.: F066798 Fresno County Superior Court Case No.: 11CECG00726

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Superior Court of California, County of Los Angeles, Judge Mary Strobel: *City of Baldwin Park and Waste Management Collection and Recycling, Inc. of San Gabriel / Pomona Valley v. City of Irwindale, et al., Respondents; Arakelian Enterprises, Inc. dba Athens Services, Real Party in Interest, September 5, 2019*
City of Baldwin Park,

v. City of Irwindale, et al., Respondents

Arakelian Enterprises, Inc. dba Athens Services, *Real Party in Interest* 

BS163400 (lead) [Consolidated with BS171622] [Related to BS163450 and BS171509] Judge Mary Strobel Hearings: July 16, 2019, August 22, 2019

Decision Petitions for Writ of Mandate

Waste Management Collection and Recycling, Inc., dba Waste Management of San Gabriel/Pomona Valley, FILED Superior Court of California County of Los Angeles

SEP -5 2019

Sherri R. Carter, Executive Officer/Clerk By MMCH MUMMULTOFL Deputy

IN. Digiambattista

v. City of Irwindale, et al., *Respondents* 

Arakelian Enterprises, Inc. dba Athens Services, *Real Party in Interest* 

BS163450 (lead) [Consolidated with BS171509] [Related to BS163400 and BS171622]

Petitioner City of Baldwin Park ("Baldwin Park") petitions for a writ of administrative mandate directing Respondent City of Irwindale ("Irwindale") to set aside its approval of an EIR, Addendum to EIR, and various land use approvals for a material recovery facility and transfer station ("Project") proposed by Real Party in Interest Arakelian Enterprises, Inc. dba Athens Services ("Athens"). In related actions, Petitioner Waste Management Collection and Recycling, Inc. ("Waste Management") petitions for a writ of administrative mandate directing Irwindale to set aside its approval of the same EIR, Addendum to EIR, and land us approvals. Irwindale and Athens (collectively "Respondents") jointly oppose both petitions.

The court held hearings on the writ petitions on July 16, 2019 and August 22, 2019. The court now issues its rulings.

### Requests for Judicial Notice / Requests to Augment Record

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The parties' requests for judicial notice are, for the most part, requests to augment the record. In general, "a hearing on a writ of administrative mandamus is conducted solely on the record of the proceedings before the administrative agency." (*Toyota of Visalia, Inc. v. New Motor Vehicle Bd.* (1987) 188 Cal.App.3d 872, 881.) However, extra-record evidence may be admitted if, in the exercise of reasonable diligence, the relevant evidence could not have been produced or was improperly excluded at the hearing. (CCP § 1094.5(e); *Pomona Valley Hosp. Med. Ctr. v. Superior Court* (1997) 55 Cal.App.4th 93, 100.)

The requirements to submit extra-record evidence under section 1094.5(e) are "stringent." (*Pomona Valley Hosp. Med. Ctr. v. Superior Court* (1997) 55 Cal.App.4th 93, 102.) In CEQA cases, "extra-record evidence can never be admitted merely to contradict the evidence the administrative agency relied on in making a quasi-legislative [or quasi-adjudicatory] decision or to raise a question regarding the wisdom of that decision."<sup>1</sup> (*Western States Petroleum Assn. v. Sup. Ct.* (1995) 9 Cal.4th 559, 579; see *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 367.)

## Waste Management's Request for Judicial Notice

Exhibits A, B, 2018 Staff Report and Minutes – DENIED. Because these documents postdate the administrative proceedings, they are not relevant to Waste Management's contention that the Project description in the EIR should have included the 2011 Hauling Agreement. (See WM OB 16; Reply 9.) The Project description must be based on the facts available to Irwindale at the time the EIR was prepared. Extra-record evidence cannot be submitted merely to contradict Irwindale's EIR.

Exhibit C, December 18, 2018 Correspondence from Local Enforcement Agency, Los Angeles County Public Health, to the Department of Resources Recycling and Recovery -- DENIED. See analysis above as to Exhibits A and B.

Exhibit D, Governor's Office of Planning and Research CEQA and Climate Change Advisory, Discussion Draft (December 2018) – DENIED. The *draft* technical guidance postdates the administrative proceedings, is not binding, and is not relevant to the adequacy of Irwindale's GHG analysis in the EIR.

# Respondents' Request for Judicial Notice

<sup>&</sup>lt;sup>1</sup> While *Western* involved a traditional mandamus action challenging a quasi-legislative decision, the California Supreme Court's reasoning has been applied to administrative mandamus review of quasi-judicial decisions. (See *Cadiz Land Co. v. Rail Cycle LP* (2000) 83 Cal.App.4th 74, 120; *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 367.)

Exhibits 1 and 2, Irwindale Agenda Report and Minutes dated September 12, 2018 re: Award of Contracts for Construction of State Highway I-605 at Live Oak Ave. – DENIED. This evidence postdates the administrative proceedings. It is not relevant to the EIR analysis of traffic mitigation measures, which must be based on evidence before the agency at the time of CEQA review. (See Oppo. 35, fn. 15, citing RJN Exh. 1, 2; see also BP Reply 19-20 [objecting to RJN Exhibits 1 and 2 as extra-record evidence].)

Exhibit 3, SCAQMD Final Localized Significance Threshold Methodology ("LST Methodology") – GRANTED. Respondents represent that the LST Methodology is relied upon in the EIR. (See Request at 2; see also AR 3580-83; Oppo. 11.) No objection has been received. (See BP Reply 16:1.) The court has not found a clear incorporation of the LST Methodology in the EIR. The LST Methodology (revised July 2008) was clearly available at the time the EIR was prepared. Nonetheless, it appears Irwindale intended to incorporate by reference the LST Methodology in the EIR. (See e.g. AR 3580-83)

#### Baldwin Park's Reply Request for Judicial Notice

Exhibit A, Weblink for The California Energy Commission's "Retail Fuel Report and Data for California" – GRANTED. This weblink was cited in the EIR, but the full report was apparently not included in the administrative record. (See e.g. AR 6401.) By citing the weblink in the EIR, Irwindale effectively incorporated the report by reference. Thus, judicial notice is appropriate. No objection has been received.

Exhibit B, SCAQMD Rule 1193 – GRANTED. This rule is cited and expressly relied upon in the EIR. (Oppo. 6, 9, 30; AR 6194.) No objection has been received.

The court notes that none of the documents above, except SCAQMD Rule 1193, were important to the court's ruling. The court would reach the same result in this action if all documents were judicially noticed.

## Factual and Procedural Background

### The Proposed Project and Site

The Project is a material recovery facility and transfer station (MRF/TS), and convenience store/fueling station. (AR 3452, 8049.) A MRF/TS "is a regional facility where residential, commercial, and/or industrial municipal solid waste and recyclable materials are delivered by commercial and non-commercial haulers, and sorted and processed in one central location prior to delivery at end use distributors." (AR 8049.) "The MRF/TS consists of a fully enclosed building with the interior designed to provide separate areas to receive, process, and transfer mixed municipal solid waste (MSW),

green waste, construction and demolition (C&D) materials, and waste hauled in by self-haulers." (AR 8049.) Hazardous waste would be prohibited at the MRF/TS. (AR 3455.)

The total building area was originally planned for 247,007 square feet, but was later increased to 265,228 square feet. (EIR Addendum, AR 8055.) The Project will operate 24 hours per day, 7 days per week, and is expected to process up to a maximum of 6,000 tons of waste per day ("tpd"). (AR 3454, 3460.) Each day there will be approximately 2,456 truck trips, 345 employee trips, and 751 fueling station trips entering and exiting the site. (AR 3810.)

The Project Site, within the City of Irwindale, is approximately 17.22 acres and is currently zoned for heavy manufacturing. (AR 3448.) "The irregular-shaped, triangular Proposed Project site is unimproved, and bordered on the south by Live Oak Avenue, on the east by the Santa Fe Dam and property owned by the U.S. Army Corps of Engineers (USACE), on the northeast by Arrow Highway, and on the west and northwest by an existing business/industrial parking lot." (AR 3448; see 3450, 3717, and 9472 [aerial photographs].)

The Project Site abuts the City of Baldwin Park on its southern border. (AR 3448-50.) The Project Site is approximately 325 feet north of a large residential neighborhood in Baldwin Park, and 480 feet from the Santa Fe Dam bike/pedestrian path. Eight schools are located within 4,500 feet of the Project Site, the closest of which – Margaret Heath Elementary – is within 1,370 feet. (AR 3556, 3717.)

The Project Site is located within the South Coast Air Basin ("Basin"). "Basin climate increases the potential to create air pollution problems. Air quality within the Basin generally rates from fair to poor." (AR 3536.)

#### Project Agreements

Irwindale began working with Project proponent, Athens, in 2008, when Irwindale and Athens executed a non-binding memorandum of understanding for a MRF/TS. (AR 8498, 1281-12205.)

Irwindale and Athens have executed several other agreements since 2008, including a 2008 Project Reimbursement Agreement and amendments (See AR 12206-12211); a 2011 Franchise Agreement for Waste Hauling Services (see AR 8597-8658, 12236-12294); and the 2016 Disposition and Development Agreement (AR 12457-12548). (For additional discussion of relevant agreements, see Waste Management Opening Brief (WM OB) 10-11.)

## Irwindale's Environmental Review and Land Use Approvals

In May 2013, Irwindale circulated a Notice of Preparation ("NOP") of the Draft Environmental Impact Report ("DEIR"). In April 2014, the DEIR was circulated for public review and comment. (AR 11-12.) Thereafter, Irwindale elected to prepare a recirculated DEIR ("RDEIR"), which was circulated for comment in August 2014. (AR 13, 11137-41. (AR 13.) Irwindale then prepared a final EIR ("FEIR"), which included responses to comments and revisions to the EIR. In April 2016, the City provided notice that it would consider certification of the FEIR. (AR 14, 11147-48.) On June 8, 2016, the Irwindale City Council considered and certified the FEIR, adopted the findings of fact, statement of overriding considerations, and a mitigation monitoring and reporting program. (AR 17-21, 9778.) Irwindale concluded in the EIR that the Project would result in several significant and unavoidable impacts to the environment, including impacts to air quality, traffic, and noise impacts. (AR 33, 3398.) In the FEIR, Irwindale incorporated the DEIR and its appendices and the RDEIR and its appendices. (AR 6060.) Accordingly, at times, the court may refer to these documents collectively as "EIR."

On June 8, 2016, City also approved the DDA agreeing to sell the Project Site to Athens. (AR 101-207.)

In late 2016, after the EIR was certified, Athens proposed final plans for the Project Site, including certain changes to the Project considered in the EIR. (AR 8051-58, 11487.) Thereafter, Irwindale prepared an Addendum to the FEIR, which was approved by Irwindale's City Council on October 11, 2017. (AR 511.) In October 2017, Irwindale also approved a General Plan Amendment, a Conditional Use Permit, and other land use approvals for the Project ("Land Use Approvals"). (AR 510-734; see list of Land Use Approvals at BP OB 10, fn. 3.)

Baldwin Park, Waste Management, and others objected to various aspects of Irwindale's certification of the EIR and the Land Use Approvals. (See e.g. AR 6144-64, 6361-95, 10470-480, 11247-70, 11298-474, 11484-748, 11742-48.)

#### Writ Proceedings

On July 11, 2016, Baldwin Park filed its verified petition for writ of mandate and complaint for declaratory and injunctive relief in BS163400, challenging Irwindale's June 2016 approval of the DDA and EIR. On November 15, 2017, Baldwin Park filed its verified petition for writ of mandate in BS171622 challenging Irwindale's October 2017 approval of the land use approvals and EIR Addendum. BS163400 and BS171622 have been consolidated.

On July 8, 2016 Waste Management filed its verified petition for writ of mandate and complaint for injunctive relief in BS163450, challenging Irwindale's June 2016 actions. On November 15, 2017, Waste Management filed its verified petition for writ of mandate in BS171509 challenging Irwindale's October 2017 actions. BS163450 and BS171509 have been consolidated.

All four cases have been related. In June 2018, the court approved the parties' stipulations approving the following briefing schedule: Petitioners to each file opening briefs not exceeding 20 pages; Respondents Irwindale and Athens to file one joint opposition brief not exceeding 40 pages; and Petitioners to file replies not exceeding 15 pages.<sup>2</sup>

The court has received Baldwin Park's opening brief, Waste Management's opening brief, Respondents' joint opposition, Baldwin Park's reply, Waste Management's reply, the joint appendix, and the administrative records.

#### **Standard of Review**

In an action challenging an agency's decision under CEQA, the trial court reviews the agency's decision for a prejudicial abuse of discretion. (Pub. Res. Code, § 21168.5.) "Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (Ibid.; see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.) Challenges to an agency's failure to proceed in a manner required by CEQA are subject to a less deferential standard than challenges to an agency's factual conclusions. (*Vineyard, supra* at 435.) In reviewing these claims, the Court must "determine *de novo* whether the agency has employed the correct procedures." (Ibid.; see *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4<sup>th</sup> 20, 26.)

In actions challenging an agency's factual determinations, substantial evidence is defined as "enough relevant evidence and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Title 14 Cal. Code Regs. ("CEQA Guidelines") § 15384(a).) "A court may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable." (*Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 393.) "The reviewing court must resolve reasonable doubts in favor of the administrative finding and decision." (Ibid.)

"The ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail 'to enable those who did not participate in its

<sup>&</sup>lt;sup>2</sup> Respondents object to Baldwin Park's incorporation by reference of certain arguments made by Waste Management. The objection is overruled. Given the parties' stipulation, under which Respondents jointly opposed (in a 40-page brief) the opening briefs of both Baldwin Park and Waste Management, Respondents do not show any prejudice. Respondents' reliance on *Parker v. Wolters Kluwer United States, Inc.* (2007) 149 Cal.App.4th 285, 290 is misplaced. That case dealt with an appellant's attempt to incorporate, in an appellate brief, arguments made in a trial court brief. The relevant court rule (8.204) does not apply here. There is also no hardship to the court or Respondents.

preparation to understand and to consider meaningfully the issues raised by the proposed project'....The inquiry presents a mixed question of law and fact.... [T]o the extent a mixed question requires a determination whether statutory criteria were satisfied, de novo review is appropriate; but to the extent factual questions predominate, a more deferential standard is warranted." (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516 ["*Friant Ranch*"].)

"Although the failure to comply with CEQA's informational requirements does not require reversal unless the petitioner establishes prejudice (Pub. Resources Code, § 21005, subd. (b)), such prejudice is found 'if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.' [Citation.] A deficiency in the EIR may be deemed prejudicial under this standard 'regardless of whether a different outcome would have resulted if the public agency had complied with those provisions." (*Washoe Meadows Community v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277, 290.)

An agency is presumed to have regularly performed its official duties. (Evidence Code § 664.) Petitioners bear the burden of proof to demonstrate, by citation to the administrative record, that the EIR is legally inadequate and that the agency abused its discretion in certifying it. (See South Orange County Wastewater Authority v. City of Dana Point (2011) 196 Cal.App.4th 1604, 1612; see Cherry Valley Pass Acres and Neighbors v. City of Beaumont (2010) 190 Cal. App. 4th 316, 327-28.) The court is not required to search the record to ascertain whether it supports an appellant's contentions, nor make the parties' arguments for them. (Inyo Citizens for Better Planning v. Inyo County Board of Supervisors (2009) 180 Cal.App.4th 1, 14.)

## <u>Analysis</u>

#### Adequacy of Project Description in the EIR

Baldwin Park contends that the Project description is "conflicting and shifting," and that the inconsistencies render the EIR non-compliant with CEQA. (Baldwin Park Oppo. ("BP OB") 12-15.) These arguments raise legal issues that the court decides *de novo*.

"An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) "If a final environmental impact report (EIR) does not 'adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project,' informed decisionmaking cannot occur under CEQA and the final EIR is inadequate as a matter of law." (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 82-83.)

The court must determine whether the alleged inconsistencies or errors in the EIR were prejudicial because they "preclude[d] informed decisionmaking and informed public participation." (See Washoe Meadows Community, supra, 17 Cal.App.5th at 290.) "Under CEQA 'there is no presumption that error is prejudicial.' Insubstantial or merely technical omissions are not grounds for relief." (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 463 [agency's decision to use only a future conditions baseline was not supported by substantial evidence, but this error had no such prejudicial effect]; hereafter "*Neighbors for Smart Rail*".)

## Square Footage of Buildings

Baldwin Park contends that the EIR inconsistently describes the square footage of the proposed buildings. (BP OB 13.)

