

EXHIBIT 2.1

CABLE GALLAGHER
LAW FIRM

KEITH D. CABLE

ADMITTED IN:
* CALIFORNIA
* NEVADA
* COMMONWEALTH
OF THE NORTHERN
MARIANA ISLANDS

101 PARKSHORE DRIVE
SUITE 100
FOLSOM, CA 95630

TELEPHONE (916) 608-7995
FACSIMILE (916) 608-7986

MARK T. GALLAGHER

ADMITTED IN:
* CALIFORNIA

January 7, 2012

Mr. Alfred Wong
DTSC Project Manager
700 Heinz Avenue
Suite 200
Berkeley, CA 94710

Re: Draft Hazardous Waste Facility Permit and Proposed Negative Declaration: CleanTech Environmental Inc. Hazardous Waste Facility, EPA ID No. CAL 000330453

Dear Mr. Wong,

We appreciate the opportunity to review and submit public comments to the Department of Toxic Substances Control ("DTSC") in response to the Draft Hazardous Waste Facility Permit and Proposed Negative Declaration for the CleanTech Environmental Inc. Hazardous Waste Storage, Transfer, and Treatment Facility to be located at 5820 Martin Road, Irwindale, California (the "Project").

We have reviewed the Proposed Negative Declaration and Hazardous Waste Facility Permit. The attachment includes our specific comments on both. However, the Negative Declaration was so cursory and opaque that it was very hard to analyze all of the potential environmental impacts of the proposed Project. The attachment presents our initial thoughts, but we reserve the right to submit further comments as we learn more about the Project. In sum, the Negative Declaration is wholly inadequate under the California Environmental Quality Act ("CEQA") and the Project presents a substantial danger to the community of Irwindale, natural resources in the area, and water and air resources. The failure of DTSC to disclose the fact that this facility is located adjacent to a Significant Ecological Area, the Santa Fe Dam Recreational Area, is particularly egregious. This is material new information, and the revised CEQA document—which must be a full environmental impact report—must be recirculated to the public and to the appropriate trustee and responsible agencies.

A full environmental impact report must be prepared before the Project can be considered for approval.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping, sweeping strokes that form a cursive name.

Mark T. Gallagher
Cable Gallagher

Attachment

cc: See attached list

Hon. David Fuentes
Mayor, City of Irwindale
5050 N. Irwindale Ave.
Irwindale, CA 91706

Hon. Julian A. Miranda
Mayor Pro Tem, City of Irwindale
5050 N. Irwindale Ave.
Irwindale, CA 91706

Councilmember H. Manuel Ortiz
Irwindale City Council
5050 N. Irwindale Ave.
Irwindale, CA 91706

Councilmember Mark A. Breceda
Irwindale City Council
5050 N. Irwindale Ave.
Irwindale, CA 91706

Councilmember Manuel R. Garcia
Irwindale City Council
5050 N. Irwindale Ave.
Irwindale, CA 91706

Mr. Martin Lomeli
Interim City Manager, City of Irwindale
5050 N. Irwindale Ave.
Irwindale, CA 91706

Ms. Laura Nieto
Deputy City Clerk, City of Irwindale
5050 N. Irwindale Ave.
Irwindale, CA 91706

Mr. Arthur R. Tapia
Chair, City Planning Commission
City of Irwindale
5050 N. Irwindale Ave.
Irwindale, CA 91706

Mr. Ray Hamada
Director of Planning and Community Development
City of Irwindale
5050 N. Irwindale Ave.
Irwindale, CA 91706

Hon. Manuel Lozano
Mayor, City of Baldwin Park
14403 E. Pacific Ave.
Baldwin Park, CA 91706

Hon. Joseph R. Rocha
Mayor, City of Azusa
213 E. Foothill Blvd.
Azusa, CA 91702

Hon. John King
Mayor, City of Covina
125 E. College St.
Covina, CA 91723-2199

Mr. Russ Guiney
Director, Los Angeles County Parks and Recreation
433 S. Vermont Ave.
Los Angeles, CA 90020

Dr. Gerald Croissant
San Gabriel Mountains Regional Conservancy
P.O. Box 963
Glendora, CA 91740

Mr. Steve Musick
Riverlands Preservation Trust of the Rio San Gabriel
455 S. Rall Ave.
La Puente, CA 91746

Mr. Thomas Chang
Editor, Santa Fe Dam Nature Center Newsletter
15501 E. Arrow Highway
Irwindale, CA 91760

Mr. Ron Stork
Senior Policy Advocate, Friends of the River
1418 20th St.
Suite 100
Sacramento, CA 95811

Mr. E. Robert Wright
Senior Counsel, Friends of the River
1418 20th St.
Suite 100
Sacramento, CA 95811

Ms. Carol Thomas Williams
Executive Officer
Main San Gabriel Basin Watermaster
725 N. Azusa Ave.
Azusa, CA 91702

Ms. Nancy L. C. Steele
Executive Director
Council for Watershed Health
700 N. Alameda St.
Los Angeles, CA 90012

Mr. Mark Griffin
West Fork San Gabriel River Conservancy
114 N. Glendora Ave.
Suite 183
Glendora, CA 91741

Mr. Barry R. Wallerstein
Executive Officer
South Coast Air Quality Management District
21865 Copley Dr.
Diamond Bar, CA 91765

Ms. Francine Diamond, Chair
Regional Water Quality Control Board
320 W. Fourth Street
Suite 200
Los Angeles, California 90013

Ms. Debbie Raphael
Director
DTSC Headquarters
1001 I Street
Sacramento, California 95812-0806

Mr. Sam Unger, Executive Officer
Ms. Deborah Smith, Deputy Executive Officer
Regional Water Quality Control Board
320 W. Fourth Street
Suite 200
Los Angeles, California 90013

Mr. Jared Blumenfeld
United States Environmental Protection Agency
Region 9 Administrator
75 Hawthorne Street
San Francisco, California 94105

Ms. Alexis Strauss
United States Environmental Protection Agency
Director, Region 9 Water Division
75 Hawthorne Street
San Francisco, California 94105

Mr. John Kemmerer
United States Environmental Protection Agency
600 Wilshire Blvd.
Suite 1460
Los Angeles, California 90017

Mr. Daryl Parrish
City Manager, City of Covina
125 E. College Street
Covina, California 91723-2199

Mr. Francis Delach
City Manager, City of Azusa
213 E. Foothill Blvd.
Azusa, California 91702

Mr. Vijay Singhal
City Manager, City of Baldwin Park
14403 East Pacific Avenue
Baldwin Park, California 91706

EXHIBIT 2.2

CLEANTECH ENVIRONMENTAL, INC. –
HAZARDOUS WASTE FACILITY IN THE CITY OF IRWINDALE

EXECUTIVE SUMMARY

CleanTech has applied for a permit to develop a hazardous waste facility (“Project”) at 5820 Martin Road in the City of Irwindale. The permit would be to “to construct and operate a hazardous waste storage, transfer, and treatment facility” to “collect, store, and treat used oil from offsite generators.” Properly handling hazardous waste is important, and we do not oppose a hazardous waste treatment facility that is fully analyzed and that mitigates its impacts. However, the issuance of a negative declaration for a hazardous waste facility with virtually no meaningful analysis and no mitigation measures is completely inappropriate, particularly where the facility is located next to a Significant Ecological Area.

Many projects of lesser potential impacts—such as retail centers and housing developments—frequently require full environmental impact reports (“EIR”) under the California Environmental Quality Act (“CEQA”). It is incomprehensible that the Department of Toxic Substances Control (“DTSC”), the agency charged with protecting the environment and communities, would attempt to site a hazardous waste treatment facility through a negative declaration, with no mitigation measures, next to the Santa Fe Dam Recreational Area (“SFD Recreational Area”), a designated Significant Ecological Area.

