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RE: Comment on Final Environmental Impact Report for ProLogis Eucalyptus Industrial Park (State Clearinghouse No. 2008021002)

Dear Mr. Bradshaw:

I am writing on behalf of Laborers International Union of North America, Local Union No. 1184 and its members living in Riverside County (collectively "LIUNA Local 1184") regarding the Final Environmental Impact Report ("FEIR") prepared for the ProLogis Eucalyptus Industrial Park, State Clearinghouse No. 2008021002 ("Project").

LIUNA Local 1184 appreciates the Planning Commission's decision to delay its consideration of the FEIR until staff and the EIR consultant reviewed and prepared responses to our comments of August 2012. Unfortunately, it appears the brief delay was not sufficient time for staff to adequately review and consider those comments as many of the concerns expressed about the DEIR still remain in regard to the FEIR. In addition, LIUNA Local 1184 is particularly concerned that the Commission's staff is proposing not to address the significant new information of the proposed nearby World Logistics Center which, when combined with the ProLogis project, the two projects alone will emit as much greenhouse gasses per year in 2020 as the City has established as its total GHG emission target for that year. In other words, the two projects together will emit as much GHGs as the entire City and will cause the City to emit twice as many GHGs as its announced goal as of 2020. Obviously, this is significant new information regarding a serious significant impact of the ProLogis Project's cumulative GHG emissions that must be addressed in a recirculated EIR for public review. These and other concerns are elaborated upon in the following comments.

In addition, LIUNA Local 1184 has had its consultants who prepared comments in 2012 review the staff's responses to comments. Matthew Hagemann, P.G., C.Hg. and Anders Sutherland, of SWAPE Consulting and Dr. James Clark, Ph.D., have reviewed the FEIR and prepared detailed comments regarding numerous technical shortcomings and omissions in the responses. SWAPE Comments (attached as Exhibit A); Clark Comments (attached as Exhibit B). Although this comment will highlight some of those technical comments below, the Commission should review each of the concerns raised in those expert comments.

LIUNA Local 1184 requests that the Planning Commission not certify the EIR at this time but request staff to reconsider the analyses and require additional mitigation measures in order to address the Project's significant air quality impacts, GHG emissions, health risks, farmland conversion, and hazardous material risks that the Project as proposed will cause in the City of Moreno Valley.

A. The FEIR's Failure To Tackle The Project's Massive GHG Emissions is an Abuse of Discretion.

The total GHG emissions that the City claims it will achieve by 2020 are 798,693 metric tons of CO2 equivalent per year for the entire City. *See* World Logistics Center DEIR, p. 4.7-9 (excerpts attached as Exhibit C). Yet the Prologis Project alone is projected to emit 79,000 metric tons of CO2e per year at full build-out – a full ten percent of the City's target. The FEIR basically relies upon a wish and a prayer that a number of air quality mitigations will miraculously reduce the Project by about 70,000 tons of GHGs per year down to 10,000 tons per year, the South Coast Air Quality Management District's ("SCAQMD") threshold of significance for GHG emissions. *See* FEIR, PDF p. 111 ("The mitigation measures discussed in the project-level impact analysis of GHG emissions indicated the measures would substantially reduce the project's emissions of greenhouse gases…."). No effort to rationally quantify or describe a reviewable basis for concluding that the smattering of air quality mitigations will come anywhere close to reducing the Project's GHG emissions by that level is provided or discussed. Moreover, when combined with the nearby World Logistics Center's GHG emissions of about 700,000 metric tons of CO2 equivalents per year, the City has essentially abandoned any GHG reduction strategy, instead taking steps to almost double its projected GHG emissions.

1. There is no substantial evidence to support the FEIR's remarkable assertion that the air quality mitigations applied to the Project will reduce GHG emissions by 70,000 tons per year.

It is not sufficient under CEQA for the City to pick a few air quality mitigations of unknown efficacy and then simply assume that they will miraculously reduce the Project's 79,000 metric tons of GHG emissions down to less than 10,000 metric tons. As SWAPE explains in its comments, there is nothing precluding the City from estimating quantitative reductions by any claimed mitigations and providing the public, this Commission, and the City Council with a rational means to evaluate whether the currently optimistic predictions have any basis in reality. SWAPE Comments, pp. 2-3. The FEIR must do more than make exaggerated

claims of mitigation effectiveness. *See Friends of Oroville v. City of Oroville* (2013) 219 Cal.App.4th 832. In *Oroville*, the court held that failing to calculate existing air emissions at the project site, and "failing to quantitatively or qualitatively ascertain or estimate the effect of the Project's mitigation measures on those emissions," amounted to misapplication of the threshold-of-significance standard. *Id*. at 842-843. Claiming to rely on a qualitative assessment, the City instead applies bald assumptions, assuming that the air quality mitigations will have a dramatic effect on reducing GHG emissions from the project all the way down to a level of insignificance, *i.e.* less than 10,000 metric tons per year. No rational discussion relying on explicable estimates, whether qualitative or quantitative, is provided to explain this unlikely result for this Project that will include upwards of 5,800 vehicle trips per day. *See* Clark & Associates Comments, p. 3 (attached as Exhibit B).