The RDEIR stated that the buildings would be 247,007 square feet, including in Chapter 2.0 "Project Description" and in Exhibit 2.3 "Project Site Plan". (AR 3456, 3471, 3562, 3809.) The EIR also analyzes the Project based on square footage of about 247,000. (AR 6170, 6263.)<sup>3</sup> However, the FEIR includes a "Revised Site Plan" that shows a building square footage of 266,060. (AR 6068.)

Respondents contend that "any reader of the EIR would understand that the square footage on that site plan was outdated and inadvertently not replaced in the EIR." (Oppo. 4.) Respondents point out that Baldwin Park later acknowledged that the Addendum, discussed below, analyzed a building increase from 247,007 square feet to 265,228 square feet. (AR 11487.)

Petitioners have not shown that the inaccuracy precluded informed decisionmaking and informed public participation with respect to the EIR. Reading the RDEIR and FEIR as a whole, it seems reasonably clear that these documents analyzed a building square footage of about 247,000. Petitioners did not exhaust this argument – they cite to no comments suggesting confusion about the square footage in the EIR, or about the site plan on page 6068. Petitioners also fail to show that the site plan on page 6068 reflected the true, intended building footage at the time the EIR was prepared and analyzed.

Irwindale's decision to use an Addendum to address certain Project changes, including the square footage increase to 265,228, is a separate issue that does not

<sup>&</sup>lt;sup>3</sup> Some of Baldwin Park's citations shows a square footage of 244,617. (AR 3562, 6170, 6263.) Baldwin Park makes no argument that this difference is a material inaccuracy.

relate to the adequacy of the project description in the EIR.<sup>4</sup> (See CEQA Guidelines, § 15162, 15164 [standard to prepare addendum].) Baldwin Park does not show that the cited Franchise and Facility Operations Agreement (AR 604), which purportedly permitted a 320,000 square foot building, is the final operations agreement or that it was relevant to the EIR analysis. (See Oppo. 4; see AR 12910-13011.) Finally, in reply, Baldwin Park cites to a resolution using the 266,060 square footage number. (AR 29.) The resolution is not the EIR, and thus is not dispositive.

The court concludes Baldwin Park has not shown that the inconsistency in the Project description of building square footage in the EIR was a prejudicial abuse of discretion.

## Number of Parking Spaces

Baldwin Park contends that the EIR inconsistently described, and underestimated, the number of parking spaces needed for the Project. Baldwin Park contends that this error could not be rectified by use of an addendum. (BP OB 13-14.)

The RDEIR and FEIR based the project site grading emissions on 147 parking spaces and 23 transfer truck stalls. (AR 3456, 6263.) Another passage in the RDEIR stated that the traffic impact analysis was based on 180 parking spaces and 23 transfer truck stalls. (AR 3462, 3809.) The "Revised Site Plan" in the FEIR at page 6068, discussed above, refers to 311 parking stalls. (AR 6068.) The RDEIR and FEIR do not explain these inconsistencies.

The RDEIR states that "Parking requirements are based upon number of employees. 345 employees divided by 3 shifts equals 115 spaces required, plus Office and Convenience Store parking 32 spaces, for a total of 147 required parking stalls." (AR 3456, fn. 2.) The RDEIR specifies that the 345 full-time employees would be distributed between three shifts: (1) 6:00 am – 2:30 pm; (2) 2:30 pm – 10:30 pm; and (3) 10:00 pm – 6:30 am. (AR 3461.) Thus, at the least, the second and third and the third and first shifts would overlap by 30 minutes. It also seems reasonable to infer that employees from the first shift would not leave exactly at 2:30 pm, thus creating some overlap with the second shift. Thus, based on the assumption in the RDEIR that 115 spaces would be required per shift, or 230 for two shifts, (see AR 3456, fn. 2), Baldwin Park argues that 147 or 180 spaces would be insufficient, causing employees to park offsite. (BP Reply 9.) However, there are other interpretations of the EIR that would not

<sup>4</sup> The court does not interpret Baldwin Park as arguing that Irwindale abused its discretion in deciding to prepare an addendum with respect to the square footage increase to 265,228. (See BP OB 23-25 [addendum arguments do not discuss square footage increase].) Moreover, the court is not persuaded from Baldwin Park's briefs that no substantial evidence supports Irwindale's determination, with respect to the increase in square footage, "that the changes in the Project (or its circumstances) were not substantial enough to require an SEIR." (*Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 704.)

result in employees parking offsite, including that Irwindale simply understated the number of required parking spaces and would need to change that aspect of the Project.

In opposition, Respondents state that the 180 parking spaces and 23 transfer truck stalls are the "operative" numbers. Respondents defend the EIR description and analysis of parking spaces by reference to the Addendum, which increased the parking spaces to 307. (Oppo. 5-6.) With respect to Irwindale's certification of the EIR in June 2016, "the addendum is not a part of the administrative record and cannot be considered in deciding whether the city abused its discretion in certifying the EIR." (*Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 265.) "Moreover, the city's subsequent approval of the addendum does not cure the prior approval of an inadequate EIR." (Ibid.)

Given the inconsistent description of parking spaces in the EIR (i.e. 147 and 180), the court preliminarily concludes Irwindale abused its discretion. However, Baldwin Park must show this error was prejudicial. In its opening brief, Baldwin Park contends that because of the underestimation of the parking requirements "the EIR failed to properly analyze numerous impacts (e.g., noise, odor, air quality, traffic." (BP OB 14, citing AR 11717-18.) The record citation is to a letter dated October 10, 2017 from MRO Engineers, a traffic engineering firm, *after* the EIR was certified. Post-certification evidence is not properly considered in determining the sufficiency of the EIR. (See BP Reply 7 ["review of the adequacy of the EIR must be based only on the AR documents dated on or before the EIR's June 8, 2016 certification."].)

In reply, Baldwin Park contends that parking lot construction is a factor in the air quality analysis since the site must be graded and paved. (See Reply 9, citing AR 3562, 6263.) Installing more parking spaces could *potentially* require paving of more acreage. However, it is unclear from these record citations whether additional paving would be required, or how much additional paving would be required per space. (See Ibid. [equating 147 spaces with 1.32 acres]; see also AR 3471, 6068 [site plans].) Nor does Baldwin Park show, with citation to the record, that it commented prior to certification of the EIR that an increase in parking spaces would require additional paving with concomitant impacts. Even if additional paving is required, Baldwin Park does not show, with discussion of the record, how the difference could be material to the EIR analysis of air quality impacts.

Baldwin Park contends that the EIR needed to analyze the traffic impacts from offsite overflow parking for about 50 employees. (Reply 9.) As stated above, there are other interpretations of the EIR that would not result in employees parking offsite, including that Irwindale simply understated the number of required parking spaces and would need to change that aspect of the Project. Notably, the number of employees was consistent in the EIR and Addendum. (AR 3461, 8050.)

Although unclear, Baldwin Park seems to argue that Irwindale prejudicially abused its discretion in increasing the number of parking spaces to 307 in the Addendum. (BP OB 14; see CEQA Guidelines §§ 15162, 15164.) As discussed below, the court reviews "whether there is substantial evidence supporting the agency's determination that the changes in the Project (or its circumstances) were not substantial enough to require an SEIR." (*Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 704.) Baldwin Park does not show in its briefs, by discussion of the record, how an increase from 180 parking spaces to about 307 would affect the analysis of environmental impacts in the EIR.

If the October 10, 2017 letter from MRO Engineers is considered, it states, in part: "Although the greatly increased parking supply will not necessarily increase the volume of traffic associated with the proposed project, it will alter the local distribution of the project-generated traffic at the project driveways, as the on-site parking (which represents the local origin or destination for all trips generated by the project) is distributed over a greater portion of the site. This redistribution of project-generated traffic must be accounted for in the analyses of driveway delay and level of service described above. [¶] We would also note that, if the additional parking results in a substantial increase in impervious area on the project site, additional impacts might occur with respect to air quality emissions from construction and operation, which haven't been addressed in the Addendum." (AR 11717-18 [emphasis added].)

This letter provides some support that the inaccurate description of parking spaces was relevant to the EIR analysis of traffic circulation. However, AR 11717-18 does not include any specific analysis of (1) *how* the inaccuracies in the EIR or increased parking in the Addendum would change the traffic analysis, or (2) *why* the change could lead to significant environmental impacts. MRO Engineers admits that the increase in parking supply would not necessarily increase the volume of traffic at the Project. While the letter notes that an increase in impervious area on the project site may cause additional impacts from construction and operation, Baldwin Park, does not cite to any evidence in the record that the additional parking spaces will substantially increase the impervious area on the project site.

The court concludes that Irwindale erred in giving an inaccurate description of the number of parking spaces at the Project in the EIR (i.e. both 147 and 180). However, the court is unable to conclude that the error prejudiced informed decisionmaking and public participation. "Insubstantial or merely technical omissions are not grounds for relief." (*Neighbors for Smart Rail, supra* at 463.)

## Truck Fueling Operations

Baldwin Park contends that the EIR does not adequately describe truck fueling operations. It also contends that the EIR does not identify or analyze the potential impacts from compressed natural gas ("CNG") trucks fueling off-site. (BP OB 14-15.)

The EIR states that there will be an estimated 2,456 daily truck round trips. (AR 3571.) Thirty-two percent of inbound collection trucks will be diesel fueled and 68 percent will be fueled by CNG. The EIR assumes 100 percent of outbound transfer trucks are diesel fueled. (AR 3569-71, 3579.) The EIR discusses a maintenance facility for the Project's trucks and heavy equipment, but does not state that CNG or diesel trucks could fuel at the MRF/TS facility. (AR 3455-56.) The only fueling accounted for in the Project description is at the public fueling station. (AR 3455, 3459, 6338-39, 6364, 6401.)

In response to SCAQMD's request that an alternative fueling station be available to reduce the Project's significant NOx emissions (AR 6326 [comment 19-19]), Irwindale stated in the FEIR that "the Proposed Project includes a CNG fueling facility to provide alternative fueling operations for the project-related truck operations." (AR 6338; see also AR 3695 [fueling station will include "compressed gas"].) However, the site plan does not include a CNG fueling station and the EIR does not otherwise analyze environmental impacts from providing CNG fueling onsite. (See e.g. AR 3471, 6068.) In opposition, Respondents now admit that the response to SCAQMD was in error: "No CNG truck fueling would occur at the site." (Oppo. 6.)

Baldwin Park commented that "if the proposed gas station/convenience store is intended to provide fueling facilities for collection and transfer vehicles, this should be disclosed [and the impacts analyzed]." (AR 6364; see also AR 6366 [Comments 25-3, 25-20.) In response, Irwindale stated, among other things, "facility truck fueling would **not** occur at the public service station." (AR 6396, 6401 [emphasis added].) Irwindale apparently concluded that it was unnecessary to analyze the impacts from facility trucks fueling at the Project, including at the public service station. In opposition, Respondents admit that this response was also in error: "The fuel station could serve [diesel] trucks, but not CNG trucks."<sup>5</sup> (Oppo. 6.)

Here, the EIR is facially inaccurate or inconsistent because it does not show a CNG fueling facility in the site plan or elsewhere, despite the statement at page 6338. Other than the statement at page 6396, there does not appear to be any information in the EIR showing that diesel truck fueling would *not* occur at the Project's public service station. Since there appears to be no condition of approval or operational mechanism to prevent the trucks from using the fueling station, the potential use should be analyzed.

As to the failure to analyze diesel truck use of the fueling station, the inaccuracy is prejudicial because the EIR did not analyze air quality or traffic impacts of that usage.

<sup>&</sup>lt;sup>5</sup> While an argument could be made that the court should look only to the EIR, see *Friant Ranch, supra,* 6 Cal.5th at 521, the court sees no reason to ignore these admissions made by Respondents in their brief, as they are consistent with the court's conclusion that the EIR is facially inaccurate or inconsistent.

Respondents contend that the "EIR's minor misstatement that trucks may not use the fueling station does not undermine its analysis of fueling operations" because fueling operations were analyzed based on a throughput of .34 million gallons of diesel per year and ROG emissions are primarily from gas, not diesel. They also contend that truck trips were analyzed in the traffic impact analysis (TIA), and "facility trucks using the fueling station would not result in new traffic impacts." (Oppo. 6-7.) These arguments are not persuasive.

The EIR, including the Air Quality and Health Risk Assessment, assumes that the fueling station would dispense .34 million gallons of diesel/year based on "average throughput for similar-sized fuel dispensing stations in California." (AR 4111, 6401.) The court finds no evidence in the record, and Respondents cite none, that this assumption is reasonable for a fueling station that could be required to service potentially hundreds of diesel waste trucks per day.<sup>6</sup> The EIR states that there will be an estimated 2,456 daily truck round trips. (AR 3571.) It is reasonable to infer that a fueling station that services diesel waste trucks would dispense significantly more than .34 million gallons of diesel/year. That ROG emissions are primarily from gas is not dispositive, since the EIR includes *no* analysis of the air quality impacts from facility diesel trucks fueling on site. Similarly, the TIA did not analyze the impacts of diesel trucks entering and leaving the fueling station, nor did it analyze safety impacts caused by simultaneous use of the facility by waste trucks and the public. (See AR 6744-6895.)

Since CNG has less air impacts than gas or diesel, it seems misleading and therefore prejudicial for an EIR to state inaccurately that a project of this type would include onsite CNG fueling.<sup>7</sup> Moreover, the EIR admits that 68 percent of collection trucks are CNG-fueled (AR 3569), but it does not analyze the impact of those trucks fueling near the Project site.

Respondents contend that the EIR was not required to analyze the impacts associated with off-site CNG truck fueling because such impacts are speculative. (Oppo. 7, citing *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1061.) As stated, the EIR assumes 2,456 daily truck round trips, and 68 percent of inbound collection trucks will be fueled by CNG. The EIR does not find that CNG trucks would *not* need to refuel as a result of trips to the Project site. Moreover, the EIR identifies the locations of nearby CNG fueling stations, showing that probable off-site fueling locations can be determined. (AR 6338-39.) Thus, unlike the potential project redesign in *Treasure Island* (involving a potential discovery of hazardous materials), it does not appear speculative that some CNG trucks

<sup>&</sup>lt;sup>6</sup> The EIR assumes that the public fueling station would not service waste facility trucks. (AR 6396, 6401.) Even with that assumption, the EIR states there will be 751 daily trips to the fuel station. (AR 3571.)

<sup>&</sup>lt;sup>7</sup> In reply, Baldwin Park argues that "the EIR assumed that on-site CNG fueling would reduce criteria pollutant emissions." (BP Reply 10, citing AR 3570, 6366.) The record citations do not support that contention.

would need to refuel near the Project. Moreover, even if the impacts from CNG truck refueling were speculative, Irwindale was required to disclose its conclusion in the EIR. (See CEQA Guidelines § 15145 ["If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion."].)

The court concludes the inaccuracies in the Project description regarding truck fueling operations precluded informed decisionmaking and informed public participation.

## **Operational Capacity of the Project**

Baldwin Park contends that the operational capacity of the Project is not definite, rendering the Project description inadequate. (BP OB 15.)

In relevant part, the EIR states the following: "The MRF/TS facility would be designed to receive, process and transfer up to a maximum of 6,000 tons per day (tpd), based upon estimated averages of 3,000 tpd of municipal solid waste, 1,000 tpd of green waste, 1,000 tpd of construction & demolition materials, and 1,000 tpd of self-haul waste. Actual processing volume of each type of material per day could exceed these estimated averages and will depend on market factors and seasonal variations, but in no event will exceed 6,000 tpd in the aggregate. The overall volume of 6,000 tpd is based upon anticipated future market demand, which will be shaped in part by Athens' ability to competitively serve new communities in the San Gabriel / Los Angeles region." (AR 6066; see also AR 3453.) Thus, the EIR clearly states the maximum daily processing capacity.

Respondents point to other portions of the EIR which support their contention that the project will be held to a maximum operating capacity of 6,000 tpd. Mitigation measure HAZ-1 requires that the applicant form a Safety Committee that will review monthly the MRF/TS Daily Operation Report for waste stream capacity. 'The purpose of the monthly review shall be to ensure compliance with the 6,000 tons per day (maximum)." (RDEIR, AR 3702-03.) Similarly, in Appendix A: Mitigation Monitoring and Reporting Program, the FEIR states that Athens shall form a safety committee, which shall include a City representative. Among other functions, the safety committee will conduct monthly reviews, including of the MRF/TS Operational Report, "to ensure compliance with the 6,000 tons per day (maximum)." (AR 6732).