As detailed in this letter, the Project may have significant environmental impacts, many of which are not even considered in the Initial Study. Before this Project is even considered, an EIR needs to be prepared that fully analyzes potential impacts of a hazardous waste facility and mitigates all potential impacts.

- The Project is located next to one of the most sensitive environmental resources in the San Gabriel Valley and potential impacts on resources have not been analyzed. The 836-acre SFD Recreational Area is one of the most sensitive areas in the region. It has been designated by the County of Los Angeles as a Significant Ecological Area, a fact completely omitted from the Initial Study. The Initial Study has failed to analyze the full range of potential environmental impacts on this sensitive resource.
- The Project will have significant environmental impacts that were inadequately analyzed and disclosed under CEQA. The Project places the nearby community at risk due to a series of improperly analyzed potential environmental impacts associated with the Project. The Initial Study has failed to disclose the range of sensitive receptors within proximity to this hazardous waste facility. The Project threatens to jeopardize air and water quality, lead to noise pollution, and increase traffic in the surrounding areas. The Initial Study fails to adequately analyze and disclose these environmental impacts and the effects on the neighboring communities.
- Inadequate CEQA review leaves significant aspects of the Project unknown and unanalyzed. The Initial Study does not analyze all reasonably foreseeable effects of the

Project, including wastewater that may be discharged into sanitary sewers, and spills or leaks of oil or other hazardous substances. Significantly, the Initial Study does not perform a comprehensive analysis of potential accidents, leaks and spills.

- Local land use issues are ignored. The Initial Study fails to consider the General Plan and zoning designations for the Project site. The Initial Study fails to perform a complete analysis required to make significance determinations regarding the General Plan or to determine consistency with zoning requirements.
- General Plan Amendment is required and the Project is inconsistent with the zoning code. The Project site is not designated as a regulated site for hazardous waste and as such, a General Plan Amendment is required. Moreover, the City's zoning code does not allow hazardous waste processing, like the Project would conduct. The Project cannot be considered unless the City amends its zoning code to allow hazardous waste processing. Even if the zoning code were amended to allow the Project, the Project would require a discretionary conditional use permit ("CUP") from the City. The Initial Study fails to demonstrate that the City could make the required findings to approve such a CUP.
- The City should be the Lead Agency. DTSC was improperly designated as the Lead Agency in the Initial Study. Because the City of Irwindale must amend its zoning code, amend its General Plan, and grant a CUP if the Project is to proceed, it should be designated as the Lead Agency. The City of Irwindale has the far greater role in evaluating the potential impacts of this project and is being usurped by the limited DTSC process. It is clear that DTSC's limited analysis reflects its lack of understanding of the local community and local land use issues. How could DTSC have missed that the proposed site is literally next door to a Significant Ecological Area??
- The Project is an area of concern for future groundwater contamination. The Project overlays the San Gabriel Groundwater Basin, an area identified by the Watermaster as an area of concern for future groundwater contamination. Due to the shallow nature of groundwater under the Project and the high porosity of the soil, any contamination leaking from the Project could spread quickly and easily into Irwindale's groundwater resource. The Initial Study fails to analyze this issue.
- The Project is located in an area prone to significant flooding. The Project is located at the base of the San Gabriel Mountains and adjacent to the San Gabriel River. This area has seen flooding in the past and the Initial Study acknowledges the potential for flooding, but the Initial Study fails to analyze the potential impacts of such flooding.

THE PROJECT'S POTENTIAL ENVIRONMENTAL EFFECTS HAVE NOT BEEN FULLY ANALYZED

The Initial Study is completely inadequate as an environmental review. Under CEQA, negative declarations, like the one DTSC has prepared for the Project, are disfavored. “If there is substantial evidence in the whole record supporting a fair argument that a project may have a significant nonmitigable effect on the environment, the lead agency shall prepare an EIR, even though it may also be presented with other substantial evidence that the project will not have a significant effect.”¹ This standard for when an EIR must be prepared is easily met—it does not require showing that environmental impacts will occur, only that there is a fair argument that they may occur.²

EIRs are also favored because they are the only way of assuring that the full environmental consequences of a project are disclosed to the public and decisionmakers:³

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR’s function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account.

Unless an EIR is prepared for the Project, a hazardous waste treatment facility will be permitted by DTSC without the full disclosure to the community and decision makers of the existing environment and the potential environmental impacts and without adequate information to debate the merits of the Project.

Under CEQA, it is the lead agency, not the public, that must analyze the Project’s environmental impacts: “We also agree with plaintiffs that, under CEQA, the lead agency bears a burden to investigate potential environmental impacts.”⁴ Thus, the failure to disclose information about the Project and to study the issues discussed below is itself a violation of CEQA.

To conduct an adequate environmental review for the Project, an EIR must be prepared. CEQA requires the environmental review to disclose the baseline conditions.⁵ As discussed further below, the Initial Study is inadequate because it fails to describe baseline conditions for several environmental resources, particularly the SFD Recreational Area.

¹ *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.

² *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

³ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449 (citation omitted).

⁴ *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1597.

⁵ *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 315 (“To decide whether a given project’s environmental effects are likely to be significant, the agency must use some measure of the environment’s state absent the project, a measure sometimes referred to as the ‘baseline’ for environmental analysis.”).

The CEQA review must analyze all of the Project's reasonably foreseeable consequences.⁶ Here the analysis is inadequate because it fails to describe the existing environment and fails to analyze many of the Project's reasonably foreseeable consequences, including oil spills from accidents and potential impacts to sensitive environmental resources.

The CEQA review must also consider the Project's cumulative impacts—that is its impacts considered together with the impacts from other past, present, and reasonably anticipated future projects.⁷ There are other facilities that generate, store, or use hazardous waste in the vicinity of the Project, but the Initial Study fails to even identify them, let alone analyze their cumulative impacts. The Initial Study is devoid of cumulative impact analysis, and therefore violates CEQA and fails to disclose the true extent of the Project's impacts.

The lead agency must also analyze alternatives to the Project.⁸ This is especially critical here, where the Project has many environmental problems. An alternatives analysis is required to show alternatives to this location, sizing of the facility, or other design considerations.

The lead agency must also adopt mitigation measures to mitigate the Project's potentially significant environmental effects.⁹ The Initial Study is defective because it does not include ANY mitigation measures, and an EIR must be prepared that includes feasible mitigation measures for all of the Project's significant environmental impacts.

All the specific resources discussed below must be analyzed and mitigated in a full EIR that meets all of these requirements.

A. An EIR Must Analyze the Project's Potential Effect on Nearby Sensitive Habitats and Resources

Significantly, the Project is located about 1000 feet northeast of the SFD Recreational Area.¹⁰ The SFD Recreational Area is a 836-acre open space with a 70-acre lake, nature center, nature trails, environmental resources, sports fields, and a children's water play area. The SFD Recreational Area is a Significant Ecological Area.¹¹ This is a special designation that the County of Los Angeles gives "to designate critical components of the biodiversity of Los Angeles County."¹² It is also part of the San Gabriel Watershed and Mountains Special Resource Study,

⁶ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 398.

⁷ *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 740.

⁸ *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1353.

⁹ *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 376.

¹⁰ CEQA Initial Study for CleanTech Hazardous Waste Facility at 28.