The FEIR all but admits the randomness of its GHG emission discussion, responding at one point to the Sierra Club's comments that "it is not possible to determine with certainty whether the project's emissions of greenhouse gases will be cumulatively considerable, within the meaning of CEQA Guidelines Sections 15065(a)(3) and 15130." FEIR, p. 109. A hundred pages later, that uncertainty appears to have vanished, the FEIR restating its two rationales for discounting the Project's 79,000 metric tons of GHGs per year. First, the EIR attempts to find solace in the claim that "the project's impacts alone would not cause or significantly contribute to global climate change…" FEIR, p. 222. This statement is entirely arbitrary given the SCAQMD's significance threshold of 10,000 metric tons per year. 79,000 metric tons per year is obviously very large compared to the threshold. And nothing in the EIR explains how or which mitigation measures will reduce the Project's GHG emissions to this level. The second rationale set forth in the EIR is that "the project has no substantial effect on consumption of fuels or other energy resources, especially fossil fuels that contribute to GHG emissions when consumed." *Id*. How a project that will generate upwards of 5,000 vehicle trips per day would have no substantial effect on consumption of fuels is not further elucidated in the EIR. What these two rationales mean in the end is that the world is already suffering from global warming and because this project's GHG contribution is small compared to the overall problem, there is no need to grapple with it in any meaningful way. Of course, as *Oroville* recognized, that capitulation renders the SCAQMD's expert threshold, which is a rational quantification of the point where a project's GHG emissions are significant and cumulatively considerable, a meaningless number.

2. The Proposed World Logistics Center and its massive GHG emissions is significant new information that must be addressed in the cumulative impact analysis.

The EIR's mishandling of the Project's large GHG emissions is exacerbated to a frightening level by the FEIR's refusal to account for the massive World Logistics Center project ("WLC"). WLC is expected to emit about 700,000 metric tons of GHGs per year from within the City. WLC and Prologis together all but scuttle the City's GHG reduction target. The FEIR, responding to comments about the WLC's cumulative impacts on traffic states that, because the WLC project was not proposed at the time of the Notice of Preparation ("NOP") for the Prologis

Project (in 2008), the EIR need not include WLC's impacts in its baseline. The City claims that the baseline traffic for the previous development proposed for the WLC site was actually higher at the time of the NOP. This response, in addition to steadfastly refusing to provide the City and its residents a realistic assessment of the Project's cumulative impacts, overlooks the City's responsibility to address significant new information that arises after a DEIR is released but prior to certification of the FEIR. Alternatively, it is simply unreasonable for the City to not adjust its baseline to reflect the impacts of the WLC project, especially given the long delay between the Project's 2008 NOP and the FEIR now six years later.

The CEQA Guidelines require recirculation of an EIR when significant new information, such as the processing of a nearby project that will drastically increase the City's GHG contributions inconsistent with its GHG reduction targets, as well as NOx and PM emissions. Section 15088.5 provides:

> (a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation include, for example, a disclosure showing that:
> …
> (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
> (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.
> (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (Mountain Lion Coalition v. Fish & Game Com.(1989) 214 Cal.App.3d 1043).

14 CCR 15088.5. The processing of the WLC is significant new information requiring recirculation. It is plain that the WLC's emission of 700,000 metric tons of GHG per year would largely erase the City's GHG reduction target in 2020 and the additional Prologis GHG emissions will have a more profound cumulative impact on the City's GHG contributions than are evident without considering the WLC project. Likewise, because the DEIR was so basically inadequate and conclusory in asserting without any meaningful estimates that air quality mitigations uncoupled from any detailed information regarding their effectiveness at reducing GHG emissions would reduce the Prologis Project's GHG emissions by 70,000 metric tons per

year, the addition of WLC's 700,000 metric tons of GHG per year makes it imperative that the City revisit and recirculate the EIR's GHG analysis before the City further dooms its supposed GHG reduction targets.

The need to address this new information and/or adjust the baseline for GHGs is also supported by the fact that, unlike traffic levels purportedly included in the baseline, the GHG emissions for WLC increase any conceivable GHG emissions that may have been estimated for that project's location at the time of the WLC project's NOP by at least 60 percent, possibly more. *See* World Logistics EIR, p. 6-16 & Table 6.F (665,321 metric tons of GHG for WLC as compared to zero at site with no project or 228,719 metric tons if built out consistent with previous General Plan) (*see* Exhibit C). This massive addition of GHG emissions to the baseline is new information that must be addressed and recirculated or, alternatively, added to the Project's baseline in order to make sure the City's EIR remains realistic.