Respondents argue that despite these statements about maximum daily operating capacity, the Mitigation Monitoring Plan does not disclose any consequences if the safety committee determines that the 6,000 tpd maximum is exceeded. However, as presented, Baldwin Park's arguments are about whether the Project description is "stable and finite." (See BP OB 12-15, Sec. II.C.) Respondents point out that the EIR provides additional information about the individual categories of waste, suggesting that they could exceed the stated averages. (See e.g. AR 3457.) However, the EIR states

that while *averages* for individual types of waste could exceed the specified amounts, the Project "in no event will exceed 6,000 tpd in the aggregate." (AR 6066.)

Given the repeated statements in the EIR and mitigation monitoring plan regarding maximum daily operations, Respondents have not shown that the Project Description was in impermissibly indefinite, or that Irwindale prejudicially abused its discretion with respect to this aspect of the project description.

## Identification and Analysis of Energy, Health, Odor, and Noise Impacts

Baldwin Park contends that the EIR fails to identify or analyze energy, health, odor, and noise impacts caused by the Project. (BP OB 15-21.) "Whether a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question. A conclusory discussion of an environmental impact that an EIR deems significant can be determined by a court to be inadequate as an informational document without reference to substantial evidence." (*Friant Ranch, supra* at 514.)

"In examining an EIR under these standards, [the court] 'look[s] not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." (*Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 242; see CEQA Guidelines § 15151.)

## Energy

Baldwin Park contends that the EIR does not analyze transportation energy use, as required by Appendix F to the CEQA Guidelines. (BP OB 15-17.)

"An EIR must include a statement concerning '[m]itigation measures proposed to minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.' (... § 21100, subd. (b)(3).) The CEQA guidelines provide that: 'Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in [a]ppendix F.' (CEQA Guidelines, § 15126.4, subd. (a)(1)(C).) Appendix F of the CEQA guidelines ... states: 'Potentially significant energy implications of a project should be considered in an EIR [to the extent relevant and applicable to the project]." (*Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 261-262.)

Appendix F states that environmental impacts subject to EIR analysis may include "[t]he project's projected transportation energy use requirements and its overall use of efficient transportation alternatives." (CEQA Guidelines, Appen. F, § II.C.6.)

The RDEIR estimates that, each day, the Project will result in approximately 2,456 truck trips, 345 employee trips, and 751 fueling station trips entering and exiting the site. (AR 3571, 3810.) The RDEIR includes an "Energy Conservation" section as required by Appendix F. (AR 3912-16.) With respect to transportation, this section states: "The transfer station is also an energy efficient function, allowing processing of materials close to sources, with more efficient transport of processed materials to ultimate destinations." (AR 3912.) No further analysis of transportation energy use is provided in the Energy Conservation section.

Elsewhere, the RDEIR states that "the project is efficient with regard to energy use since project operations would reduce overall energy consumption by reducing the transfer truck trip mileage within the region and reducing the amount of solid waste material that is ultimately disposed of at a landfill." (AR 3602.) The FEIR includes a similar statement. (AR 6173-74.) Table 3.3-11 cites evidence that the average distance from 15 markets to the Project is less than the average to two other regional transfer stations. (See AR 3570 [9.1 miles to Project compared to 18.1 and 13.4 miles]; 6257.) Table 3.3-12 cites evidence that the distance from the Project to landfill, recycling, and composting facilities is similar to that of other regional transfer stations. (AR 3570-71.) The RDEIR also states that "the applicant has provided information to the City that more than two-thirds of the materials that will be driven to and away from the Proposed Project facility are currently being taken to other facilities in the South Coast Air Basin." (AR 3568.) Despite these "regional efficiencies," for purposes of the air impacts analysis and health risk assessment, the EIR assumes that all trips to the Project would be "new trips." (AR 6257, 3569.)

In California Clean Energy Committee v. City of Woodland (2014) 225 Cal.App.4th 173, 210 ("Clean Energy"), "the City's draft EIR anticipated [the project] would generate up to 40,051 new vehicle trips each day," of which 40 percent were expected to originate outside the City. The EIR did not address transportation energy impacts as required by Appendix F. The City argued that the EIR was sufficient because its reduction of the size of the project as approved meant some transportation energy was mitigated, and that it had mitigation measures designed to reduce vehicle trips. The Court of Appeal rejected these arguments, stating: "the City cannot say how much less transportation energy is needed for the project as approved because the issue has never been assessed in an EIR. CEQA EIR requirements are not satisfied by saying an environmental impact is something less than some previously unknown amount." (Id. at 210; see also Ukiah Citizens, supra, 248 Cal.App.4th at 264 [similar transportation energy analysis].)

Baldwin Park contends that Irwindale similarly failed to analyze transportation energy impacts. (BP OB 16.) The EIR estimates that the Project would result in 2,456 truck trips, 345 employee trips, and 751 fueling station trips per day. Respondents do not claim that this amount of transportation energy use is not potentially significant such that Appendix F did not apply. (See Appendix F, sec. II.) Although the number of trips is less than that at issue in *Clean Energy* and *Ukiah Citizens*, the court cannot conclude, without EIR analysis, that 2,456 waste truck trips daily is not potentially significant with regard to energy use. The record shows that the waste trucks could be driving significant distances. (See e.g. AR 3570-71.)

The Energy Conservation section includes no analysis of the impacts from this transportation energy use. Although other parts of the EIR discuss evidence that the Project will likely reduce waste truck trip mileage in the region (see AR 3568-71, 3602, 6173-74), the EIR also assumes in the RDEIR that for purposes of air quality analysis, all trips to the Project would be new. While Irwindale arguably could use a different assumption regarding the number of new trips for transportation energy impacts, the EIR needed to explain the discrepancy. Regardless of the percentage of trips that are new, the EIR includes no analysis of the Project's transportation energy use requirements and impacts.

Respondents contend that the EIR adequately analyzed transportation energy use because it identified anticipated trip lengths, noted that trucks trips will be largely CNG fueled, and discussed transportation energy conservation mitigation measures. (Oppo. 9, citing AR 6350-51, 6195, 3913-14.) *Clean Energy* and *Ukiah Citizens* rejected similar arguments, and held that a discussion of length of trips and energy conservation mitigation measures does not suffice as a transportation energy use analysis. (*Clean Energy, supra* at 210 ["CEQA EIR requirements are not satisfied by saying an environmental impact is something less than some previously unknown amount"]; *Ukiah Citizens, supra* at 264-265 [EIR provides trip generation analysis, but "fails to calculate the resulting energy impacts of those trips."].)

The RDEIR admits that "the trip lengths to the Irwindale MRF/TS would be less than the trip lengths to some competing MRFs but would be more than the trip lengths to other competing MRFs." (AR 3569.) The RDEIR also admits that "the Proposed Project does not include reducing waste volumes going to other MFR/TS or reducing the permits at other MRF/TS locations." (Ibid.) Assuming that the Project's truck trips are not all new, as Respondents claim (Oppo. 9), the EIR admits that at least one third of the trips will be new. (AR 3568.) The energy use impacts of those trips were not analyzed.

The court concludes that failure to specifically analyze the transportation energy impacts of those portions of trips which under Irwindale's analysis would be considered "new" renders the Energy Conservation section inadequate as precluding informed decisionmaking or informed public participation.

## Health Risks Associated with Project's Criteria Air Pollutant Emissions

Baldwin Park contends that the EIR is deficient because it does not identify or correlate the health risks associated with the Project's criteria air pollutant emissions,

specifically nitrogen oxides (NOx), reactive organic gases (ROG), and ozone ( $O_{3.}$ ) (BP OB 17-19.)

The RDEIR provides the following relevant discussion of air quality and impacts on health. "'Criteria' air pollutants refer to those air pollutants for which the USEPA has established National Ambient Air Quality Standards (NAAQS) under the Federal Clean Air Act, including CO, NOx, SO2, PM10, PM2.5, O3 and lead." (AR 3537.) "O3 is a respiratory irritant and an oxidant that increases susceptibility to respiratory infections and that can cause substantial damage to vegetation and other materials. O3 is not emitted directly into the atmosphere, but is a secondary air pollutant produced in the atmosphere through a complex series of photochemical reactions involving ROG and NOx." (Ibid.) Ozone concentrations vary by season and atmospheric conditions. (Ibid.) "Nitric oxide (NO) and nitrogen dioxide (NO2) are the most significant air pollutants generally referred to as NOx .... Nitrogen dioxide has been found to be a lung irritant capable of producing pulmonary edema. Inhaling NO2 can lead to respiratory illnesses such as bronchitis and pneumonia." (AR 3538.) ROG, also known as VOC, "can cause eve, nose, and throat irritation; headaches, loss of coordination, nausea; and damage to liver, kidney, and central nervous system." Some ROGs are suspected to cause cancer. "As with other pollutants, the extent and nature of the health effect will depend on many factors including level of exposure and length of time exposed." (Ibid.)

The RDEIR estimates that the Project's estimated daily mitigated emissions will be 81 pounds of ROG and 1,323 pounds of NOx, both significant. The SCAQMD thresholds of significance for ROG and NOx are 55 pounds per day. (AR 3578.) The RDEIR does not estimate or quantify how much ozone will be generated by the Project. (See e.g. Ibid.) The EIR discloses that the Basin, in which the Project is located, is in nonattainment for ozone. (AR 6689, 3542.)

The RDEIR provides a table summarizing data on average amounts of ozone and nitrogen dioxide, measured in parts per million, found from monitoring in Los Angeles County for 2010-2012. (AR 3536.) Another chart summarizes the state and national standards for the average amounts of ozone, NO<sub>2</sub>, and other pollutants, measured in parts per million. (AR 3544.) The RDEIR also includes a health risk assessment ("HRA"), which analyzes potential impacts from toxic air contaminants ("TACs") during operation of the MRF/TS. (AR 3588-89.) The HRA does not analyze health impacts from ozone, NOx, or ROG. (Ibid.) According to Respondents, the EIR also discusses dispersion modeling based upon SCAQMD's Localized Significant Thresholds ("LST") to identify *localized risks* associated with criteria pollutants, including NO<sub>2</sub> but not including ozone or ROG. (Oppo. 11, citing AR 3580-83; 6172; 6322; 6333.)

Baldwin Park contends that the EIR fails to correlate the Project's NOx and ROG emissions with specific health impacts caused by those pollutants and by ozone, and fails to explain why such analysis would be infeasible. (BP OP 17-18; Reply 15.) A factually similar issue was addressed in *Friant Ranch, supra*, 6 Cal.5th at 519-22. In *Friant Ranch*, the EIR provided estimates of the project's emissions of ROG and NOx in

tons per year and identified the Air District's thresholds of significance. The EIR also included background information about ozone, including the ambient levels that have been found to cause adverse health effects. (Id. at 517.) The California Supreme Court found the EIR insufficient as an informational document with respect to the health impacts of ROG, NOx, and ozone. (Id. at 517-522.) The Court concluded:

Although the EIR generally outlines some of the unhealthy symptoms associated with exposure to various pollutants, it does not give any sense of the nature and magnitude of the "health and safety problems caused by the physical changes" resulting from the Project as required by the CEQA guidelines. (Guidelines, § 15126.2, subd. (a).) Perhaps it was not possible to do more. But even in that case, we would have found the EIR insufficient because it failed to explain why it was not feasible to provide an analysis that connected the air quality effects to human health consequences. (Id. at 1165-66.)

Here, as Baldwin Park contends, *Friant Ranch* supports a conclusion that the EIR does not sufficiently analyze the health risks associated with the Project's emissions of ROG, NOx, and ozone. The EIR provides some information about state and national standards for ozone and NO<sub>2</sub> in parts per million, and some general information about the health risks of ROG, NOx, and ozone. (AR 3544, 3537-38.) It also estimates Project emissions of ROGs and NOx in pounds per day. (AR 3578.) However, it does not estimate or quantify the health impacts associated with the Project's emissions of ROG, NOx, and ozone. The information about state and national standards for ozone and NO<sub>2</sub> are provided in parts per million, while the Project emissions are estimated in pounds per day, depriving the public of a useful comparison. Even though the Basin is in non-attainment for ozone, the EIR does not attempt to estimate how much ozone will be produced by the ROG and NOx emissions.

In opposition, Respondents defend the EIR analysis of health impacts of ROG, NOx, and ozone by reference to the HRA and LST modeling. (Oppo. 11.) The HRA analyzes health risks of TACs, not these criteria air pollutants. (AR 3588-89.)<sup>8</sup> The LST modeling did not analyze any impacts from ROG or ozone. Moreover, as to NO<sub>2</sub>, the LST modeling did not analyze impacts produced by mobile sources, such as collection and transfer trucks, which are the Project's primary source of such contaminants. (See AR 3580-83; see also AR 3578.)

Respondents contend that "because ozone is caused by unpredictable complex processes that fluctuate daily and occur on a regional level, correlation to specific daily exceedances and health impacts is problematic." (Oppo. 10.) While the EIR includes a general discussion of how ozone is formed (AR 3537), Respondents cite to no evidence from the record showing that it is infeasible to predict the amount of ozone produced by the Project, given the estimates of ROG and NOx emissions and other known variables (e.g. site location, weather patterns in Irwindale). Thus, *Friant Ranch* is on point: "if it is

<sup>&</sup>lt;sup>8</sup> TACs are distinct from the six criteria air pollutants. (*Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 203.)

not scientifically possible to do more than has already been done to connect air quality effects with potential human health impacts, the EIR itself must explain why, in a manner reasonably calculated to inform the public of the scope of what is and is not yet known about the Project's impacts. Contained in a brief, such explanation is directed at the wrong audience." (*Friant Ranch, supra* at 521.)

The court concludes Irwindale prejudicially abused its discretion because the EIR did not analyze the health risks associated with the Project's emissions of ROG, NOx, and ozone. The EIR also does not explain that, or why, it would be infeasible to provide such an analysis, including with respect to ozone.

## <u>Odor</u>

Baldwin Park contends that the EIR odor discussion does not comply with CEQA because the EIR does not identify the sources or extent of Project odors before mitigation. (BP OB 19-20.)

"CEQA requires that an EIR include, among other things, a detailed statement setting forth '[a]II significant effects on the environment of the proposed project' and '[m]itigation measures proposed to minimize significant effects on the environment." (*Lotus v. Development of Transportation* (2014) 223 Cal.App.4th 645, 653.) The EIR must include information that allows the reader to evaluate the significance of environmental impacts. "The standard of significance applicable in any instance is a matter of discretion exercised by the public agency 'depending on the nature of the area affected." (Id. at 654-55 and fn. 7.)

In a discussion of Project operations, the RDEIR identifies putrescible and potentially odorous wastes at the Project as "yard clippings and food/restaurant wastes." (AR 3596.) The RDEIR acknowledges that the Project will result in potentially significant "odors from wastes and organic materials attributable to project operations." (AR 3410.) The RDEIR states that odor impacts will be "less than significant with mitigation." (See AR 3410, 3591.) Taken at face value, the EIR admits that, without the proposed mitigation, the Project would have significant odor impacts.

The RDEIR provides the following analysis of odor impacts:

# THRESHOLD AQ-6 Would the Project create objectionable odors affecting a substantial amount of people?

#### Less than Significant Impact with Mitigation

According to the SCAQMD CEQA Air Quality Handbook, land uses associated with odor complaints typically include agricultural uses, ... food processing plants, ... composting, ... landfills....

The proposed MRF/TS is not expected to generate significant odors because all transfer activities potentially generating odors would take place within an enclosed building designed to minimize odors. Design features in the MRF/TS building include exhaust fans to provide multiple air exchanges every hour (as needed). The air leaving the building at the roof exhaust fans will be treated by a non-toxic odor neutralizing misting system to mitigate any odors. Negative pressure will be maintained at the building entrance to minimize the amount of untreated air leaving the building. A non-toxic odor neutralizer will be mixed with dust control water in the ceiling mounted misting systems for extra odor mitigation, as needed...[¶¶]

The SCAQMD resolves complaints through investigation and issuance of a notice to comply when necessary. Continued application of these existing regulations would avoid any impacts associated with objectionable odors and assure that any objectionable odors would not affect a significant amount of people.