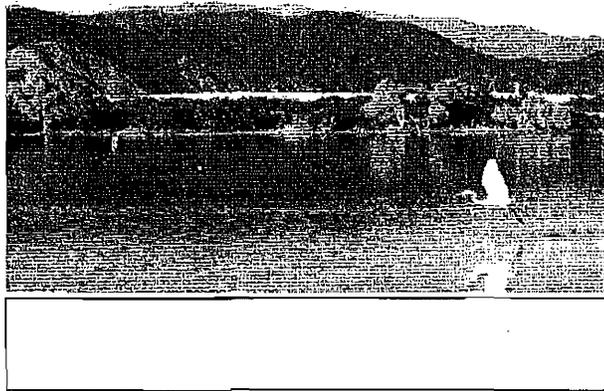
¹¹ County of Los Angeles, Map of Significant Ecological Areas, http://planning.lacounty.gov/assets/upl/data/map_t02-sea-2-2010.pdf, attached hereto as Exhibit A.

¹² Los Angeles County Department of Regional Planning, <http://planning.lacounty.gov/view/sea-existing>.

conducted by the National Park Service.¹³ “Santa Fe Dam Recreational Area is nestled at the foot of the San Gabriel Mountains and is considered one of the many hidden jewels of Southern California.... The facility is home to many protected native plants and animals....”¹⁴ The park attracts neighborhood families, city residents, and a large number of tourists for swimming, picnics, year-round fishing, boating, bicycling, walking, horse riding, and youth group camping. The SFD Recreational Area also provides habitat for many species. In addition to welcoming countless numbers of Californians to explore and enjoy wildlife and tranquility, the SFD Recreational Area is also home to many protected native plants and animals, including the threatened California Gnatcatcher.

As Figure 2 demonstrates, the proposed Project is literally next door to the SFD Recreational Area. Approval of the Project without proper analysis and mitigation endangers this invaluable natural and community resource. Children playing in the water, families picnicking under the trees, friends on fishing trips, and the protected wildlife all will be only about 1,000 feet from a hazardous waste facility that stores and chemically treats used oil, oil contaminated soil, and other hazardous substances.

Despite the potential significance of environmental impacts on this treasured resource, an analysis of impacts to the SFD Recreational Area facility is completely absent from the Initial Study. While the Initial Study recognizes the SFD Recreational Area and the sensitive species that inhabit the SFD Recreational Area, there has been no assessment of risks to the SFD Recreational Area, or the sensitive species that live there, presented by operations of the facility, truck traffic to



and from the facility, and reasonably foreseeable events like spills or other catastrophic events. Because of the potential for devastating effects on the SFD Recreational Area, these risks must be assessed in an EIR. Also, a health risk assessment of the facility’s likely impacts on the health of people using the SFD Recreational Area for picnics, hiking, and other activities should be conducted. These studies and assessments are critical to complete before the proposed facility receives a permit because of the potential that any effects caused by the facility may be irreparable and persistent. Similarly, the Irwindale public park, which is home to nightly concerts, picnic areas, and play areas, is unmentioned in the Initial Study despite its 1.5 mile distance from the Project.

¹³ National Park Service, San Gabriel Watershed and Mountains Special Resource Study, Newsletter 2 (Aug. 2005), http://www.nps.gov/pwro/sangabriel/San_Gabriel_SRS_news2.pdf.

¹⁴ County of Los Angeles, *Santa Fe Dam Recreational Area*, http://parks.lacounty.gov/Parkinfo.asp?URL=cms1_033344.asp&Title=Santa%20Fe%20Dam%20Rec%20Area.

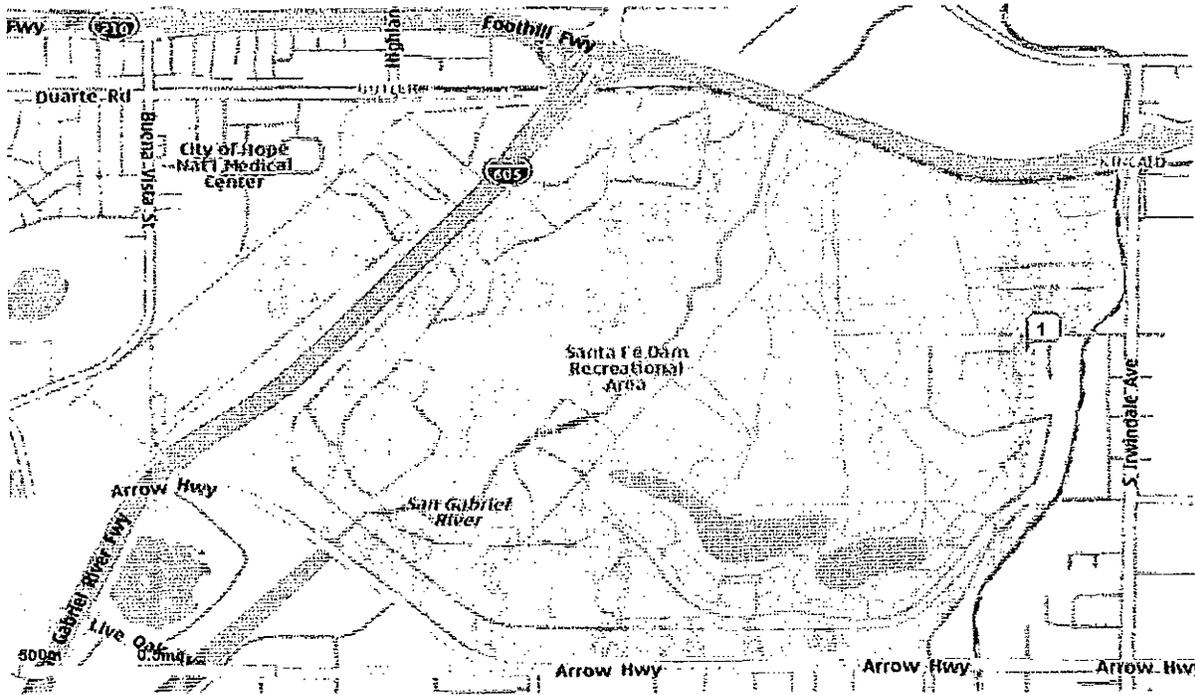


Figure 2. The SFD Recreational Area with 5820 Martin Road, Irwindale, CA indicated with the flag marked "1." Source: Yahoo! Maps.

B. An EIR Must Analyze the Project's Potential Impacts to Biological Resources

The adjacent SFD Recreational Area is a Significant Ecological Area. There are several endangered plant species in the City of Irwindale including Branton's Milk-Vetch, the Slender-Horned Spine Flower, and the San Gabriel Mountain Dudleya. There are also several sensitive species of wildlife, known to inhabit the valuable alluvial shrub and evergreen habitat in Irwindale, which have the potential of becoming listed as threatened or endangered. Such species include the Northern Harrier, the Spark-Shinned Hawk, the Osprey, Cooper's Hawk, the Prairie Falcon, the Burrowing Owl, the California Black-Tailed Gnatcatcher, the Coast Horned Lizard, the Yellow Warbler, and the Yellow-Billed Cuckoo.¹⁵

The City's General Plan also recognizes the SFD Recreational Area as an import resource for recreation, habitat, endangered species preservation, and open space.¹⁶ The General Plan contains numerous Resource Management Policies that the Project appears to conflict with, and that the Initial Study failed to evaluate, including the following:

- Resource Management Element Policy 4. The City of Irwindale will continue to protect the use of the area's resources through appropriate land use controls and planning.

¹⁵ City of Irwindale General Plan Update at 114-15.

¹⁶ City of Irwindale General Plan Update at 109-110, 114.

- Resource Management Element Policy 5. The City of Irwindale will maintain and improve the existing park facilities in the City for the benefit and enjoyment of future generations.
- Issue Area – Resource Preservation. The City of Irwindale will maintain and preserve those natural and man-made amenities that contribute to the City’s livability.
- Resource Management Element Policy 13. The City will encourage environmental considerations and the City’s discretionary authority over land use entitlements
- Resource Management Element Policy 19. The City of Irwindale will consider environmental justice issues as they are related to potential health impact associated with air pollution and ensure that all land use decisions, including enforcement actions, are made in an equitable fashion to protect residents, regardless of age, culture, ethnicity, gender, race, socioeconomic status, or geographic location from the health effects of air pollution.

An EIR must be prepared that evaluates the Project’s consistency with these policies, particularly given the Project’s location adjacent to the rich natural resources in the SFD Recreational Area.

In analyzing the impacts of the Project on biological resources, the Initial Study states that although there are “a number of threatened, rare, and/or endangered species [that] are identified as being located with the general area of the Facility . . . the Facility and surrounding area is highly urbanized and does not have any sensitive habitat impact.” The only study actually performed was a Rarefind Search. This is an inadequate analysis of the potential effects of the Project on biological resources, including nearby threatened and endangered species. Even if the area surrounding the Project could be considered only “urban,” an assumption which is highly contested due to the nearby location of the SFD Recreational Area, the Project may nonetheless have impacts on species of concern. Further, species are mobile; performing a Rarefind Search is not sufficient to ensure that sensitive species are not harmed by a project. Considering the importance we place on protecting our State’s and Country’s threatened wildlife, a more thorough analysis of the impacts on sensitive species is required particularly in light of the fact that one of the region’s most sensitive environmental resources is a mere 1,300 feet away. If the Project is allowed to be approved without sufficient consideration of the effects on nearby sensitive, threatened, and endangered species, it may contribute to the ultimate extinction of these valuable species. An EIR needs to be prepared that analyzes the Project’s potential impacts on each of the species listed above, including the impacts of accidental spills or other releases from the Project site.

The California Endangered Species Act declares that species of fish, wildlife, and plants, which are in danger of or threatened with extinction because of man’s activities, are of significant ecological, educational, historical, recreational, esthetic, economic, and scientific value to the people of the State. Accordingly, the conservation, protection, and enhancement of these species and their habitats is of statewide concern.¹⁷ The California Endangered Species Act, as well as the United States Endangered Species Act, prohibit the taking of endangered or threatened

¹⁷ Cal. Fish & Game Code § 2051.

species without an Incidental Take Permit.¹⁸ “Taking” means harassing, harming, wounding, or killing any endangered or threatened species.¹⁹ Considering the proximity of the proposed hazardous waste facility to a number of endangered plants and sensitive species of wildlife that have the potential of becoming listed or endangered, there exists a high potential that the Project will result in a “taking.” These potential impacts to important resources must be analyzed and appropriate mitigation measures adopted in order to ensure that the Project does not jeopardize the continued existence of any of these valued species.²⁰

C. An EIR Must Analyze the Project’s Potential Effect on Nearby Community Resources

The area surrounding the proposed Project contains important community resources and sensitive populations that stand to be affected by the Project’s hazardous waste operations and the potential environmental effects described in this section. Vivas Magdalena Daycare and Arberry Family Daycare are less than a mile and a half from the Project site. In addition, at least fourteen other daycare facilities are three miles or less from the proposed Project.²¹ Mt. Olive High School, Pleasant View Elementary School, Valleydale Elementary School, Andres Duarte Elementary School, Paramount Elementary School, and Mountain View Elementary School are all within 1.5 miles of the proposed hazardous waste facility. Over twenty other schools are within 3 miles of the proposed Project.²² The Edgewood Center Nursing Home is only 1.7 miles from the Project, and approximately ten other nursing homes, assisted living centers, senior living centers, or rehabilitation centers are within 3 miles of the proposed Project.²³ The Irwindale Public Library is only 1.2 miles from the proposed Project, the Elks Lodge Community Center is only a mile and a half, and Our Lady of Guadalupe Mission is only a mile from the proposed Project. The Initial Study portrays the neighborhood as purely industrial and does not consider, much less mention, the effects the Project may have on these vital community resources. A formal scientific study must be performed that analyzes the impacts of the Project on all these sensitive receptors and community resources. All of these locations and sensitive populations are near enough to the proposed Project that they face significant danger from any air, water, noise, or transportation pollution potentially caused by the Project as well as impacts from spills or other potential releases from the proposed facility. An EIR must be prepared that analyses the Project’s potential impacts on all of these sensitive receptors.

D. An EIR Must Analyze the Project’s Potential Traffic Impacts

The traffic impact analysis in the Initial Study is fatally flawed, thus calling into question the finding of less than significant impacts. The traffic impact analysis does not utilize an expert traffic study. Instead, the Initial Study simply concludes that because the number of truck and

¹⁸ See Cal. Fish & Game Code § 2081; 16 U.S.C. § 1538-1539.

¹⁹ 16 U.S.C. § 1532 (19).

²⁰ EPA, Summary of the Endangered Species Act, <http://www.epa.gov/lawsregs/laws/esa.html>; California Department of Fish & Game, California Endangered Species Act, <http://www.dfg.ca.gov/habcon/cesa/>.

²¹ See Exhibit B for the full extent of nearby daycare centers.

²² Exhibit C demonstrates nearby local schools.

²³ Exhibit D demonstrates nearby nursing homes, assisted living centers, senior living centers, or rehabilitation centers.

vehicular traffic trips will increase only slightly, traffic impacts will be less than significant. Not only is this conclusion based on pure speculation, but it is also incorrect.

The Initial Study states that traffic is already significant in the Project area. The Level of Service is identified as Level D, meaning that “small increases in traffic flow may cause substantial increases in delay.” The Initial Study then hastily concludes that because the Project will create only a small increase in the number of vehicles, the Project is not expected to cause a significant increase in traffic flow.²⁴ This explanation is faulty and nonsensical. Indeed, CEQA prohibits this type of analysis, which trivializes existing environmental problems.²⁵ Because the Project will operate in an area with a Level D Level of Service, any small increase, including an increase of eighteen large trucks per day, has the potential to cause substantial increases in delays and decreases in travel time. Moreover, no mitigation measures are required to restrict the number of truck trips on any given day. Thus, the actual number of trips from trucks, employees, vendors and others to the Project site may in fact be significantly larger. These potential impacts must be analyzed in an EIR.

E. An EIR Must Analyze the Project’s Potential Air Impacts

The Initial Study’s analysis of air quality is inadequate for a number of reasons. First, the Initial Study’s assumptions of no impact are not justified. The study contains an insufficient explanation as to how expected emissions from the Project, especially operational emissions, were calculated. Conclusions of less than significant impact were made without any air studies, and modeling data is not provided. Generally, the entire air impacts analysis, including the analysis of greenhouse gas emissions, is vague, opaque, and comprised of conclusory statements that are unsupported by factual evidence.

Second, indoor air quality at the facility was not studied. This is an essential component of air quality analysis. Higher than acceptable levels of indoor air contaminants have been demonstrated to cause headaches, shortness of breath, fatigue, hypersensitivity and allergies, dizziness, coughing, nausea, or more permanent ailments for workers who are continuously exposed to the air in industrial facilities.²⁶ The compounds stored at the Project site, as well as the chemicals used to recycle oil could release gases, toxic vapors, and odors within the warehouse that may affect the health of workers within the facility. DTSC cannot make an accurate finding that the Project has a less than significant impact on air quality without examining indoor air quality.

²⁴ CEQA Initial Study for CleanTech Hazardous Waste Facility 37 (Nov. 8, 2011) (“As noted in the Environmental Setting, the Level of Service for North Irwindale Avenue between First Street and Gladstone Street is identified as Level D. Level D borders on a range in which small increases in flow may cause substantial increases in delay and decreases in travel time. If approved, the project will increase the maximum vehicle traffic to the Facility. This increase in vehicle truck traffic is not expected to significantly increase the daily traffic flow because there will be only small increase in the number of vehicles.”).

²⁵ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718 (rejecting impact analysis nearly identical to DTSC’s traffic analysis for the Project: “In simple terms, the EIR reasons the air is already bad, so even though emissions from the project will make it worse, the impact is insignificant.”).