There has been concern about odors from trucks traveling to and from the Proposed Project site. As identified in the Roadway Litter Prevention On-Site Management Plan, all incoming and outgoing hauling vehicles are required to be either fully covered and/or tarped or be a fully enclosed vehicle/trailer. While this is a litter prevention plan it would also reduce odors from vehicles travelling to and from the Proposed Project site. Furthermore, upon inquiry from the City based on comments on the DEIR, Athens Services has informed the City EIR preparers that odors from trucks travelling to and from Athens' other MRF sites have not been a source of historical complaints. (Loughnane, 2014). Additionally, the City has not received odor complaints in the past from residents related to collection trucks using City streets. The City has no other basis or identified any evidence to support a potential impact from odors related to trucks travelling to the Proposed Project Site. Therefore, it is not foreseeable that there will be a potential impact related to odors and no mitigation measures are required. (AR 3591-92.)

The RDEIR also discusses how the "proposed project would comply with SCAQMD Rule 410 (Odors from MRF/TS), which establishes odor management practices and requirements to reduce odors from municipal solid waste transfer stations and material recovery facilities." (AR 3592-99.)

Baldwin Park contends that "the RDEIR states that the Project's odor impacts will be less than significant <u>after mitigation</u> ..., but does not identify the significant types [of] odor sources and impacts before mitigation." (BP OP 16.) In opposition, Respondents cite to general discussion of the types of waste that can cause odor, but they do not cite any analysis of the types of odors that will be created, the persons who may be affected, and the significance of that impact. (Oppo. 12.) The EIR's reference to "yard clippings and food/restaurant wastes" provides some information about the potential sources of odor at the Project. (AR 3596, 3410.) Neither party has cited evidence of a methodology to identify the "types of odors" that will be created, or to measure the number of persons who may be affected or the significance of any particular odor impact

In defending the EIR's odor analysis, Respondents cite to "mitigation" proposed for the Projection, including (1) an enclosed building; (2) treatment of air leaving the building; and (3) requirements that waste trucks be enclosed or use tarps. (Oppo. 12-13.) The EIR also relies on SCAQMD's process for investigating and resolving odor complaints. (AR 3591-92.) However, "a mitigation measure cannot be used as a device to avoid disclosing project impacts." (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 663-664; see also *Lotus, supra,* 223 Cal.App.4th at 653 [EIR deficient due to failure to discuss impact construction will have on tree root zones; adoption of mitigation measures to reduce potential impact to less than significant did not remedy this deficiency].) For instance, the EIR odor analysis relies heavily on mitigation from air treatment and SCAQMD odor regulations.

Baldwin Park also contends that "there are extensive odor-causing activities outside the building" that were not identified and analyzed in the EIR. (BP OB 19-20.) The EIR analysis for odor impacts from waste trucks entering or exiting the Project is somewhat different than the analysis of odor impacts from the MRF/TS itself. The EIR concludes that "City has [not] identified any evidence to support a potential impact from odors related to trucks travelling to the Proposed Project Site ... no mitigation measures are required." (AR 3591-92 [emphasis added].)

Baldwin Park contends that inbound trucks will queue outside the building. (BP OB 20.) Baldwin Park's record citations do not show that the trucks' tarps or waste would be removed prior to entry. Similarly, trucks would be loaded and tarped before exit. (AR 3455, 3458; see also AR 3591-92.) However, the record does disclose that waste trucks loaded with "putrescible materials" could park outside at the facility for extended periods. (See e.g. AR 3461 [loaded trucks will park outside at Project].) The EIR suggests that potential odor impacts from these trucks would be mitigated by tarps or "water tight seals". (Ibid.)

Given the EIR's acknowledgement of potentially significant odors from wastes and organic materials attributable to project operations and identification of specific mitigation measures, the court finds the analysis of odor impacts legally sufficient.

## <u>Noise</u>

Baldwin Park contends that the EIR does not sufficiently identify or analyze noise impacts generated by the Project's construction trips. (BP OB 20-21.)

Irwindale analyzed noise impacts of the Project in detail in Chapter 3.10 of the RDEIR. (AR 3729-65.) The RDEIR discusses existing noise levels in the Project area, and notes existing ambient noise in the range of 52-73 dBA. (AR 3734-35.) With respect to noise from construction trips, the RDEIR states that the Project would generate 1,875 haul truck trips during construction grading (AR 3561), and that each haul trip would generate noise of about 88 dBA at 50 feet. (AR 3749.) "Per the City of Irwindale noise ordinance, if construction activities are within a radius of 500 feet of a residential zone, construction activities exceeding 75 dBA ambient base noise levels between 7 a.m. and 7 p.m. at the property boundary of an industrial zone would be considered a significant impact." (Ibid.; see also AR 3744-45.) The RDEIR proposes mitigation (IMM N-1 through MM N-6) for these potentially significant impacts, including a City-approved route for haul trips and a limit on construction activities to 7 am to 7 pm, Monday through Saturday. (AR 3749-50.) The RDEIR states that "Noise impacts related to construction and adopted standards would be less than significant with mitigation." (AR 3751.)

In a section titled "Threshold N-5", the RDEIR further explains the relevant findings with respect to construction noise: "With implementation of MM N-1 to MM N-6 construction noise would be mitigated and limited to 7 a.m. to 7 p.m., to less than significant based on adopted City standards. But the levels would often be increased by at least 5 dBA above ambient conditions during the construction period that would last for 18 months. No additional mitigation measures are available to reduce this ambient increase. The resulting increases over the construction period would be considered a substantial periodic increase in noise (above existing ambient noise levels) and would be a significant and unavoidable impact of the Proposed Project." (AR 3762.)

Baldwin Park cites to a response to a comment in the FEIR, which states that "Construction would be conducted during the daytime hours and the construction trucks would have a minimal effect on existing traffic noise levels as they would represent a very small percentage of the overall existing traffic." (AR 6186; see BP OB 20.) That response does not change the detailed RDEIR analysis set forth above, which is incorporated in the EIR. The court finds the analysis of construction noise impacts, including with respect to haul trips, to be sufficiently detailed to satisfy CEQA.

Baldwin Park contends that the RDEIR states construction will occur over a single 18-month phase, but the subsequently adopted DDA and Operations Agreement permit construction to occur in three phases, across 26 months. (BP OP 21, citing AR 604, 697, 714, 12816.) This part of Baldwin Park's brief concerns the sufficiency of analysis in the EIR, adopted in June 2016, and not whether later Project changes necessitated further analysis. (See BP OP, sec. II.D.) The cited evidence – from October 2017 and October 2018 -- postdates the FEIR. (AR 604, 697, 714, 12816.) Baldwin Park does not explain why the court should consider this evidence when assessing whether the EIR, adopted in June 2016, provides legally sufficient analysis. (See CCP § 1094.5(e).) Indeed, Baldwin Park admits that "review of the adequacy of the EIR must be based <u>only on the AR documents dated on or before the EIR's June 8</u>,

<u>2016 certification</u>." (Reply 7 [emphasis in original].) Moreover, Baldwin Park, which has the burden, does not sufficiently explain the prejudice to informed decisionmaking of the eight-month change in the construction period.

The court concludes the EIR sufficiently identified and analyzed construction noise impacts.

## **Deferral of Mitigation**

Baldwin Park contends that the EIR improperly defers noise and odor mitigation measures. (BP OP 21-23.)

"Impermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR.' [Citation.]" (*Center for Biological Diversity v. Department of Fish and Wildlife* (2015) 234 Cal.App.4th 214, 240.) "[W]hen, for practical reasons, mitigation measures cannot be fully formulated at the time of project approval, the lead agency may commit itself to devising them at a later time, provided the measures are required to 'satisfy specific performance criteria articulated at the time of project approval.' [Citation.] In other words, '[d]eferral of the specifics of mitigation is permissible where the local entity commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan.'" (Id. at 241.)

"Essentially, the rule prohibiting deferred mitigation prohibits loose or open-ended performance criteria." (Ibid.) "When a public agency has evaluated the potentially significant impacts of a project and has identified measures that will mitigate those impacts, the agency does not have to commit to any particular mitigation measure in the EIR, as long as it commits to mitigating the significant impacts of the project." (Ibid.; see CEQA Guidelines § 15126.4.)

The parties do not address the standard of review for Baldwin Park's arguments about noise and odor mitigation. It appears Baldwin Park raises purely legal questions regarding whether certain mitigation measures impermissibly defer mitigation.<sup>9</sup>

#### <u>Noise</u>

Baldwin Park contends parts of mitigation measures N-6 and N-7 are vague and lack sufficient guidelines or performance standards. (BP OB 21-22.)

N-6 provides in full: "The construction contractor shall post rules visible to drivers that require turning-off construction equipment when not in operation (for more than 5 minutes). The construction contractor shall shield stationary equipment operating under

<sup>&</sup>lt;sup>9</sup> The court would reach the same result on Baldwin Park's mitigation arguments under a substantial evidence review.

full power for more than 60 minutes that would otherwise not be shielded by the perimeter soundwall." (AR 3751; 6735.)

N-7 provides in pertinent part: "The Applicant shall modify nighttime operations (10 p.m. – 7 a.m.) that result in verified noise complaints to eliminate objectionable noise during the nighttime hours. The applicant shall notify the City of any noise complaints received within 24 hours of receiving the complaint and provide a proposed amendment to the On-Site Management Plans to demonstrate a reduction in ambient noise within one (1) week, subject to review and approval of the City upon a finding that the amendment will result in compliance with adopted noise standards of the City of Irwindale and the City of Baldwin Park." (AR 3756; 6736.)

Baldwin Park contends that N-6 defers mitigation because it "fails to specify the standards (e.g. height, thickness) of the sound wall." (BP OB 22.) The RDEIR states that Irwindale's noise ordinance requires construction activities within 500 feet of a residential zone, to limit construction noise to 75 dBA ambient base noise levels between 7 a.m. and 7 p.m. at the Project property boundary. (AR 3747.) As proposed noise mitigation, N-6 must be read in context of the EIR's analysis of construction noise. Respondents contend that N-6 imposes a "mandatory obligation" to construct a shield around stationary construction equipment in a manner that maintains the 75 dBA standard. (Oppo. 14.) N-6 does not expressly or impliedly include such mandatory obligation. However, the EIR also does not claim that N-6 in itself will reduce the noise impacts to less than significant; rather, N-6 is one of several measures intended to reduce the noise impacts. The RDEIR provides a performance standard - Irwindale's noise ordinance -- the contractor would use to design or obtain an effective noise shield. (AR 3751.) The dimensions of the shield(s) would necessarily depend on the stationary equipment at issue. Given the uncertainties and variabilities involved, CEQA does not require Invindale to specify the height or thickness of the shield. (See Friant Ranch, supra, 6 Cal.5th at 523, 525-526.)

Contrary to Baldwin Park's assertion, the phrase "verified noise complaints" in N-7 is not vague and reasonably refers to noise complaints received about Athens' nighttime operations within the hours of 10 p.m. to 7 a.m.<sup>10</sup> N-7, read in context of the EIR, also provides adequate performance standards for how Athens must report and resolve such complaints. The RDEIR discloses that "Irwindale's adopted standards for Industrial uses is 60 dBA between 10 p.m. and 7 a.m." (AR 3754.) The code provides that industrial uses may not exceed these ambient standards by 5 dBA at the property boundary line without City authorization. (Ibid.) Baldwin Park contends that this performance standard does not appear in the text of N-7. (Reply 18.) However, N-7 refers the "adopted noise standards of the City of Irwindale." Thus, it is reasonable to interpret section N-7 to incorporate Irwindale's "adopted standards", set forth at page 3754, as a performance standard for the complaint resolution mechanism in N-7.

<sup>&</sup>lt;sup>10</sup> N-7 requires Athens to "notify the City of *any* noise complaints." Thus, the term "verified" in the first sentence does not suggest that Athens only needs to report noise complaints that it verifies as true or accurate.

The court concludes Baldwin Park has not shown that the noise mitigation measures are impermissibly deferred or lack sufficient performance standards.

# <u>Odor</u>

Baldwin Park contends that the complaint procedure set forth in AQ-20 is defective because the EIR does not identify the sources of odor generated by the Project, and there are no performance standards or remedies for odor complaints. (BP OB 22-23.)

AQ-20 states that Athens's On-Site Management Plan "shall include a requirement that any and all odor complaints shall be referred directly to the City of Irwindale." Irwindale shall "substantiate" odor complaints as follows: (1) inspection by its Code Enforcement staff, and/or; (2) inspection by SCAQMD, and, or; (3) retention of a "qualified consultant, as determined and selected by the City, ... to collect samples to quantify odor intensity using a Nasal Ranger or other comparable instrument." After substantiation of an odor complaint, Athens and Irwindale shall meet to identify a remedy. (AR 3599.)<sup>11</sup>

Respondents contend that the operative performance standard "is that objectionable odors [will] not be perceived by large numbers of people in the Project vicinity." (Oppo. 15, citing AR 3592.) AQ-20 impliedly includes such a performance standard.

While there is some question about when an odor is "objectionable" or the number of persons that must be affected before an odor complaint is substantiated, AQ-20 suggests that a consultant can "quantify odor intensity." The court concludes that AQ-20 is not an impermissibly deferred mitigation measure.

# Description of Project Timeline; Impacts from Hauling Agreement

Waste Management contends that Irwindale prejudicially abused its discretion because the EIR project description does not identify the "whole of the Project", specifically: (1) the 30-year life of the Project; and (2) impacts associated with the 2011 Franchise Agreement for Waste Hauling Services ("Hauling Agreement.") (WM OB 14-17.)

Under CEQA, "Project" is defined as an "activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...." (Pub. Resources Code § 21065; see also CEQA

<sup>&</sup>lt;sup>11</sup> Baldwin Park has not challenged any of the other odor mitigation measures, and the court makes no determination regarding those mitigation measures.

Guidelines § 15378.) "Activity" includes "[a]n activity directly undertaken by any public agency." (§ 21065(a).) "'Project' is given a broad interpretation ... to maximize protection of the environment.' [Citation.] 'Project' refers to '*the whole of an action*, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...' (Cal.Code Regs., tit. 14, § 15378, subd. (a), italics added.)" (*Riverwatch v. Olivenhain Mun. Water Dist.* (2009) 170 Cal.App.4th 1186, 1203.)

"Drafting an EIR ... necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can." (CEQA Guidelines § 15144.) "Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects." (Id. § 15126.2(a); see also § 15151.)

The California Supreme Court has set forth the following test relevant to Waste Management's arguments about the Project description: "[A]n EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396.)

## 30-Year Project Lifetime

The EIR assumes that construction of the MRF/TS would be completed in late 2015 or early 2016. (AR 3462-63.) The EIR states that "the existing environmental setting describes the physical setting that exists at the present time (2013)." (AR 3487.) In addition to existing conditions in 2013, the EIR analyzes "Interim Year (2016) Conditions Without and With the Project" and "Long Range (2035) Conditions Without and With the Project." (AR 3785.) The EIR justifies use of these interim and long-range time periods on the grounds that the Project buildout was expected to occur in 2016, the Project requires a General Plan amendment, and Irwindale's General Plan has a "horizon year" of 2035. (AR 3785, fn. 1, 2; see also AR 3586.)

In asserting that Irwindale was required to use a 30-year timeframe for the Project, Waste Management relies heavily on *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1450-55. (WP OB 15.) As succinctly summarized by another Court of Appeal case, "*Santee* arose out of a crisis precipitated in the late 1980's by the closure of a jail facility in one area of San Diego County, Vista. The county responded by proposing to expand an existing facility at Las Colinas near the city of Santee. But the expansion project was supposed to be temporary. It was only going to last seven years. So the EIR totally omitted *any* environmental impacts after the expected termination of the temporary expansion. That omission, said the appellate court, meant the EIR didn't really provide a stable description of the project, particularly since there was some indication the county was going to need the expanded facilities after the seven years had expired." (*City of Irvine v. County of Orange* (2015) 239 Cal.App.4th 526, 542 [analyzing *Santee*].)

Based on the administrative record, the *Santee* court found "it is reasonably foreseeable that the project will continue for a longer term than seven years, and it is likewise reasonably foreseeable that the temporary male detention facility will be moved to East Mesa either before the end of seven years or at that time." (*Santee, supra* at 1454.) "These future uses should have been included in the EIR and their cumulative effects discussed." (Ibid.)