²⁶ Canadian Centre for Occupational Health and Safety, Indoor Air Quality, http://www.ccohs.ca/oshanswers/chemicals/iaq_intro.html.

Third, the Initial Study does not analyze the impacts of odors from the Project, a key issue for any air impacts analysis. Numerous sources indicate that oil recycling facilities create strong odors, suggesting that the air quality impact of the Project associated with emanating odors may potentially be significant. In February 2000, the Agency for Toxic Substances and Disease Registry was petitioned to investigate Sikes Oil Service, an oil recycling facility in Georgia that residents alleged caused significant odors.²⁷ Similarly, residents near a Fallon, Nevada oil recycling plant have reported foul odors, headaches, and eye irritation.²⁸ In 2008, more than one hundred citizens called 9-1-1 to complain about strong, offensive odors associated with an oil recycling facility in Klamath Falls, Oregon.²⁹ Residents near Columbus, Ohio are consistently disturbed by odors from a nearby oil recycling facility that they analogize to the smell of rotten eggs and burned rubber.³⁰ In Detroit, Michigan, residents have made countless complaints against a local oil recycling facility that produces foul smells causing gagging and headaches.³¹ Considering the potential that this Project could cause similar odors, an analysis of odor impacts is essential before determining the overall significance of air impacts.

Finally, the air impact analysis fails because there is no cumulative impact analysis. In analyzing the total air impacts of a project, cumulative impacts are reviewed to determine the incremental effects of a project when viewed in connection and combined with the impacts of past projects, other current projects, and probable future projects.³² Looking at just the Project's impact in isolation from the current environment does not present an accurate account of the effects that the Project will have on the surrounding community.

F. An EIR Must Analyze the Project's Potential Noise Impacts

"Calling noise a nuisance is like calling smog an inconvenience. Noise must be considered a hazard to the health of people everywhere." William H. Stewart, former U.S. Surgeon General. The proposed Project would more than double the amount of truck traffic that normally frequents this location. A medium sized truck produces 73-78 decibels of noise and a heavy truck can produce between 80 and 100 decibels of noise.³³ This noise output from heavy trucks can be

²⁷ Agency for Toxic Substances & Disease Registry, *Public Health Assessment & Health Consultations: Sikes Oil Service* (Mar. 23, 2010), <http://www.atsdr.cdc.gov/hac/pha/pha.asp?docid=1024&pg=1>.

²⁸ Kate Russel, Ohio Citizen Action, *Heartland Petroleum Not the Only Oil Recycler to Have Problems*, <http://ohiocitizen.org/?tag=bango-oil>, attached hereto as Exhibit E.

²⁹ NBC 52, *Strong Smell Floods 9-1-1 With Calls*, http://www.localnewscomesfirst.com/index.php?option=com_content&view=article&id=1890&Itemid=274, attached hereto as Exhibit F.

³⁰ *Ohio AG Seeks Refinery Shutdown for Air Violations*, Associated Press (Oct. 29, 2011), available at <http://www2.nbc4i.com/news/2011/oct/29/ohio-ag-seeks-refinery-shutdown-air-violations-ar-807649/>, attached hereto as Exhibit G.

³¹ University of Michigan, *Environmental Justice Case Study: Delray Neighborhood Lawsuits Against Local Polluters*, <http://www.umich.edu/~snre492/Jones/delray.htm>, attached hereto as Exhibit H.

³² Cal. Pub. Res. Code § 21083.

³³ Simon Fraser University, Decibel, <http://www.sfu.ca/sonic-studio/handbook/Decibel.html>; Edmonton Trolley Coalition, Noise Pollution, <http://www.trolleycoalition.org/noise.html>, attached hereto as Exhibit I.

twenty times greater than the noise output from a personal automobile.³⁴ Noise experts have concluded that intermittent and impulsive noise, such as the noise created by trucks passing, is more disturbing to communities than continuous noise.³⁵ And CEQA case law makes clear that intermittent noise must be analyzed under CEQA and can result in a significant impact, even if the applicable noise standards are otherwise met.³⁶

Despite the high noise levels associated with truck traffic and industrial facilities and the seriousness of potential health risks corresponding to significant noise levels, the Initial Study gives little consideration to the noise impacts of the Project. First, the Initial Study contains no discussion of the environmental baseline related to noise; there is no indication what the current ambient noise levels are in the area where the Project will be located. Second, no noise study was prepared to predict the additional noise that will be created from the daily operation of the oil recycling facility and the frequent traffic of large tanker trucks during the transfer of hazardous waste. Without identification of current ambient noise levels (including the noise levels at the SFD Recreational Area) or a scientifically based prediction of the noise that will be produced by the Project, the Initial Study's conclusion that the Project will have no noise impact is not credible. Further, the Initial Study attempts to explain its determination of "no impact" by stating that the noise from the Project will not be constant, instead it will be temporary and intermittent. As explained previously, however, noise experts have concluded that this type of intermittent noise is more disturbing to communities than constant noise.³⁷ Additionally, noise from industrial operations is known to be significant, creating such substantial disturbances that industrial and residential areas are rarely placed side by side.

As suggested by the former U.S. Surgeon General, noise pollution is more than a mere irritation. "Exposure to noise constitutes a health risk. There is sufficient scientific evidence that noise exposure can induce hearing impairment, hypertension and ischemic heart disease, annoyance, sleep disturbance, and decreased school performance."³⁸ The United States Environmental Protection Agency ("EPA") holds a similar view that noise constitutes a "real and present danger to people's health."³⁹ Specifically, EPA explains that noise significantly affects people throughout each phase of their lives; studies have demonstrated that exposure to high noise levels leads to lower birth weights, learning difficulties and higher blood pressure in children, and sleep problems for elderly citizens.⁴⁰

³⁴ Edmonton Trolley Coalition, *Noise Pollution*, <http://www.trolleycoalition.org/noise.html>, attached hereto as Exhibit J.

³⁵ San Francisco Department of Public Health, Environmental Health: Noise Enforcement Program, <http://www.sfdph.org/dph/EH/Noise/default.asp>, attached hereto as Exhibit K.

³⁶ *Berkeley Keep Jets over the Bay Com. v. Board of Port Commissioners of the City of Oakland* (2001) 91 Cal.App.4th 1344, 1379, 1382.

³⁷ Edmonton Trolley Coalition, *Noise Pollution*, <http://www.trolleycoalition.org/noise.html>.

³⁸ Willy Passchier-Vermeer & Wim F. Passchier, *Noise Exposure and Public Health*, 108 *Environment Health Perspectives* 123, 123 (Mar. 2000), attached hereto as Exhibit L.

³⁹ Environmental Protection Agency, *Noise: A Health Problem 2* (1978), available at <http://nepis.epa.gov/>, attached hereto as Exhibit M.

⁴⁰ Environmental Protection Agency, *Noise: A Health Problem 3-23* (1978), available at <http://nepis.epa.gov/>.

An EIR must be prepared that analyzes the Project's potentially significant noise impacts.

G. An EIR Must Analyze the Project's Potential Impacts Related to Hazardous Effects

Used oil is a hazardous waste, and impacts related to its use, storage, and treatment—including potential accidents—must be analyzed in an EIR. In addition, the Project would generate additional hazardous waste—and its potential impacts must also be analyzed.

The Initial Study states that “[t]ruck traffic does not go through natural habitat, and primarily uses Interstate 605, approximately 0.5 miles north of the Facility.”⁴¹ However, no justification for this assumption is provided, and the exact route trucks will take to and from the facility is nowhere stated in the Initial Study.