In opposition, Respondents rely on *City of Irvine, supra*, in which the petitioner asserted that a county failed to comply with CEQA when it declined to update the traffic analysis in a jail facility EIR based on unforeseen delays in construction. The EIR included a traffic study on the effects of the Project in 2014, an "interim year," and in year 2030, the projected completion date. Based on project delays, the county later admitted that the earliest true interim year was 2018. (*City of Irvine, supra*, 238 Cal.App.4th at 541.) The Court of Appeal rejected the petitioner's argument that the project description was inaccurate or unstable. The Court reasoned that "the only discrepancies to which Irvine points are functions of delays in the project, and those relate to traffic—by definition a fluid condition—and not the project itself." (Id. at 543.) Citing the California Supreme Court's decision in *Neighbors for Smart Rail, supra*, 57 Cal.4th at 463-464, the Court also found that the alleged discrepancy in the EIR, due to project delay, was not prejudicial because the public was given two "comparison years" (2014, 2030) to analyze traffic impacts. (*City of Irvine, supra* at 543-544.)

In reply, Waste Management distinguishes cases which found EIR descriptions of project terms to be sufficient, and that the possibility of a term extension was too speculative to require EIR analysis. (See WM Reply 9; see *Center for Biological Diversity v. County of San Bernardino* (2016) 247 Cal.App.4th 326, 348-350; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 737-38.) Waste Management contends that these cases are distinguishable because substantial evidence shows that the Project will operate past 2035.

Waste Management does not cite evidence of some reasonably foreseeable future *expansion* of the Project that will likely change the scope or nature of the Project or its impacts. Waste Management contends that the EIR omits information about the true term of the Project, and analyzes impacts from a year (2035) before the end of the Project operations. While the EIR did not expressly discuss the 30-year initial term of the Operations Agreement, the EIR also did not assume that the Project would end in 2035. The year 2035 was used to analyze "long range conditions" because that is the timeframe used in Irwindale's General Plan. (AR 3785.) The EIR also states, with respect to the air quality analysis, that "project activities beyond 2035 assumed the same emission factors as 2035," thus disclosing that 2035 was not intended to reflect the full life of the Project. (AR 4098.) The EIR also does not suggest that a change in

the assumed operational years of the MRF/TS would result in an increase in the annual permitted throughput, number of truck trips, or similar Project attributes. (See e.g. AR 4097, 6066, 6762.) Respondent could reasonably have concluded that any change in the nature of impacts after 2035, the last date for which the City had projected data, was too speculative to further analyze.

Since Irwindale had information that the Project was intended to last at least 30 years, arguably the Project description could have been more accurate by specifically disclosing that information. Nonetheless, the record suggests that the Project operations could continue through 2035. The public would not be led to believe that the Project would necessarily cease operations in 2035.

Even if Irwindale was required to specifically disclose that the MRF/TS could operate 30 or more years, Waste Management also does not show the alleged omission precluded informed decision-making and informed public participation. As stated, the EIR used 2035 to analyze long-range conditions, but did not assume that the Project would end in 2035. Waste Management, which has the burden, has not explained or cited to evidence showing that analysis of two comparison years (2016, 2035) deprived the public of the ability to understand the Project impacts. While Waste Management asserts that omission of the full Project term misleads the public "as to the magnitude of the Project's direct and cumulative air quality, GHG and traffic impacts" (see WM OB 14), it does not cite any evidence of **how** omission of this information could affect the EIR's analysis of direct or cumulative impacts. Simply asserting that an omission was prejudicial is not sufficient. (See *Inyo Citizens for Better Planning, supra*, 180 Cal.App.4th at 14.)

The only example asserted by Waste Management, in a footnote, is to multiply the Project's 2,456 truck trips per day over the 15 years allegedly omitted from 2035 to 2050. (WM OB 17, fn. 8.) Waste Management does not connect this statement to any analysis of Project impacts, including cumulative impacts, in the EIR. While it seems plausible the Project's operations through 2050 could affect direct or cumulative impacts, the EIR already analyzes such impacts for a nearly 20-year period. Therefore, without more specific argument and record citations from Waste Management, the court cannot conclude that another 15 years of operations would meaningfully change the analysis.

Waste Management cites to evidence that Irwindale knew, as early as 2008, that the MRF/TS Project may have an initial 30-year term, with 10-year automatic rolling extensions. (WM OB 15, citing AR 8501-11, 9529, 9940-42.) Waste Management points out that, in October 2017, *after* the EIR was approved, its traffic expert asserted that the EIR analysis through 2035 "represents only about half of the initial term for operation of the proposed project, which we believe is inadequate. In order to provide a thorough evaluation of the long-term impacts of the proposed project, the cumulative

conditions analysis must be extended to address traffic operations in the year 2050."<sup>12</sup> (WM OB 16, citing AR 11717-18.) The court is not persuaded it should consider this post-certification evidence in assessing the adequacy of the EIR. Moreover, even if considered, the letter does not provide *specific* evidence of how the additional years of operation could affect the analysis of cumulative traffic impacts.

Waste Management has not shown that Irwindale prejudicially abused its discretion in failing to further analyze in the EIR impacts of the MRF/TS after 2035.

# Hauling Agreement

Waste Management contends, citing *Laurel Heights I, supra*, that the Hauling Agreement should have been analyzed as part of the Project because it is "a reasonably foreseeable consequence of the initial project" that could change the scope or nature of the Project and its impacts. (WM OB 16.) The Hauling Agreement was executed in 2011, before approval of the MRF/TS, and is not a "future expansion or action" of the Project. (AR 12236-12249.) Waste Management admits that the Hauling Agreement and Operations Agreement are "coterminous," and it does not show that it is reasonably foreseeable that the Hauling Agreement will result in a change to the Project operations in the future.

In reply, Waste Management contends that Irwindale has recently approved three one-year extensions of the Hauling Agreement. (See Reply 9; RJN Exh. A, B). The court denies the request for judicial notice of this extra-record evidence. Extrarecord evidence cannot be submitted merely to contradict Irwindale's EIR. Moreover, even if considered, those extensions do not change the Project operations through 2035, which were analyzed in the EIR. Waste Management does not show a violation of the test set forth in *Laurel Heights, supra*, 47 Cal.3d at 396 with respect to reasonably foreseeable future action.<sup>13</sup>

Waste Management has not shown that Irwindale prejudicially abused its discretion in failing to discuss in the EIR the Project timeline or the Hauling Agreement.

# Irwindale's Decision to Reject Reduced Tonnage Alternative

Baldwin Park contends that Irwindale failed to consider the "significant environmental benefits" of a reduced tonnage alternative. (BP OB 23.)

<sup>&</sup>lt;sup>12</sup> In their opposition brief, Respondents have not argued that Waste Management failed to exhaust administrative remedies with respect to contentions about the adequacy of the EIR Project description.

<sup>&</sup>lt;sup>13</sup> To the extent Waste Management suggests Irwindale should have prepared an EIR for the Hauling Agreement before it was executed in 2011, that issue is not before the court in this writ petition.

"An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation." (CEQA Guidelines, § 15126.6(a).)

"An agency may not approve a project unless it finds the alternatives are infeasible, a finding that must be supported by substantial evidence in the record." (*Save Panoche Valley v. San Benito County* (2013) 217 Cal.App.4th 503, 521.) "The discussion of alternatives need not be exhaustive." (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 548.) The agency's balancing of interests in analyzing project alternatives cannot be attacked merely based on a "policy disagreement" with the agency. (*California Native Plant Soc. v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001-1003.)

The RDEIR discussed the "Reduced Tonnage Alternative" ("Alternative"), a similar facility but with a 25% reduction in capacity to 4,500 tpd. The Alternative would reduce air pollutant and traffic impacts by 25%, two impacts the EIR found to be significant and unavoidable, while achieving most of the Project's objectives. (AR 3939-45.) The RDEIR concludes that the Alternative "would be the environmentally superior alternative", but that "it would not reduce any of the identified significant impacts of the Project to a less than significant level." (AR 3952.) However, "this alternative does not capture the full potential to recover materials from the local and regional waste stream prior to transfer and/or disposal, which will therefore need to occur at another site in the region." (AR 792.) Irwindale rejected the Alternative because it: 1) would not feasibly attain the Proposed Project's objectives to serve as facilitator for regional compliance with Assembly Bill 341; 2) would only partially assist the City and applicant's goal for waste reduction and diversion goals and mandates., by providing additional processing capacity to increase diversion of recyclable commodities from the mixed municipal waste stream; and 3) provide a similar land development project as required for the construction and operation of the proposed MRF/TS. (AR 792-93.)

Baldwin Park contends that there is no evidence to support the EIR's finding that the Alternative "would not reduce any of the significant impacts." (BP OB 23.) Baldwin Park omits the rest of the EIR finding that the Alternative "would not reduce any of the identified significant impacts of the Project *to a less than significant level.*" (AR 3952 [emphasis added].) Baldwin Park's record citations do not show that this finding – that the Alternative would not reduce any significant impacts to less than significant – is not supported by substantial evidence. Contrary to Baldwin Park's contention, Irwindale *did* consider the significant environmental benefits of the Alternative.

Baldwin Park disagrees with Irwindale's reasons for rejecting the Alternative (see BP OB 23:23-26), but Irwindale was permitted to balance conflicting interests. Baldwin

Park's policy disagreement is not a basis to attack Irwindale's analysis of alternatives. (See *California Native Plant Soc., supra,* 177 Cal.App.4th at 1001-1003.)

Baldwin Park does not show that Irwindale prejudicially abused its discretion in rejecting the Reduced Tonnage Alternative.

## **GHG** Impacts

# Irwindale's Use of SCAQMD's GHG Threshold for Stationary Source Emissions

Waste Management contends that Irwindale prejudicially abused its discretion by relying on SCAQMD's greenhouse gases (GHG) threshold of significance of 10,000 MTCO2e/year<sup>14</sup>, which was originally developed for stationary and not mobile sources. (WM OB 18-20.)

"A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, noncompliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant." (CEQA Guidelines § 15064.7(a).)

Section 15064.4 provides guidance with respect to the lead agency's duty to analyze the significance of a project's greenhouse gas emissions. "A lead agency shall make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project." (Id. § 15064.4(a).) "In determining the significance of a project's greenhouse gas emissions, the lead agency should focus its analysis on the reasonably foreseeable incremental contribution of the project's emissions to the effects of climate change. A project's incremental contribution may be cumulatively considerable even if it appears relatively small compared to statewide, national or global emissions." (§ 15064.4(b).) "The lead agency has discretion to select the model or methodology it considers most appropriate to enable decision makers to intelligently take into account the project's incremental contribution to climate change. The lead agency must support its selection of a model or methodology with substantial evidence." (§ 15064.4(c).)

"CEQA grants agencies discretion to develop their own thresholds of significance' and an agency's choice of a significance threshold will be upheld if founded on substantial evidence." (*Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 206; see CEQA Guidelines § 15064(b).)

"[B]ecause of the global scale of climate change, any one project's contribution is unlikely to be significant by itself. The challenge for CEQA purposes is to determine whether the impact of the project's emissions of greenhouse gases is *cumulatively* 

<sup>&</sup>lt;sup>14</sup> MTCO2e refers to metric tons of carbon dioxide. (See AR 6417.)

considerable, in the sense that 'the incremental effects of [the] individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.'" (*Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 219 [*Newhall Ranch*].) "A lead agency may rely on existing numerical thresholds of significance for greenhouse gas emissions, though ... use of such thresholds is not required." (Id. at 230.)

Here, the EIR indicates that "the primary source of emissions associated with the construction and operation of the project would occur from vehicles including collection trucks, transfer trucks, self-haul trucks and employee vehicles. Additional emissions would result from the on-site operation of equipment, and on-site area sources." (AR 3599-3600.) The Project will emit 58,834 MTCO2e/year. (AR 3601.) Irwindale found the Project's impacts on GHG emissions less than significant after imposition of one mitigation measure, AQ-22, discussed further below. (AR 3411.)

"For the Proposed Project, the City is adopting the SCAQMD, 10,000 MT CO2e per year industrial project screening threshold as the significance threshold." (AR 3600.) SCAQMD adopted this GHG significance threshold in December 2008 "for Stationary Sources, Rules, and Plans where the SCAQMD is lead agency." (AR 3554.) "This threshold was selected to capture 90 percent of the GHG emissions from these types of projects where the combustion of natural gas is the primary source of GHG emissions." (AR 3555; see AR 56656-56666 [December 2008 SCAQMD Board agenda report].) The EIR acknowledges that the SCAQMD GHG significance threshold initially applied only to stationary sources. The EIR justifies use of the threshold for the Project, for which GHG are substantially emitted from mobile sources, on the grounds that "discussions at the last GHG working group meeting [of SCAQMD] indicated that this threshold would be utilized for all industrial related emissions that include both stationary and mobile sources." (AR 3555.)

Waste Management and others commented that the EIR improperly relies on SCAQMD's GHG threshold for stationary sources, even though much of the Project GHG emissions are mobile. (AR 11275, 6415-17.)<sup>15</sup> Irwindale responded that use of the SCAQMD threshold was within its discretion, stating: "[S]ince the SCAQMD released its 'interim' GHG significance threshold of 10,000 MT CO2e in 2008, limiting its application to projects with GHG emissions for stationary sources, it has broadened its application to projects that include both stationary and mobile source emissions. The appropriateness of utilizing this threshold for projects with both stationary and mobile source emissions has been confirmed in consultation with the SCAQMD." (AR 6587.)

<sup>15</sup> Commenters also argued that "the DEIR should have analyzed whether the Project would be consistent the California Air Resources Board (CARB)-recommended strategies, including compliance with the reductions in BAU [business-as-usual] levels identified in the AB 32 Updated Scoping Plan." (AR 6416.) Contrary to Respondents' suggestion (Oppo. 22), Waste Management does not contend in its writ briefs that Irwindale must apply a BAU analysis. (See WM Reply 12.) Waste Management cites to evidence in the record that, in an April 2014 analysis, Irwindale's traffic consultant rejected use of the SCAQMD threshold for a different project where the majority of the emissions were from mobile sources. (AR 6416-17, 6519-6522, 6552-6553.) The expert stated that SCAQMD did not consider mobile sources when setting the 10,000 MTCO2e threshold, and that it would be "misleading" to apply the threshold to a project where the majority of emissions are related to mobile sources. (AR 6417.) Notably, in opposition, Respondents do not address this evidence. Nor do Respondents cite to any evidence (as opposed to statements in the EIR) about any official position taken by the SCAQMD GHG working group; evidence of any consultations with SCAQMD about this issue; or any expert testimony or opinion justifying use of the SCAQMD threshold for a project with substantial mobile sources.

Given the global nature of GHG emissions, it seems plausible that a significance threshold could apply to projects with both stationary and mobile sources. (But see AR 50462 ["the analysis of GHG emissions from stationary sources is much more straightforward than the analysis of … emissions from mobile sources."].) However, the SCAQMD agenda report from 2008 specifically states that the threshold was developed only for stationary sources. (See AR 56656-56666; see AR 56661 ["analysis did not include … mobile sources"; see also AR 6417.) Therefore, without some factual or scientific justification, an agency could not reasonably use the SCAQMD threshold for mobile sources. Respondents' vague reference to discussions at a GHG working group is not substantial evidence.<sup>16</sup>

The court finds support for this conclusion in the California Supreme Court's decision in *Newhall Ranch.* "A lead agency enjoys substantial discretion in its choice of methodology. But when the agency chooses to rely completely on a single quantitative method to justify a no-significance finding, CEQA demands the agency research and document the quantitative parameters essential to that method. Otherwise, decision makers and the public are left with only an unsubstantiated assertion that the impacts—here, the cumulative impact of the project on global warming—will not be significant." (See *Newhall Ranch, supra*, 62 Cal.4th at 228.) Here, with the application of MM AQ-22 and the SCAQMD significant threshold of 10,000 MTCO2e, Irwindale found the Project's GHG emissions of 58,834 MTCO2e/year to be less than significant. (AR 3411.) Although the mitigation measure is important to the no-significance finding, so is the choice of significance threshold. The EIR deprives the public of information

<sup>&</sup>lt;sup>16</sup> Respondent appears to be referring to consultation or discussion with SCAQMD staff, not any official advice or standard adopted by the Board of SCAQMD. The record reflects that at a 2010 working group meeting, SCAQMD staff indicated it would *propose* expanding the threshold to projects with mobile source emissions, but did not bring the recommendation to the Board. See AR 3555 ["Staff indicated that they hoped to bring the proposed GHG significance thresholds to the board for their December 2010 meeting; however, this did not occur."]

necessary to understand the justification for using the SCAQMD threshold for the Project. Therefore, as in *Newhall Ranch*, the error is prejudicial.

The court also finds support in *Golden Door Properties, LLC v. County of San Diego* (2018) 27 Cal.App.5th 892, 904-905, a case Respondents declined to address in opposition. The court in *Golden Door Properties* invalidated a county's GHG Guidance document and its "recognized and recommended method" for considering GHG emissions, using a quantitative threshold, because, in part, it "reli[ed] on statewide data without evidence supporting its relationship to countywide [GHG] reductions." Similarly, here, Irwindale relied on a quantitative threshold for stationary sources without substantial evidence supporting use of that threshold for a project involving mobile sources.

Respondents contend that Newhall Ranch can be distinguished because the EIR "does not rely on a single quantitative method, but uses four separate methodologies." (Oppo. 21, citing AR 6587.) The cited pages of the EIR states that "four types of analyses were used to determine whether the Proposed Project would be in conflict with the goals for reducing GHG emissions." (AR 6587.) In addition to comparison to SCAQMD's GHG threshold (identified as "Item b" in the EIR), the EIR states that the other three analyses included: (a) "The potential conflicts with the CARB' thirty-nine (39) recommended actions identified in Table 3.3-16 List of Recommended Actions by Sector;" (c) "The basic parameters of a project to determine whether its design is inherently energy efficient, will lead to wasteful energy use, or is neutral with regard to future energy use."; and (d) "Potential conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases." (Ibid.) This conclusory statement apparently refers to a somewhat more detailed discussion in the RDEIR. (AR 3601-02.) Unlike item b, items a, c, and d apparently do not rely on a quantitative method to analyze GHG emissions and significance. Inclusion of these other gualitative analyses does not relieve Irwindale of the obligation to support its decision to use the SCAQMD threshold with substantial evidence.

Respondents contend in their brief that "faced with no adopted GHG thresholds applicable to the Project, the City properly relied on the SCAQMD threshold." (Oppo. 22.) Irwindale was required to support its decision to use the SCAQMD threshold with sufficient reasoning in the EIR and substantial evidence in the record to allow informed decisionmaking and public participation. Vaguely pointing to discussions at a SCAQMD GHG working group did not meet that standard.

The court concludes that Irwindale prejudicially abused its discretion in applying the SCAQMD's 2008 GHG significance threshold for stationary sources to the Project without sufficient explanation or substantial evidence in the record.

## Consistency with CARB Scoping Plan

Waste Management contends that Irwindale's discussion of Project consistency with the state's Climate Change Scoping Plan "fails to reflect a good faith effort at full disclosure." (WM OB 24.)

With respect to analysis of GHG emissions, the CEQA Guidelines provide that the lead agency should consider "the extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions." (§ 15064.4(b)(3); see also *Friends of Oroville v. City of Oroville* (2013) 219 Cal.App.4th 832, 839-840 [*Oroville*].)

The RDEIR explains how Assembly Bill 32 directs CARB to develop and implement regulations to reduce statewide GHG emissions. (AR 3550.) "On December 11, 2008, CARB adopted its Scoping Plan, which functions as a roadmap of CARB's plans to achieve GHG reductions in California required by AB 32 through subsequently enacted regulations." (AR 3553.) In 2014, CARB approved a "First Update" to its Scoping Plan. (AR 3554.) However, "the Scoping Plan adopted pursuant to A.B. 32 is a plan for reducing greenhouse gas emissions, but does not itself establish the regulations by which it is to be implemented." (See *Newhall Ranch, supra*, 62 Cal.4th at 228.)

As indicated above, the RDEIR states that four types of analyses were used to determine the significance of the Project's GHG impacts, including analysis of "potential conflicts with the CARB' thirty-nine (39) recommended actions identified in Table 3.3-14 List of Recommended Actions by Sector." (AR 3600; see AR 3600-3605.) The RDEIR concludes that the Project "does not pose any apparent conflict with the CARB recommended actions." (AR 3602.) It states "the project would help achieve Measure RW-3, which promotes high recycling." (Ibid.; see also AR 3392 [Project will "provide state-of-the-art recycling methods"].) Table 3.3-16 lists CARB recommended actions and estimated GHG reductions; the table does not appear to apply or analyze these actions to the Project. (AR 3602-05.) In response to a comment, the FEIR provides additional explanation of the energy efficiency of the Project, including a requirement for the Project "to be LEED certifiable and built to the Green Building Code standards." (AR 6588.)

Relying on *Oroville, supra*, Waste Management contends that Irwindale abused its discretion because it "made no effort to establish the effect of the Project's efficiency features on GHG emissions." (Reply 14; see WM OB 24.) In *Oroville*, the Court of Appeal found that the agency erred, in part, by "placing great weight on Scoping Plan consistency to sustain the City's finding that the Project's GHG emissions will have a less than significant impact after mitigation." (*Oroville, supra*, 219 Cal.App.4th at 843.) The EIR did "not provide any figures regarding the existing Wal-Mart's GHG emissions, or any figures regarding the effect of the Project's mitigation measures on GHG emissions (MM AIR-8a through MM AIR-8e, which are largely energy- and environment-related measures)." (Ibid.)
*Oroville* does not support Waste Management's contention that Irwindale failed to provide sufficient analysis of Project consistency with the CARB Scoping Plan. Irwindale did not rely on consistency with the Scoping Plan as mitigation or to support a finding that the Project GHG impacts would be less than significant. Rather, the lessthan-significant finding was based on implementation of mitigation measure AQ-22, discussed below. (AR 3605, 6802.) Waste Management does not challenge Irwindale's conclusion of consistency with the Scoping Plan as unsupported by substantial evidence. Considering the EIR as whole, including the discussion of recycling and energy efficiency measures, the EIR provides sufficient analysis with respect to consistency with the Scoping Plan to satisfy CEQA.

## GHG Mitigation Measure AQ-22

Waste Management contends that Irwindale prejudicially abused its discretion because the EIR contains "no facts or analysis" to support the finding that mitigation measure AQ-22 will reduce GHG impacts to less than significant. (WM OB 22-23.)

The court reviews *de novo* whether the EIR provides sufficient analysis of the efficacy of a mitigation measure. (*Friant Ranch, supra*, 6 Cal.5th at 511-517.) However, to the extent factual issues are involved, the court reviews Irwindale's decision to rely on AQ-22 for substantial evidence. (*Oroville, supra*, 219 Cal.App.4th at 844; *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1027.)

The FEIR describes AQ-22 as follows:

The Project Applicant shall purchase verifiable and certified GHG offset credits and provide verification to the City of the purchase annually. Off-set credits shall be purchased in an amount that is based on one of the following:

(1) Offset-credits for 48,803 metric tons or,

(2) Offset-credits in an amount computed on the basis of the Project's actual GHG emissions the previous year compared to emissions from the 2013 baseline condition minus 10,000 metric tons of CO2e per year. The calculation must be prepared and certified by a professional Air Pollution expert, acceptable to the City as determined by the Director of Community Development.

When feasible, offset purchases would be prioritized by proximity to the Project Site, with greatest preference given to projects within the jurisdictional boundaries of the SCAQMD, then California, and then finally nationally. Carbon offsets are widely available in a number of markets (e.g., GreenX and IntercontinentalExchange) and exists at levels that greatly exceed the potential needs of the Proposed Project.<sup>17</sup> (AR 6082-83.)

In an email dated May 9, 2016, to Irwindale's Community Development Director, Athens' President wrote in pertinent part:

Athens' interpretation of MM AQ-22 is that it can purchase 48,803 MTCO2e of GHG credits each year the Project is operational, or conduct the Option 2 calculations on an annual basis and purchase GHG credits for any positive emissions .....[¶]

The FEIR notes that recycling itself creates GHG reductions; however, to be conservative, reductions from landfill diversion and recycling were not applied to the Project. It is Athens' intention to apply such reductions as part of any GDG emissions calculations pursuant to Option 2 above. We will use accepted methodologies developed by the U.S. Environmental Protection Agency (EPA) and/or the California Air Resources Board (CARB) to estimate GHG reductions from recycling....[¶]

.... When applying the concept of feasibility (i.e., "when feasible"), Athens will be considering the concept of economic feasibility, thus searching for the most cost effective GHG credits available. (AR 38302.)

Waste Management contends that Irwindale "presumably" agreed to Athens' plan to take credit for GHG reductions from recycling pursuant to "Option 2." (WM OB 21.) Waste Management cites no evidence that Irwindale approved Athens' interpretation. The FEIR was issued after Irwindale received this correspondence, and, as indicated below, Irwindale responded directly only to the issue of feasibility. However, the parties also have not cited the court to evidence that Irwindale disputed or rejected Athens' interpretation of Option 2 under which landfill diversion and recycling could be considered in the calculation of Project GHG omissions.

In a June 8, 2016 report to the Irwindale City Council, city staff clarified, at the request of Athens, that "'when feasible' is defined as 'when the cost of offsets is less than or equal to other sources', and the suggested proximity of credits is in no way intended to incur additional cost." (AR 9092.) City staff also indicated that the "when feasible" language was included "following SCAQMD preferences." (Ibid.)

As further background, a 2008 white paper of the California Air Pollution Control Officers Association (CAPCOA) states the following: "GHG emission reduction credits are becoming more readily available however the quality of the credits varies considerably. High quality credits are generated by actions or projects that have clearly

<sup>&</sup>lt;sup>17</sup> In footnote 9, Waste Management points out that the Addendum inadvertently omitted reference to AQ-22. That omission is immaterial to the analysis here. (See Oppo. 28, fn. 9; AR 11076-78.)

demonstrated emission reductions that are real, permanent, verifiable, enforceable, and not otherwise required by law or regulation. When the pre- or post-project emissions are not well quantified or cannot be independently confirmed, they are considered to be of lesser quality. Similarly, if the reductions are temporary in nature, they are also considered to be poor quality." (AR 50474; see WM Reply 15.)

Waste Management also points to evidence that the Recirculated DEIR had a requirement that Athens comply with Title 24 of the California Code of Regulations and the California Air Pollution Control Officers Association (CAPCOA) GHG Registry when utilizing emission credits (AR 3601-3602), but that this requirement was deleted "with no analysis or explanation" in the Final EIR. (AR 6725-26.)

# Facts or Analysis Supporting AQ-22

An EIR must include facts and analysis to support an interference that a mitigation measure will have a quantifiable impact on reducing adverse environmental effects. (*Friant Ranch, supra*, 6 Cal.5th at 522; *Oroville, supra*, 219 Cal.App.4th at 841-844 [EIR found inadequate for failing to quantitatively or qualitatively estimate the effect of the project's mitigation measures on GHG emissions].)

Waste Management points out that AQ-22 relies, in part, on SCAQMD's GHG threshold of significance of 10,000 MTCO2e/year since both Option 1 and Option 2 state that Athens is required to purchase offsets to reduce GHG emissions to 10,000 MTCO2e/year. (WM OB 23.) As discussed above, Irwindale prejudicially abused its discretion by relying on SCAQMD's GHG significance threshold for stationary sources without sufficient explanation or substantial evidence in the record. Since AQ-22 incorporates SCAQMD's significance threshold, AQ-22 violates CEQA for the same reasons.

Waste Management contends that the "EIR offers no explanation as to how the applicant's purchase of offset credits would ensure actual reductions in GHG emissions" and that AQ-22 has no "teeth." (WM OB 22.) Respondents contend that offsets are a permissible form of mitigation under CEQA and that the "benefits of the offsets are ... obvious." (Oppo. 25.) Offsets are a valid form of mitigation for GHG emissions. (§ 15126.4.) However, it does not follow that all GHG offset credits are the same, or that the benefits of offsets are "obvious" and do not require any analysis under CEQA.

Here, there appears to be no explanation in the EIR of what it means for GHG offset credits to be "verifiable or certified." Respondents have cited none. As previously mentioned, the version of AQ-22 in the RDEIR included a requirement of "compliance with Title 24 and CAPCOA's GHG Registry exchange," and that requirement was omitted from AQ-22 in the FEIR. (AR 3601, 6082-83.) Respondents concede that the effectiveness of AQ-22 depends on the terms "verifiable and certified." (Oppo. 26:3-23.)

Waste Management contends the EIR lacks discussion of whether "AQ-22's proposed voluntary markets (e.g. GreenX and IntercontinentalExchange" have been

sufficiently reviewed to ensure functionality. (WM OB 22-23.) The EIR states that "Carbon offsets are widely available in a number of markets (e.g., GreenX and IntercontinentalExchange) and exists at levels that greatly exceed the potential needs of the Proposed Project." The court agrees that this terse analysis in the EIR does not satisfy CEQA. Even if credits are available from these markets, there is no information about their quality and effectiveness.

The EIR includes no analysis that would allow the public to assess the quantity and quality of GHG credits available to Athens on an annual basis. Thus, the public cannot assess Irwindale's conclusion that AQ-22 would reduce the Project's GHG impacts to less than significant.

## Impermissibly Vague or Deferred Mitigation

Waste Management contends that AQ-22 is impermissibly vague and defers mitigation because Option 2 allows Athens to purchase an offset amount computed by Athens. (WM OB 23.)

The court rejects Waste Managements' contention that AQ-22 "fails to specify how an offset could be found infeasible." (WM OB 23.) AQ-22 discusses feasibility only with respect to the geographic area from which the offset credits may be purchased. (AR 6082-83.) Irwindale's clarification similarly shows that feasibility relates only to a comparison of costs between different geographic areas. (AR 9092.)

Waste Management does not show, by citation to authority, that AQ-22 impermissibly defers mitigation by authorizing Irwindale to select a "professional Air Pollution expert" to calculate annual GHG emissions. It may be presumed that Irwindale will perform its official duty in this regard. (Evid. Code § 664.)

However, like Waste Management, the court questions whether AQ-22 would permit Athens to consider GHG reductions from landfill diversion and recycling when it calculates annual GHG emissions, consistent with Athens' May 9, 2016 email. (AR 38302.) Landfill diversion and recycling are already required or otherwise incentivized by regulation in California. (See e.g. 14 CCR § 18835 et seq.) Irwindale did not incorporate Athens' proposed Implementation Plan into AQ-22, but it also did not set forth a standard in AQ-22 under which the Air Pollution expert would calculate GHG emissions. It appears there is nothing in AQ-22 or the EIR that would prevent the Air Pollution expert from calculating GHG emissions in the manner proposed by Athens. The EIR does not analyze the effectiveness of Option 2 as mitigation if landfill diversion and recycling are considered GHG emissions reductions. There does not appear to be any reason to defer analysis of the manner in which GHG emission reductions are calculated under Option 2. In reply, Petitioner argues that AQ-22 is vague because "City now claims that ... the 2013 baseline is zero." (Reply 16.) The EIR indicates that a 2013 baseline was conservatively evaluated as zero. (AR 3601, 6600-01, 6595.) In that context, the 2013 baseline referred to in AQ-22 is arguably zero. However, there is ambiguity since the EIR also states that the estimated 2013 baseline "is 4,360 tons per day (based on market share, waste amounts, and trip distances)." (AR 3601.) If a baseline of zero was assumed in Option 2 of AQ-22, then it was unnecessary to compare the calculated emissions to the baseline. AQ-22 could have more clearly stated that Athens would be required to purchase offset credits equal the calculated emissions minus 10,000 MTCO2e/year. Although perhaps insufficient to invalidate the EIR in itself, this ambiguity adds to the court's conclusion that AQ-22 is vague and not sufficiently analyzed.

For the reasons stated above, Irwindale prejudicially abused its discretion in analyzing the effectiveness of AQ-22 in reducing the Project's GHG emissions to less than significant.

### Traffic Impacts

## Baseline

Waste Management contends that Irwindale violated CEQA by using a "fictitious" baseline to calculate traffic impacts. (WM OB 24-25.) To obtain a 2013 baseline, Irwindale applied a 1.8% growth factor to 2011 traffic data. (AR 3804.) Waste Management does not dispute that an agency has discretion to calculate a baseline by applying a growth factor to data from a prior year. Rather, Waste Management contends that substantial evidence does not support Irwindale's decision to do so in this case.

"If the determination of a baseline condition requires choosing between conflicting expert opinions or differing methodologies, it is the function of the agency to make those choices based on all of the evidence." (*Save our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 120.) ""[N]either CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule for determination of the existing conditions baseline. Rather, an agency enjoys the discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence." (*Neighbors for Smart Rail, supra*, 57 Cal.4th at 449.)