First, the statement in the Initial Study is plainly incorrect. Interstate 605 is far to the west of the facility, not 0.5 miles north as stated. Interstate 210 is to the north. Regardless of which interstate is utilized, 210 or 605, as demonstrated in Figure 2, both of these interstates run alongside or through the SFD Recreational Area, meaning that truck traffic will indeed go through natural habitat. Additionally, the routes trucks will take after exiting either Interstate 605 or 210 are not specified. If Interstate 605 is to be the primary route for trucks headed to the facility as stated, those trucks will necessarily drive through the SFD Recreational Area after exiting Interstate 605.⁴² There are also roads that run from Interstate 210 to the facility that pass through, or near, the SFD Recreational Area.

Trucks passing through or near this sensitive habitat present many potential problems. As stated in the Irwindale General Plan:

The transportation of chemicals and other hazardous substances through the City also presents public safety problems. Two major freeways, numerous railway lines and the urban arterials that traverse the City carry traffic that is involved in the transport of hazardous materials. These transportation routes carry a variety of materials that could pose health risks to Irwindale's residents in the event of an accident. The possibility of such an occurrence may be relatively higher in Irwindale than other communities given the extent of freeway and railroad traffic that passes through the City and the concentration of manufacturing uses in the area.⁴³

The City itself has recognized that transport of hazardous waste is a potentially significant impact, but the Initial Study fails to recognize what the City's General Plan has concluded. Indeed, these health risks posed by a potential accident are very real. California's Office of Spill Prevention and Response's list of “major oil spills” in the state includes a spill that involved a tanker truck that overturned on State Route 182 near Bridgeport and spilled approximately 3,600

⁴¹ CEQA Initial Study for CleanTech Hazardous Waste Facility at 13.

⁴² See Figure 2.

⁴³ City of Irwindale General Plan Update at 134.

gallons of oil into the East Walker River.⁴⁴ The oil spill impacted approximately 10 miles of stream habitat, impacting wildlife and beneficial uses. Were a truck carrying hazardous waste to or from the Project to be involved in an accident on its way through the SFD Recreational Area, there is great potential to impact this sensitive, natural habitat, similar to how the spill in the East Walker River impacted that habitat.

Not only would a spill emanating from a truck on its way to/from the proposed Project impact the sensitive, natural habitat of protected and rare species, it would also affect water quality and sensitive receptors. As demonstrated in Figure 2, the San Gabriel River is very near the proposed Project location, and trucks approaching the site will either cross the river, or pass next to it. A spill into the San Gabriel River would have very detrimental effects on the water quality of the river, both in the vicinity of the spill, and downstream of the spill. Additionally, because the facility lies on the alluvial fan of the San Gabriel River, and alluvial fans are characterized by porous sands and gravels, there is a strong possibility that a spill could quickly impact groundwater resources. These impacts would be significant, and they have not yet been analyzed.

Treatment of used oil to create recycled oil will necessarily generate hazardous waste. CleanTech's permit application states that "[h]azardous wastes may be generated on-site as a result of laboratory operations, maintenance and cleaning operations, and vehicle maintenance."⁴⁵ These wastes will be "containerized, placed into the drum storage area, and evaluated for final disposition," which will include transferring to an off-site facility.⁴⁶

Although these hazardous wastes are acknowledged by the permit application, the impacts of these hazardous wastes were not acknowledged or analyzed as part of the Initial Study. The Part B Application readily states that the characteristics of these hazardous wastes and the proper treatment of them will be unknown, requiring that they be tested either on-site or off-site.⁴⁷ Because the characteristics of these wastes are unknown, the analysis of used oil treatment onsite cannot have considered the impacts of these other hazardous wastes. These must be identified and analyzed.

Furthermore, because these hazardous wastes will need to be disposed of off site, and potentially tested off site as well, there will necessarily be additional traffic attributable to the generation of hazardous waste. This additional traffic has not been accounted for or analyzed in the Initial Study. This additional traffic will cause impacts including increased GHG emissions, the potential for more accidents and spills affecting sensitive habitat, sensitive receptors, and water quality, and the potential that unknown hazardous wastes will be transported through Irwindale and surrounding areas. Likewise, these impacts from additional traffic attributable to the hazardous wastes created at the Project must be considered and analyzed.

⁴⁴ California Department of Fish & Game, Office of Spill Prevention & Response, *Major Oil Spills and Incidents Involving OSPR 3*, attached hereto as Exhibit N.

⁴⁵ Part B Application at 23.

⁴⁶ *Id.* at 24.

⁴⁷ *Id.*

An EIR must be prepared that analyzes and mitigates all of these potential impacts related to hazardous effects.

H. An EIR Must Analyze Other Reasonably Foreseeable Impacts

CEQA requires that the effects or impacts of a project be analyzed, and this includes all effects, including indirect or secondary effects, caused by a project that are “reasonably foreseeable.”⁴⁸ These reasonably foreseeable effects may be later in time or far removed in distance from the Project.⁴⁹ Here, there are many “reasonably foreseeable effects” that have not been considered and analyzed as required by CEQA.

The Initial Study identifies that wastewater from the proposed facility “may be discharged to a sanitary sewer system under a permit issued by the Los Angeles County Sanitation District.”⁵⁰ While this discharge is identified, the reasonably foreseeable effects related to it are nowhere analyzed. These effects may include spills or leaks associated with the system leading to/from the facility to the sanitary sewer and impacts of the discharged wastes on the sanitary sewer treatment system itself, especially if that waste contains oil or any other hazardous substance.

Expansion of operations is also foreseeable in the future, but not analyzed as part of the Initial Study. Future expansion of the Project must be analyzed if it is a “reasonably foreseeable consequence of the initial Project.”⁵¹ At the very least, the addition of extra storage tanks at the site is foreseeable and should be analyzed.

Accidents are reasonably foreseeable, even if they are inadvertent, and this is acknowledged in the Initial Study. The Initial Study identifies two likely accidents—spills and fires. However, the Initial Study limits its analysis of these two accidents to only on-site concerns. For instance, the Initial Study discusses spills from a tanker truck or container, but then discusses only how the facility itself is equipped to handle those spills. A spill outside the confines of the facility is clearly foreseeable, as trucks will routinely haul used oil to the facility and hazardous waste and recycled oil from the facility. The impacts of spills outside the confines of the facility must be analyzed. Additionally, the impacts of other similar potential releases of hazardous waste to the environment, like from explosions or deliberate employee actions, must also be analyzed because they are reasonably foreseeable.

Additionally, the Project appears to be designed to convert used oil into unprocessed fuel oil as its end product. The burning of used oil as fuel is dirty and has its own environmental impacts. The indirect environmental impacts of creating additional unprocessed fuel oil is a reasonably foreseeable consequence of the Project that must be analyzed in an EIR.

⁴⁸ Cal. Code Regs. tit. 14, § 15358(a)(2).

⁴⁹ *Id.*

⁵⁰ CEQA Initial Study for CleanTech Hazardous Waste Facility at 13.

⁵¹ *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, 47 Cal.3d 376, 396 (1988).

Moreover, the Initial Study contains no analysis of the Project's cumulative impacts. It does not even identify other hazardous waste facilities and users in the area, let alone analyze their impacts together with the Project's.

LAND USE AND ZONING IMPACTS ARE NOT ADEQUATELY ANALYZED

The Land Use and Planning section of the Initial Study makes broad conclusions based on generalities and does not consider the General Plan and zoning designations for the Project site. No site plans, elevations or description of uses is provided in the Initial Study text, making it impossible to evaluate the Project fully against the General Plan and zoning code of the City. As discussed below, the Project may have multiple significant impacts related to compatibility with land use policies in the General Plan and zoning code; all of these potential impacts must be analyzed in an EIR.