To identify existing conditions, Irwindale's traffic consultant compared 2013 key intersection trip counts to the traffic counts obtained in 2011. (AR 6582, 3804-07.) The 2013 trip counts showed that AM Peak Hour trips in total had increased by 1.8%. (AR 3804, 6583.) For PM Peak Hours, however, 2013 trip key intersection counts revealed that traffic had decreased by approximately 4%. (AR 3804, 3807, 6580-84.) To

conservatively identify 2013 (existing) conditions, the RDEIR applied a 1.8% growth rate to 2011 AM Peak Hours (consistent with identified growth) and utilized 2011 PM Peak Hour counts (higher than 2013 counts). (Ibid.) Caltrans, a state agency with expertise in transportation, did not express any concerns regarding the approach used to determine existing, 2013 conditions.<sup>18</sup> (AR 6583.) Thus, the record contains substantial evidence supporting Irwindale's calculation of 2013 baseline conditions, including from expert consultants.

The FEIR's updated TIA also included new traffic counts reflective of 2016 conditions. (AR 6064, 6801.) The FEIR explains that the peak hour count data was updated to 2016 conditions in the updated TIA "to determine whether the conclusions regarding MRF/TS project impacts and mitigation measures were still applicable and sufficient under the revised traffic count and cumulative project scenarios...." (AR 6602, 6583.) Waste Management does not address this evidence.

Waste Management contends that evidence in the record "reflects that actual grown between 2011 and 2013 at *several locations* analyzed was six to seven (and as much as nine) times higher than the growth assumed in the EIR. (AR 2555-2556, 6225-6227.)" (WM OB 25 [emphasis added].) The cited evidence is limited to several locations, and does not undermine Irwindale's reasoning for applying a growth factor to 2011 data. In any event, since substantial evidence supports Irwindale's calculation of the 2013 baseline, the CEQA cannot be challenged based on a conflicting expert opinion or on the grounds that a different method could have been used.

Irwindale did not prejudicially abuse its discretion in calculating the 2013 baseline for the traffic analysis.

## Fair Share Fees

Waste Management contends that mitigation measures T-1 and T-2, which require Athens to fund its "fair share" of intersection improvements, do not adequately mitigate the Project's traffic impacts. (WM OB 25-27.)

T-1 requires Athens to fund intersection improvements to mitigate potential traffic impacts at I-605 NB Off-Ramp / Live Oak Ave. (AR 6737.) T-2 requires Athens to fund improvements to mitigate potential traffic impacts at I-605 SB Off-Ramp / Arrow Highway.<sup>19</sup> (AR 6738.) Because improvements at I-605 / Live Oak Ave. would be constructed on Caltrans property, outside of city jurisdiction, Irwindale acknowledges in the EIR that it cannot ensure the mitigation measures will be implemented. (AR 3852-53.) It appears that the proposed improvement in T-2 is also on property outside

<sup>18</sup> Petitioner, who has the burden, does not cite to evidence contradicting the EIR statement that Caltrans did not express concern with this calculation of 2013 baseline.

<sup>19</sup> Waste Management misses this distinction in its opening brief, and analyzes T-1 and T-2 as if they both apply to I-605 / Live Oak.

Irwindale's jurisdiction. (AR 3888.) Thus, the potential traffic impacts sought to be mitigated by T-1 and T-2 remain significant and unavoidable. (AR 3852-53, 3888.)

The RDEIR explains Athens' fair share contributions as follows: "Per the City of Irwindale Traffic Study Guidelines, the Proposed Project shall pay its fair share of improvements to eliminate the significant impacts identified in the Traffic Impact Analysis. The Fair Share Contribution towards the required 2035 improvements at each location is based on the Proposed Project's percentage of new traffic for Long Range With Project (2035) conditions. The Proposed Project is anticipated to contribute to approximately 33% of the total new traffic at the intersection of I- 605 SB Off-Ramp / Arrow Highway and I-605 NB Off-Ramp / Live Oak Avenue." (AR 3851.)

Waste Management contends that Irwindale's fair share calculation is not supported by substantial evidence because "the impact is caused *solely* by the Project." (WM OB 26, citing AR 3851-52.) Waste Management misconstrues the record when it argues that the impact at I-605 / Live Oak Ave. is caused "solely" by the Project.<sup>20</sup> The record includes substantial evidence that this intersection operates at an unacceptable level of service ("LOS") under existing conditions, without the Project. (AR 5073, 6804-05.) The record also contains substantial evidence, from Irwindale's traffic consultant, that the Project would contribute approximately 33% of the new traffic at I-605 / Live Oak and 20% at I-605 / Arrow Highway. (AR 3881-82, 6771.) Waste Management cites no evidence to the contrary. Thus, substantial evidence supports Irwindale's fair share calculation.

Waste Management contends that the "EIR fails to discuss how the City would ensure funding of 67% of the remaining cost." (WM OB 26.) Since the EIR discloses that the impact at I-605 / Live Oak Ave. would remain significant and unavoidable with mitigation, Irwindale was not required to identify how it could obtain additional funding for the improvements. (See *Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238, 244-245 ["The EIR is only required … to discuss currently feasible mitigation measures."]) Moreover, Irwindale was not required to impose a fee on Athens greater than its fair share. (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 364 [mitigation should be proportional to impact].)

Waste Management contends that no substantial evidence supports that the improvements contemplated by T-1 and T-2 will occur, or that Caltrans will cooperate in the improvements. (WM OB 26.) The EIR acknowledges that the mitigation may not be feasible because it would occur outside of city jurisdiction. (AR 3852-53, 3888.) Thus,

<sup>&</sup>lt;sup>20</sup> Waste Management's brief and record citations only discusses impacts at I-605 / Live Oak Ave. To the extent Waste Management intended to make arguments with respect to T-2 and impacts at I-605 / Arrow Highway, it failed to meet its burden to cite to the record. (CCP § 1094.5(b); *Inyo Citizens for Better Planning, supra,* 180 Cal.App.4th at 14 [court does not make parties' arguments for them].)

no further analysis or evidence was required. Moreover, the record does contain substantial evidence that Caltrans agreed to work cooperatively with Irwindale toward construction of the improvements in a "timely" manner. (AR 6105-07, 6140, 6315.)

Waste Management contends that "a significant and unavoidable impact conclusion does not relieve the City of disclosing the true extent or severity of the impacts to the I-605/Live Oak Avenue intersection in the very likely event that MM T-1 and MM T-2 are not constructed." (WM OB 26.) This argument is inapplicable. The EIR includes analysis of traffic impacts at the I-605/Live Oak Avenue intersection *before implementation of mitigation*. (AR 3854-3888, 5115-26, 6845-61.)

In reply, Waste Management argues that Respondents' only evidence of future construction required by T-1 and T-2 is "post-decisional" and that substantial evidence does not support Irwindale's finding that traffic impacts were mitigated "to the maximum extent feasible." (Reply 19-20.) In its analysis above, the court has not relied on the extra-record evidence cited by Respondents at page 15 of their opposition. (See Resp. RJN Exh. 1, 2.) City has disclosed the mitigation measures and the feasibility of their implementation when outside the purview of City. This analysis satisfies CEQA.

Irwindale did not prejudicially abuse its discretion in imposing or analyzing "fair share" mitigation measures T-1 and T-2.

## Mitigation for Air Quality Impacts

## AQ-12 through AQ-18

Waste Management challenges air quality mitigation measures AQ-12 through AQ-18 on the grounds that they "merely restate what the law already requires; they identify no actual, concrete mitigation – and therefore operational air quality impacts remain unmitigated in violation of CEQA." (WM OB 27.) These arguments are unpersuasive.

Although AQ-12 through AQ-18 would reduce ROG and NOx emissions, the EIR found that this mitigation would not reduce ROG and NOx impacts to less than significant and no additional feasible mitigation measures had been identified. (AR 3577, 3580.) "CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment... unless the measures necessary to mitigate those effects are truly infeasible." (*City of San Diego v. Board of Trustees of California State University* (2015) 61 Cal.4th 945, 967.) Waste Management cites no evidence in the record to dispute the EIR finding that AQ-12 through AQ-18 would not reduce ROG and NOx emissions to less than significant, and that no other feasible mitigation exists.

Waste Management's contention that AQ-12 through AQ-18 are improper mitigation because they "restate what the law already requires" is unpersuasive. "The

Guidelines specifically recognize that mitigation measures requiring adherence to regulatory requirements or other performance criteria are permitted. (Guidelines, § 15126.4, subd. (a)(1)(B)." (*Treasure Island, supra,* 227 Cal.App.4th at 1060.) "A condition requiring compliance with regulations is a common and reasonable mitigation measure, and may be proper where it is reasonable to expect compliance." (*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 906.) Waste Management fails to distinguish these cases in reply. The rule stated in Guidelines section 15126.4(a)(1)(B), *Treasure Island,* and *Oakland Heritage* is not limited to compliance with regulations in developing future mitigation, as Waste Management states. Waste Management cites no legal authority to the contrary; the SCAQMD letter cited in reply is not controlling. (Reply 17; see AR 6321.)

Irwindale did not prejudicially abuse its discretion in adopting AQ-12 through AQ-18 as mitigation for air quality impacts.

# AQ-10 and AQ-11

Waste Management contends that AQ-10 and AQ-11 "are deficient because they fail to include a numerical performance standard for the EIR's assumed reduction." (WM OB 27-28.)

AQ-10 requires that "contractors shall use varying-pressure-low-volume paint applicators or other application techniques with equivalent or higher transfer efficiency." (AR 6719.) AQ-11 requires use of "super compliant VOC (and ROG) coatings for all architectural applications" and explains that super-compliant coatings "contain less than 10 grams of VOC per liter." (Ibid.) The EIR explains that AQ-11 would reduce VOC content from 250 to 10 grams per liter. (AR 6397-98.) It also states that "the decrease in ROG emissions (96 percent) within Table 3.3-10 is the result of MM AQ-10 and AQ-11 (coating activities) as well as combustion mitigation measures (AQ-1 through AQ-9)." (AR 6397; see also AR 3563-64 [tables 3.3-9 and 3.3-10 showing reduction in ROG emissions from 289 pounds per day to 11.8 after mitigation].)

AQ-10 and AQ-11 both include performance standards. AQ-10 requires contractors to use "varying-pressure-low-volume paint applicators" or other application techniques with "equivalent or higher transfer efficiency." Waste Management cites no evidence that a contractor would not understand the qualitative standard in AQ-10. It also cites no legal authority that a "numerical" standard is necessarily required in AQ-10. AQ-11 requires use of a "super-compliant" coating, which is numerically defined in the EIR.

Other than its argument that AQ-10 and AQ-11 lack performance standards, Waste Management cites no evidence in the record to dispute the EIR finding that ROG emissions would be reduced 96 percent with the mitigation. Moreover, that EIR finding is based in part on combustion mitigation measures in AQ-1 through AQ-9, which Waste Management has not discussed or challenged. Irwindale did not prejudicially abuse its discretion in adopting AQ-10 and AQ-11 as mitigation for air quality impacts.

### Infeasibility of Air Quality Mitigation

Waste Management contends that Irwindale improperly concluded that it was infeasible to require the use of more alternatively fueled trucks. (WM OB 28.)

Approximately 32 percent of the trucks operated by Athens were fueled by diesel in 2014 and thus subject to the mitigation measures. (AR 3579.) The EIR states that "the use of alternative fueled solid waste and transfer trucks (i.e., compressed natural gas) will be required pursuant to SCAQMD Rule 1193 for the applicant's vehicles." (Ibid.) However, "the use and/or purchase of all alternative fueled vehicles beyond what is required by Rule 1193 as part of this Proposed Project is infeasible due to the high cost of refuse collection vehicles and existing requirement that alternatively fueled vehicles replace existing vehicles to comply with the SCAQMD Rule 1193." (Ibid.) The EIR explains the infeasibility finding as follows:

The SCAQMD rule considers what is economically feasible for purposes of imposing Rule 1193 on solid waste operators. For example, Rule 1193 includes provisions for economic hardship of small private fleet operators that can allow two one-year extensions to acquire rule compliant vehicles. Also, the transfer trucks are still primarily diesel fueled because at this time there are no suppliers that can deliver feasible alternatives (alternative-fueled transfer trucks). Rule 1193 requires fleet operators to go through a procurement process for alternative-fueled transfer trucks, but bids generally are not responded to because alternative-fueled vehicles don't meet other bid specifications (Cole, 2014). The process is outlined in Rule 1193 (f)(3)(A). As alternative-fueled vehicles with appropriate specifications needed for transfer trucks become available, Rule 1193 requirements will assure that fleets will be add [sic] these vehicles for future replacements.

Additionally, requiring third party collection trucks that utilize the facility to be alternatively fueled beyond the requirements they have to comply with under Rule 1193 would foreseeably result in an increase in emissions. Rather than converting their trucks to alternative fuels, third parties would likely choose to travel to the next closest facility (which potentially will result in increased trip lengths and air emissions) that does not have this requirement rather than using the Proposed Project even if it is more convenient with a shorter travel distance. In this instance, emissions may increase due to a longer travel distance.... (AR 3579-80.)

Although this EIR analysis is substantially based on SCAQMD Rule 1193, Waste Management, which has the initial burden under section 1094.5, does not discuss that

rule in any detail in its writ briefs. (WM OB 28; Reply 18-19; see BP Reply RJN Exh. 2 [Rule 1193].) Without addressing Rule 1193, its requirements, and history, Waste Management cannot show that the analysis above is not supported by substantial evidence. The court cannot say that the analysis above is, on its face, insufficient to satisfy CEQA.

Waste Management contends that the EIR sets up a "straw man" by failing to "consider a mitigation measure that would instead require only a portion of Athens' transfer trucks and solid waste vehicles to be alternatively fueled," as Waste Management had suggested. (WM OB 28, citing AR 6204, 6267-69.) The EIR analysis set forth above is reasonably interpreted to consider, albeit in a somewhat conclusory manner, the marginal cost of additional alternatively fueled vehicles. (See AR 3579 [ "use and/or purchase of all alternative fueled vehicles **beyond** what is required by Rule 1193 as part of this Proposed Project is infeasible due to the high cost...."].) Thus, as phrased, this "straw man" argument is not compelling.

Waste Management contends that Irwindale failed to respond adequately to Petitioner's comments about third-party trucks, which suggested as feasible mitigation "contract requirements to reduce impacts from trucks that utilize the Project or requiring diesel truck operators to apply for funding established by CARB or SCAQMD to retrofit or replace engines." (WM OB 28, citing AR 6205, 6267-69.) "Responses to comments need not be exhaustive; they need only demonstrate a 'good faith, reasoned analysis.'" (Eureka Citizens for Responsible Government v. City of Eureka (2007) 147 Cal.App.4th 357, 378.) Waste Management apparently refers to comment letter 13, comment 22 at AR 6205. The EIR reasonably responded to that comment, stating "rather than converting their trucks to alternative fuels, third parties would likely choose to travel to the next closest facility (which potentially will result in increased trip lengths and air emissions)." (AR 6256; see also AR 6597.) In response to the suggestion that Irwindale require diesel truck operators apply in good faith for CARB or SCAQMD funding to retrofit or replace engines, the EIR incorporated a similar provision in MM AQ-18. (AR 6722-23.) Irwindale adequately responded to Waste Management's comments about mitigating emissions from third-party trucks.

In reply, Waste Management makes new arguments. (Reply 18-19.) Waste Management argues that "the administrative record lacks evidence of a cost estimate for purchasing alternatively-fueled vehicles." (Reply 18, citing AR 11317 [Baldwin Park comment letter].) Waste Management contends that the record lacks evidence to support the EIR finding that use of alternatively-fueled vehicles or Tier 4 equipment, by Athens or third-party haulers, is infeasible.<sup>21</sup> (Reply 19.) The opening brief argued that the infeasibility finding was without evidentiary support, but the specific arguments made by Waste Management (set forth above) were different. (See WM OB 8-18.) Waste Management did not argue, for instance, that the record lacked a cost estimate. New issues raised in reply are improper and may be disregarded. (*Regency Outdoor* 

<sup>&</sup>lt;sup>21</sup> A discussion of federal emissions standards Tiers 1-4 is provided at AR 6597, fn. 33.

Advertising v. Carolina Lances, Inc. (1995) 31 Cal.App.4th 1323, 1333.) Waste Management also does not provide a comprehensive discussion of the relevant analysis and evidence in the record to support these reply arguments. The court is not required to search the record to ascertain whether it supports an appellant's contentions. (Inyo Citizens for Better Planning v. Inyo County Board of Supervisors (2009) 180 Cal.App.4th 1, 14.) The court reject these new reply arguments for these reasons.

Based on the arguments set forth in the opening brief, the court is not persuaded that Irwindale prejudicially abused its discretion in the EIR analysis of air quality mitigation.

# Irwindale's Decision to Prepare an Addendum

Both Baldwin Park and Waste Management challenge Irwindale's decision to prepare an addendum rather than a supplemental EIR (SEIR). (BP OB 23-25; WM OB 17-18.)

"Once a project has been subject to environmental review and received approval, section 21166 and CEQA Guidelines section 15162 limit the circumstances under which a subsequent or supplemental EIR must be prepared." (*Friends of the College of San Mateo Gardens v. San Mateo County Community College District* (2016) 1 Cal.5<sup>th</sup> 937, 949.) The court reviews "whether there is substantial evidence supporting the agency's determination that the changes in the Project (or its circumstances) were not substantial enough to require an SEIR." (Santa Teresa Citizen Action Group v. City of San Jose (2003) 114 Cal.App.4th 689, 704.)

In relevant part, section 15612 provides: "[N]o subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following: (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR ... due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) Substantial changes occur with respect to the circumstances under which the project is undertaken ... ; or (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified ... [which shows, *inter alia*, a significant effect not discussed in the EIR]."

Section 15614 of the Guidelines addresses when the agency may prepare an addendum: "The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred." (§ 15164(a).)<sup>22</sup>

<sup>&</sup>lt;sup>22</sup> At the hearing, Petitioners argued preparation of an addendum was inappropriate because the construction period was increased from 18 months to 26 months in the

### Changes to Site Plan

Baldwin Park contends that the decision to prepare an Addendum is not supported by substantial evidence because the revised site plan "moved numerous noise-producing operations closer to Baldwin Park." (BP OB 24-25.)

Based on the parties' record citations, the court has reviewed the original site plan in the RDEIR (AR 3471, 3473) and the revised site plan in the Addendum.<sup>23</sup> (AR 8051, 8073.) In the Addendum, Irwindale found that the EIR noise analysis remained adequate because there was no increase in the Project's operational capacity. (AR 8061.)

Compared to the RDEIR site plan, the Addendum site plan shows that the fueling station/convenience store was moved from the northeastern edge of the site to the southeastern edge. (AR 3471, 3473, 8051, 8073.) In the Addendum plan, there is a parking lot and some green space south of the fueling station/convenience store. (AR 8073.) With respect to noise impacts, the RDEIR concluded that "fueling facility/convenience stores are not usual sources for excessive noise and because this fueling facility location would not be close to residential receptors, no significant noise impacts are expected from operations." (AR 3755.) The RDEIR did not find significant noise impacts on the northeastern border facing Arrow Highway, where the fueling station/convenience store was originally located. (AR 3755.) Based on this original finding of no significant noise impact, as well as the parking area along Live Oak Avenue, the comparison of the RDEIR and Addendum does not show a lack of substantial evidence supporting Irwindale's decision to prepare an Addendum with respect to the relocation of the fueling station/convenience store. Baldwin Park cites no other relevant evidence.

Baldwin Park also contends that the "loadout tunnel (where the trucks exit the interior of the Project building) and the loading dock were also moved to the south." (BP OB 25.) It is not clear from the site plans cited by the parties what Baldwin Park refers to with "loadout tunnel" and "loading dock." The Addendum does state that a loadout tunnel was relocated from west side to the south of side of the project, and a loading dock was relocated from the east side to the south side. (AR 8056.) The court notes that the RDEIR and Addendum site plans both show inbound trucks entering the Project on the northeastern side, circulating past the northwestern and southwestern sides, and

Franchise Agreement. Neither Petitioner raised the issue of extended construction period in its briefing concerning preparation of the addendum. The court does not consider arguments not made in the briefs.

<sup>&</sup>lt;sup>23</sup> The FEIR also includes a "revised site plan" that, like the Addendum plan, shows the fueling station at the southern part of the property. (AR 6068.) Counsel do not address this FEIR revised site plan in their briefing.

exiting on the middle northeastern side on Arrow Highway. While there were some changes in circulation, a comparison of the site plans does not, in itself, show a substantial change that required preparation of a supplemental EIR.

Baldwin Park points out that Irwindale found some significant, unavoidable noise impacts all day along the northwestern portion of the site, and from 5 – 7 am on the southern portion. (BP OB 24, citing AR 3751-73, 3755-58.) However, in its brief, Baldwin Park does not connect these findings of significant, unavoidable noise impacts to changes in the site plan. Baldwin Park's record citations do not show that Irwindale "moved numerous noise-producing operations closer to Baldwin Park," or that any relocation of "noise-producing operations" was substantial enough to require a SEIR.

Irwindale Baldwin Park has not shown, with citation to the record, that no substantial evidence supports Irwindale's decision to prepare an Addendum with respect to changes in the site plan.

### **Baseline**

Baldwin Park and Waste Management both contend that Irwindale erred by not updating the baseline information in the Addendum. (BP OB 25; WM OB 17-18.)

Baldwin Park contends that the Addendum improperly used a baseline of 2015-2016 for its construction emissions analysis, even though the earliest construction will begin is 2020. (BP OB 25, citing AR 8064, 8067, 8087; see also WM OB 12.) Baldwin Park contends that assumption "undercut" the direct and cumulative air quality and traffic impacts that would occur from 2,190 additional construction truck trips disclosed in the Addendum. (See AR 8067 [73 daily trips during 30-day period].) Although somewhat unclear, Baldwin Park seems to argue that Irwindale was required to prepare a SEIR based on a delay in the construction timeline. A delay in the construction timeline, in itself, is not necessarily a substantial change requiring a SEIR within the meaning of section 15162.<sup>24</sup> Baldwin Park's record citations do not show that the construction changes (e.g. additional 2,190 truck trips) would result in a substantial change that required a SEIR within the meaning of section 15612.

Waste Management contends that the EIR was prepared too early in the approval process, before approval of the full MRF/TS. (WM OB 17-18.) However, the Project was well-defined at the approval of the DDA and during CEQA review. (See e.g. AR 109, 164-77, 8830-33, 8498-507.) CEQA demands that environmental review

<sup>&</sup>lt;sup>24</sup> Although not discussing an addendum, the Court of Appeal's analysis in *City of Irvine, supra*, 238 Cal.App.4th at 541 provides some support for rejecting Baldwin Park's argument that an SEIR is required due to construction delays: "The problem with this argument is that it confuses the need for a stable *project description* with the task of ascertaining the interim traffic impacts of project *construction* as that construction takes place—on a time line that cannot be predicted with certainty."

be undertaken at the earliest feasible time in the planning process. (*North Coast Rivers Alliance v. Westlands Water Dist.* (2014) 227 Cal.App.4th 832, 859.)

Baldwin Park and Waste Management do not show a prejudicial abuse of discretion with respect to the baseline used in the Addendum.

## Irwindale's Approval of the General Plan Amendment

Baldwin Park contends that the EIR land use findings violated CEQA and Irwindale's General Plan and zoning ordinance. (BP OB 25-27.)

### Land Use Findings under CEQA

Irwindale's city council adopted a resolution amending the General Plan Land Use Map for the Project site from commercial to commercial/industrial. (AR 510-513.) Baldwin Park contends that the EIR lacks "valid CEQA findings about land use consistency" because it does not discuss "the severity of the change in intensity of use" in the approved General Plan Amendment (GPA) to "commercial/industrial land use." (BP OB 26, citing Pub. Res. Code § 21082.2(c) and CEQA Guidelines § 15384.) Initially, the argument is conclusory and not supported by discussion of relevant or helpful legal authorities involving CEQA requirements for consistency with a city's land use policies.<sup>25</sup> The court could reject the argument on that basis alone.

In relevant part, the RDEIR states: "The Proposed Project site is currently zoned Heavy Manufacturing with a General Plan land use designation for commercial development. The Proposed Project includes a General Plan Amendment to commercial/industrial land use. Converting the City's General Plan land designation from commercial land use to commercial/industrial land use would resolve the current conflict between the existing land use designation and zoning code. Reverting the land use designation back to industrial use is not considered a significant impact due to the fact that prior to the General Plan Update in 2008, the site had a land use designation of industrial. Additionally, the site has historically been used for an industrial facility, and the surrounding area is dominated by industrial and commercial land uses to the west, south, and east; and therefore, the Proposed Project is compatible with all immediately surrounding existing land uses." (AR 3721; see also Id. fn 1.)

Baldwin Park argues that the "RDEIR includes no evidence to substantiate the prior use of the site" and does not compare the prior use to the Project. Baldwin Park also contends that the EIR ignores that the site is bordered by open space on the eastern side and a residential neighborhood on the south. (BP OB 26.)

Facially, the EIR analysis of consistency with land use policies is sufficiently detailed and reasoned to comply with CEQA. Baldwin Park's contentions are not

<sup>&</sup>lt;sup>25</sup> Pub. Res. Code § 21082.2(c) and CEQA Guidelines § 15384, the authorities cited by Baldwin Park, simply provide definitions of "substantial evidence."

persuasive. It is Baldwin Park's burden to show that there is no substantial evidence supporting the EIR; its few citations do not meet that burden. (See AR 3721, 3556, 3717-18.) Presumably, Irwindale knows the "prior use" of land within its jurisdiction. Thus, without more comprehensive discussion of the record, Baldwin Park cannot show that the relevant EIR finding is not supported by substantial evidence. The EIR also includes an analysis of consistency with Irwindale's general plan, and a discussion of surrounding uses, including in Baldwin Park. (AR 3721-24.)

Baldwin Park does not show that Irwindale prejudicially abused its discretion in its discussion of the Project's consistency with Irwindale's land use plans and policies.

#### Consistency with Irwindale's General Plan and Zoning Ordinance

"When [the court] review[s] an agency's decision for consistency with its own general plan, [the court] accord[s] great deference to the agency's determination. This is because the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. [Citation.] Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes. [Citations.] A reviewing court's role 'is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies." (*Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1563.)

"[A] governing body's conclusion that a particular project is consistent with the relevant general plan carries a strong presumption of regularity that can be overcome only by a showing of abuse of discretion.' [Citations.] 'An abuse of discretion is established only if the [governing body] has not proceeded in a manner required by law, its decision is not supported by findings, or the findings are not supported by substantial evidence. [Citation.] We may neither substitute our view for that of the [governing body], nor reweigh conflicting evidence presented to that body. [Citation.]' [Citation.] This review is highly deferential to the local agency." (*Joshua Tree Downtown Business Alliance v. County of San Bernardino*, 1 Cal. App. 5th 677, 695-696.)

Baldwin Park contends that the GPA was inappropriate because Irwindale's General Plan Table 2-7 states that a new zoning district must be created to implement the commercial/industrial designation. (BP OB 26, citing AR 54012-13.) Earlier, the General Plan states: "The land use categories, or 'designations,' indicate the type of development permitted for specific areas of the City. The Community Development Element contains ten land use categories as indicated in Table 2-7." (AR 54010.) With respect to "commercial/industrial," the General Plan also states: "This category of land use supports either Industrial development (FAR 1.0 to 1.0) or commercial (FAR 0.5 to 1.0)." (AR 54011.) This language, read in context, does not support Baldwin Park's argument that there is an inconsistency between the GPA, which amended the land use

map to commercial/industrial, and the policies of the General Plan. In fact, the General Plan affirms the availability of the commercial/industrial designation. While Table 2-7 apparently required Irwindale to create a "new zoning district," Baldwin Park does not show, with citation to authority, that Irwindale's failure to perform that duty is a basis to set aside the GPA. It does not appear from the petition that Baldwin Park has sought a writ of ordinary mandate directing Irwindale to create a "new zoning district" pursuant to Table 2-7. Baldwin Park does not show Respondent's consideration of consistency with the General Plan as a whole, including the two potentially inconsistent provisions, was an abuse of discretion.

Baldwin Park contends that the land use approvals "disregard the General Plan's practice of using M-1 zones as a buffer between M-2 zones and 'neighboring cities.'" (BP OB 27, citing AR 54003.)<sup>26</sup> Although Respondents fail to respond to the argument (see Oppo. 39-40), the court nonetheless finds it unpersuasive. The General Plan states in pertinent part:

Irwindale is viewed as an industrial community due to the presence of the existing large-scale mining operations along with the supporting mining-related businesses and heavy manufacturing concerns. Contributing to Irwindale's image as an industrial town is the large number of open yard businesses found in the City. The majority of the developable land in the City is zoned M-2, including many of the City's quarry sites and landfills. The M-1 zone is, for the most part, a buffering zone applied to those areas located adjacent to neighboring cities and some of Irwindale's residential neighborhoods.<sup>27</sup> (AR 54003.)

The quoted part of the General Plan states that the M-1 zone is "for the most part" used as a buffer between neighboring cities. However, it does not categorically forbid M-2 zoning adjacent to a neighboring city. The record also shows some buffering between the Project and the nearby residential neighborhood in the form of a parking area in the Project site and commercial/industrial uses in Baldwin Park. (AR 3471, 3717.) Accordingly, it was not unreasonable for Irwindale to conclude that the GPA and Project were consistent with the cited part of the General Plan at page 54003.

<sup>27</sup> M-1 and M-2 refer to light and heavy manufacturing zones, respectively. (AR 54011.)

<sup>&</sup>lt;sup>26</sup> Baldwin Park fails to show that Irwindale had an obligation to comply with policy 4.4 of the Baldwin Park General Plan for land located within the boundaries of Irwindale. (See BP OB 27, citing AR 53667.) Policy 4.4 requires *Baldwin Park* to "develop zoning regulations that ensure adjacent residential neighborhoods are adequately buffered from potentially incompatible industrial uses." Applying that policy to a city other than Baldwin Park would be nonsensical.

Finally, Baldwin Park contends that a zoning code amendment approved by Irwindale violates a "public interest" requirement of Irwindale Municipal Code section 17.84.010. (BP OB 27.) Section 17.84.010 states: "The provisions of this title [i.e. the zoning code], including, but not limited to, the classification of property, shall be amended whenever the public interest and necessity so require."28 Irwindale approved a zoning ordinance amendment to exempt MRFs from a 500-foot setback requirement from residential uses for recycling facilities, which term includes MRFs. (See Irwindale Municipal Code § 17.56.080A, B; AR 643-647.) Section 17.84.010 does not impose specific findings requirement on Irwindale to amend the zoning code. It appears that the Project would be the only MRF in Irwindale and that the zoning code amendment at issue would only apply to the Project. The record contains substantial evidence that the Project would promote important county and state recycling and waste diversion goals, among other policy objectives. (See e.g. AR 9158, 96.) As stated above, the record also shows some buffering between the Project and the nearby residential neighborhood in the form of a parking area in the Project site and commercial/industrial uses in Baldwin Park. (AR 3471, 3717.)<sup>29</sup> The court cannot conclude that Irwindale abused its discretion in weighing the various public interests involved when it approved the zoning code amendment at issue.

## Conclusion

# Baldwin Park's petition.

The petition is granted in part: the court finds the project description and analysis is inadequate as to truck fueling operations; the EIR does not sufficiently analyze transportation energy impacts; and the EIR does not sufficiently analyze the health risks associated with the Project's emissions of ROG, NOx and ozone. The petition is otherwise denied.

# Waste Management's petition.

The petition is granted in part: the court finds the EIR does not sufficiently analyze greenhouse gas emissions or the effectiveness of AQ-22 in reducing GHG emissions to less than significant. The petition is otherwise denied.

A writ will issue directing Irwindale to set aside its certification of the EIR and the land use approvals dependent on that certification, and directing that any future environmental analysis will be conducted consistent with the court's ruling.

<sup>29</sup> At the hearing, counsel for Baldwin Park also argued that City had engaged in spot zoning and was exporting Project impacts onto neighboring cities. These arguments are not considered by the court as they were not analyzed in Petitioner's briefs.

<sup>&</sup>lt;sup>28</sup> Neither party provides the court with a copy of the relevant parts of the municipal code. The court judicially notices sections 17.84.010 and 17.56.080 from Irwindale's website.

Petitioners are jointly ordered to lodge and serve a proposed form of judgment and a proposed form of writ within ten days. Petitioners are to submit a declaration with the proposed judgment and writ indicating they have met and conferred with Respondent and Real Party in Interest, and whether Respondent or Real Party in Interest has an objection to the proposed form of writ or judgment. If there are objections, the court will hold the proposed judgment and writ for ten days for the objections to be filed. The court will resolve the objections and sign the judgment, with or without a hearing, in its discretion.

The further hearing set for September 13, 2019 is taken off calendar.

DATED:

MARY H. STROBEL, JUDGE OF THE SUPERIOR COURT