A. General Plan

- The Project site is designated in the City General Plan as "Industrial / Business Park." The General Plan states that "[t]he Industrial designation corresponds to the CM (Commercial Manufacturing), M-1 (Light Manufacturing), and the M-2 (Heavy Manufacturing) zones. The maximum FAR for this category is 1.0 to 1.0." The Initial Study provides no information as to whether the Project is in compliance with the maximum FAR allowed by the General Plan designation. Therefore, the determination as to whether the Project would conflict with any applicable land use plan, policy, or regulation cannot be made. If the Project were to exceed the maximum FAR and require a variance, the Project may have a potentially significant land use impact. The Initial Study fails to complete the analysis necessary to make these determinations and therefore cannot make a finding of "no impact."
- The City General Plan at page 134 states that, "Many of the City's industries produce, use, and store hazardous materials. Public safety issues involve not only the use of these materials in populated areas but also the transport and disposal of the substances...The transportation of chemicals and other hazardous substances through the City also presents public safety problems. Two major freeways, numerous railway lines and the urban arterials that traverse the City carry traffic that is involved in the transport of hazardous materials. These transportation routes carry a variety of materials that could pose health risks to Irwindale's residents in the event of an accident. The possibility of such an occurrence may be relatively higher in Irwindale than other communities given the extent of freeway and railroad traffic that passes through the City and the concentration of manufacturing uses in the area. Exhibit 6-4 identifies those registered hazardous waste generators and handlers in the City. Because these businesses use hazardous materials, they are required to obtain necessary permits from various public agencies." Although several businesses in the vicinity of the Project appear to be designated as regulated sites for hazardous waste on General Plan figure 6-4, the Project site itself does not appear to be designated. As proposed, the Project is inconsistent with the General Plan. Therefore a General Plan Amendment may be required.

- As noted in the section above, the risk of accident and release of toxic substances are greater in the City of Irwindale than other cities due to the density of industrial uses and the transportation of chemicals and hazardous wastes through the City. The Project will create new and expanded hazardous waste uses in the City and will increase the transportation of hazardous materials within the City. Therefore, an EIR must analyze existing hazardous waste transportation through the City, and whether adding new transportation of hazardous wastes will cause additional impacts. Section 8a of the Initial Study fails to make this comprehensive analysis, and therefore it is impossible to determine if the Project will comply with the concerns stated in the land use section of the General Plan. In addition a cumulative analysis must be undertaken.
- The General Plan provides dozens of goals and issues that need to be analyzed and addressed to determine if the Project complies with those goals. There is no matrix of how the Project is in compliance with the goals of the General Plan, and the Initial Study's statement that there would be no impact from conflicts with the applicable land use plan is not based on actual analysis.
- The General Plan at page 151 states that, "The Fire Department shall also work with local law enforcement officials in regulating the transport of hazardous materials through the City." To comply with this requirement, CleanTech should prepare a hazardous materials transportation plan. No hazardous materials transportation plan has been submitted to be analyzed as part of the Initial Study, and it does not appear that the Fire Department of the City was contacted for an analysis of that hazardous materials transportation plan. Before the lead agency can determine whether the Project will conflict with applicable land use plans and policies, a hazardous materials transportation plan must be created and evaluated in an EIR.

B. Zoning

- The Project is inconsistent with the zoning code. The Project is located in the M-2 Heavy Manufacturing Zone, which specifically lists uses that are allowed, either with or without a CUP. Uses that the zoning code does not specifically allow are prohibited. Nowhere does the zoning code list hazardous waste processing as an allowed use.⁵² Therefore, hazardous waste processing is prohibited, and may not be approved unless and until the zoning code is amended.
- Moreover, the Initial Study acknowledges that the Project would allow CleanTech to operate a "used oil recycling facility." The zoning code specifically regulates "processing facilities" that process recyclable material—precisely the type of facility the Project will be.⁵³ But the zoning code specifically states the processing facilities, like the Project, may not accept hazardous materials: "No hazardous materials, including but not

⁵² City of Irwindale Municipal Code, §§ 17.56.010, 17.56.020.

⁵³ City of Irwindale Municipal Code, § 17.56.080.

limited to, automotive fluids shall be permitted on site.”⁵⁴ In other words, the zoning code specifically prohibits the Project. The Project cannot be approved, and should not even be considered, unless and until the City of Irwindale amends its zoning code to allow hazardous waste processing.

- Even if the Project were allowed under the current zoning code (it is not), the Project would require a CUP under zoning code section 17.56.020. A CUP is required for uses the zoning code allows that involve “considerations of smoke, fumes, dust, vibration, noise, traffic congestion, or hazard.” The Initial Study fails to recognize the need for a zoning code amendment and for a CUP—both discretionary approvals by the City. The Initial Study assumes compliance with all codes and finds no impact. The Initial Study provides no evaluation of the impacts of amending the zoning code and makes no finding as to whether a CUP could be granted for the facility if the zoning code is amended. An EIR must be prepared that acknowledges and mitigates the impacts the zoning code presumes for the Project. This underscores why DTSC should not be the lead agency.
- In fact, even if the zoning code were amended to allow the hazardous waste processing, a CUP could not be granted for the Project because the Initial Study makes no attempt to provide the information to support the findings required to issue a CUP. Zoning code section 17.80 requires that certain specific findings be made prior to the approval of the CUP. Municipal Code section 17.80.040 states that the applicant shall have the burden of proof to with respect to required findings. The Initial Study fails to address any of these findings, which must be examined to make the determination whether the Project will “conflict with any applicable land use plan, policy...(Including by not limited to the general plan, specific plan, local coastal program or zoning ordinance.)” (Emphasis added.)

The Initial Study addresses none of the required findings in Municipal Code section 17.80.040 and therefore cannot make the determination that the Project will not conflict with local land use policies.

Specifically there is no evidence in the Initial Study that the Project has the access to streets that are able to carry the quantity of traffic generated by the proposed facility. The Initial Study states that, “the level of service for North Irwindale Avenue between First Street and Gladstone Street is identified as Level D. Level D borders on a range in which small increases in flow may cause substantial increases in delay and decreases in travel time.”⁵⁵ The Initial Study then tries to turn the above statement on its head by stating that the “increase in vehicle truck traffic is not expected to significantly increase the daily traffic flow, because there will be only a small increase in the number of vehicles.” As noted above, the Initial Study finds that on Level of Service Level D roadways, a “small increase in flow may cause substantial increases in delay,” which would cause a significant impact under CEQA, and calls into question the ability for the City to make the required finding. Because “small increases” in traffic can cause significant delays,

⁵⁴ City of Irwindale Municipal Code, § 17.56.090(B)(12).

⁵⁵ City of Irwindale General Plan Update at 37 (emphasis added).

the traffic from the trucks, employees, vendors, and others may result in a significant impact on the roadway level of service. A traffic study must be completed, and adequate mitigation imposed, before the any determination of ‘no impact’ can be made.

- The Project will transport hazardous materials through the community and the region. The General Plan is very clear that “[t]he transportation of chemicals and other hazardous substances through the City also presents public safety problems. Two major freeways, numerous railway lines and the urban arterials that traverse the City carry traffic that is involved in the transport of hazardous materials. These transportation routes carry a variety of materials that could pose health risks to Irwindale’s residents in the event of an accident.”⁵⁶ Due to the risks posed by the transportation of the chemicals, it is incumbent upon the Project to present a transportation plan that provides a risk analysis for adjacent land uses on the transportation route. The negative declaration and Initial Study fail to address the impact of any routing of hazardous materials. Moreover, there is no cumulative analysis of the added impact of the Project with exiting and reasonable foreseeable projects that transport hazardous waste in the City. These analyses must be presented in an EIR prior determining that the Project will not “conflict with any applicable land use plan.”
- The zoning code provides various development standards for projects built in the M-2 zone. These requirements specify set-backs, parking, height and other development criteria that have not been evaluated because no site plan has been provided to the public.

C. Green House Gases

- The Initial Study cannot make a finding that there will be no increase in greenhouse gas emissions. The Initial Study is completely devoid of any analysis of the Project’s indirect greenhouse gas emissions. Most notably, the Project appears to be designed to convert used oil into unprocessed fuel oil as its end product. The burning of used oil as fuel will have very significant greenhouse gas emissions, but the Initial Study completely ignores them. An EIR for the Project needs to be prepared that quantifies and mitigates the Project’s direct and indirect greenhouse gas emissions.

IMPROPER LEAD AGENCY

DTSC has improperly been designated as the Lead Agency in the Initial Study. CEQA Guideline 15051 is clear and unequivocal in the “criteria for identifying the Lead Agency”:

- (1) The lead agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose such as an air pollution control district or a district which will provide a public service or public utility to the project.

⁵⁶ City of Irwindale General Plan Update at 134.

The Project will need to obtain a General Plan Amendment, zoning code amendment, and a CUP from the City of Irwindale. All of these are discretionary actions and therefore subject to CEQA. These discretionary approvals would be the exercise of general governmental powers as discussed in CEQA guideline 15051, and therefore the City of Irwindale should be designated as the Lead Agency.

The failure to provide analysis of the significant land use issues related to the City land use approvals required for the Project, the adjacency of sensitive environmental resources, and community resources shows that DTSC's limited regulatory role makes its designation as Lead Agency nonsensical. DTSC is only focused on a narrow set of issues surrounding the permit that it issues. A City must balance the needs of the City's population and indeed the entire region in making certain land use decisions. Thus, the City of Irwindale should be the lead agency to prepare an EIR for the Project.

WATER IMPACTS AND ISSUES ARE NOT ADEQUATELY ANALYZED

Due to the location of the Project, there are many potential impacts to water resources and issues related to water that must be analyzed in an EIR. These include issues regarding nearby and adjacent impaired waterbodies, potential impacts to the high quality aquifer below the site, and the very real possibility of a flood impacting the facility.

A. Improper Assumptions in Initial Study

The water impacts analysis is unsound because it assumes that there will never be any release of contaminants from the site. This assumption is unrealistic. Although the Project may well utilize containment methods, a spill or leak is entirely foreseeable. In fact, DTSC directly acknowledged the possibility of a spill or leak in its demand that CleanTech meet financial assurance requirements for liability.⁵⁷ DTSC required financial assurances to insure that CleanTech has the necessary funds to remediate any potential hazardous waste contamination caused by the Project.

Because the analysis improperly assumes that an escape of contaminants could not occur, the Initial Study is void of any analysis of potential groundwater impacts associated with the Project. The Initial Study does not identify the existing environmental setting and baseline conditions of the groundwater underlying the site. As a result, it is unclear whether the portion of the San Gabriel Canyon Basin aquifer that underlies the site is the portion of the San Gabriel Canyon Basin aquifer that already suffers from serious contamination plumes that underlie 50% of the city.⁵⁸ Further, the Initial Study does not analyze whether the environmental impacts of a potential spill or leak would be significant. Given that the site is on the alluvial fan of the San Gabriel River, which consists of sand and gravel, any release of hazardous substances from the

⁵⁷ California Environmental Protection Agency & Department of Toxic Substances Control Act, *Draft Hazardous Waste Facility Permit: CleanTech Environmental, Inc.* 25. EPA ID Number: Cal 000330453.

⁵⁸ City of Irwindale General Plan Update 113 (2008), available at <http://irwindale.ca.us/pdf/planning/general-plan-june-2008.pdf>.

Project would easily seep into groundwater resources.⁵⁹ These potential impacts must be analyzed in an EIR.

B. Impaired Waterbodies

Many of the waterbodies near, and adjacent to, the facility are on California's impaired waterbody list required by section 303(d) of the Clean Water Act. When a waterbody is deemed to be "impaired" and included on the "303(d) list," a "total maximum daily load" ("TMDL") must be set for that waterbody that limits discharges to the maximum amount of pollutants that can be discharged to the waterbody while still attaining water quality standards.⁶⁰

As discussed above, the Project is adjacent to the SFD Recreational Area. Santa Fe Dam Park Lake ("SFD Lake") in the SFD Recreational Area is impaired and on California's 303(d) list of impaired waterbodies for which TMDLs must be set. Specifically, SFD Lake is impaired with high levels of copper and lead, and with unnatural pH levels.⁶¹ Because SFD Lake is impaired and on the 303(d) list, TMDLs must be set for the lake, and according to the State Water Board's website, TMDLs for SFD Lake for these pollutants are expected to be set by 2019.⁶²

Like the SFD Lake, the nearby San Gabriel River is also on California's 303(d) list of impaired waterbodies. Reach 3 of the San Gabriel River, which is defined as the stretch of the river from Whittier Narrows to Ramona, and is the stretch of the San Gabriel River near the Project, is impaired with high levels of bacteria.⁶³ The TMDL for this pollutant in the San Gabriel River is expected to be set by 2021. Although the levels are not such that a TMDL is required, samples of Reach 3 of the San Gabriel River were also found to exceed lead, toxicity, and ammonia standards.⁶⁴

Until TMDLs are set to regulate discharges into these waterbodies and ensure that water quality standards are met, these waters will remain impaired, meaning that any discharge that leaves the Project and drains into these waterbodies will only add to these existing problems. An EIR must analyze the Project's potential impacts on these already impaired nearby water bodies.

C. Aquifer Concerns

Irwindale overlays the main San Gabriel Groundwater Basin.⁶⁵ The portion of the groundwater basin under Irwindale "consists of fresh-water bearing materials containing coarse sand and

⁵⁹ CEQA Initial Study for CleanTech Hazardous Waste Facility at 18.

⁶⁰ 33 U.S.C. § 1313.

⁶¹ See Los Angeles Regional Water Quality Control Board, *Final California 2010 Integrated Report (303(d) List): Santa Fe Dam Park Lake*, attached hereto as Exhibit O.

⁶² *Id.*

⁶³ See Los Angeles Regional Water Quality Control Board, *Final California 2010 Integrated Report (303(d) List): San Gabriel River Reach 3*, attached hereto as Exhibit P.

⁶⁴ *Id.*

⁶⁵ City of Irwindale General Plan Update at 112.

gravel, making them ideal aquifers.”⁶⁶ The aquifer beneath the City is at least several hundred feet thick and has rapid flow characteristics, as would be expected for an aquifer located where there are abundant alluvial fan deposits.

Previously, the Watermaster in charge of this groundwater basin indicated that there is concern about the possibility of future groundwater contamination resulting from activities in Irwindale. This concern was no doubt due to the shallow groundwater and high porosity and high permeability of the aquifer. Placing a used oil facility on top of such an aquifer, with high porosity and high permeability, has the potential to create a public health crisis were a spill to occur.

D. Potential For Flooding

The Initial Study acknowledges that the Federal Emergency Management Agency (“FEMA”) has classified the area around Santa Fe Dam as an “area of undetermined, but possible flood hazard.” Yet it does nothing to analyze or mitigate the risk that flooding at a hazardous waste facility may cause significant environmental impacts. The Initial Study even acknowledges that the Project “may be subject to local flood hazard,” but it does nothing to analyze and assess the risk of hazardous waste contaminating flood waters. At a minimum, the potential environmental impacts from flooding at the Project site must be thoroughly analyzed and mitigated in an EIR.

CONCLUSION

Even with the scant information provided in the Initial Study, it is evident that the Project may have significant environmental impacts. A full, adequate EIR must be prepared before the Project can be considered. Given the nature of the Project and the sensitivity of nearby uses, an EIR must be prepared by the City of Irwindale and appropriate mitigation measures adopted.

⁶⁶ *Id.*