3. The substantial evidence in the record establishes that the Project will have a significant impact on GHG emissions, including the sheer volume of its GHG emissions and its adverse impact on the City's ever achieving its GHG reduction targets.

The FEIR confirms that the City has not gathered in any estimate of actual reductions of GHG emissions by any of the mitigation measures it purports will address those emissions. Hence, it is clear that there is no substantial evidence in the record to show that the Project will emit 10,000 metric tons or less per year of CO2 equivalents. As a result, the EIR cannot substantiate a conclusion that the Project's GHG emissions will result in less than significant impacts and, instead, must conclude that these emissions will result in significant impacts. The EIR must include additional feasible mitigations to address these GHG impacts, including electrified loading docks, mandating the installation of solar panels (rather than the mere possibility of solar panels), on-site industrial solar power storage, additional pollution control equipment on trucks utilizing the facility, and, where other feasible project specific mitigations are exhausted, the use of offset credits through recognized programs. SWAPE describes several mitigation measures in its comments as well as the availability of offset credits. SWAPE Comments, pp. 3-4.

Mitigation measures, including for a project's GHG emissions, must be fully enforceable through permit conditions, agreements or other legally binding instruments. 14 CCR § 15126.4(a)(2). *See Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal. App. 4th 683, 730 (project proponent's agreement to a mitigation by itself is insufficient; mitigation measure must be an enforceable requirement). Especially given the uncertainty claimed by the City in measuring GHG reductions from various mitigation measures, the EIR must include a monitoring and verification process to confirm reductions in the Project's overall GHG emissions and include contingencies, *i.e.* additional mitigations including more offsets, if the measures do not achieve expected GHG reductions.

Lastly, because the evidence does not support a finding of no significant impact from the Project's GHG emissions, the City must acknowledge that significant impact and make a finding of overriding considerations that is supported by a showing that all feasible mitigation measures have been required. CEQA Guidelines §§ 15126.4, 15091, 15092(b)(2); Pub. Res. Code § 21002.

B. The EIR Significantly Underestimates the Project's Air Pollution Emissions From Mobile Sources.

The EIR makes a significant error in its air pollution emissions analysis by failing to rely upon substantial evidence regarding the veracity of the estimated truck trips for the Project. According to the review of Dr. James Clark, the EIR relies on an uncorroborated estimate of the Project's daily truck trips of 1.96 daily truck trips per 1,000 square feet. As Dr. Clark explains, "[i]n order to avoid underestimating the number of trips associated with large warehouse/distribution center operations without rail service, the SCAQMD staff recommended that lead agencies utilize a rate of 2.59 trips per TSF [thousand square feet] for large warehouse air quality analyses on a project specific basis." Clark Comments, p. 3. By using a value that is significantly reduced from SCAQMD's recommended value for the CalEEMod model, the EIR significantly understates the Project's air emissions:

> Based upon the trip generation rate of 2.59, the total number of trips associated with Project would increase from 4,400 to 5,813 trips per day. The net result is that the air quality analysis performed by the Proponent greatly underestimates the emissions from mobile sources by at least one-third during the operational phase of the Project. Those impacts are likely to lead to a significant impact that will be unmitigated and unaccounted for in the FEIR. Without proper modeling of the emissions from these additional vehicles the impacts on the environment and the citizens of the Moreno Valley are unknown.

Clark Comments, p. 4. Because the EIR fails to disclose the full extent of the Project's air pollution impacts, it should be revised to include an accurate discussion of those impacts and recirculated along with any necessary additional mitigation measures.

C. The EIR Does Not Include Additional Feasible Mitigation Measures to Further Reduce the Project's Significant Impacts From its Emissions of NOx and PM10 and, Without Requiring Additional Measures, the City Cannot Adopt a Statement of Overriding Considerations.

An agency may adopt a statement of overriding considerations only *after* it has imposed all feasible mitigation measures to reduce a project's impact to less than significant levels. CEQA Guidelines §§ 15126.4, 15091. CEQA prohibits agencies from approving projects with significant environmental impacts when feasible mitigation measures can substantially lessen or avoid such impacts. Pub. Res. Code § 21002. As explained in CEQA Guidelines section 15092(b)(2), an agency is prohibited from approving a project unless it has "[e]liminated or

substantially lessened all significant effects on the environment where feasible." The EIR states that the Project's direct and cumulative emissions of NOx and ROGs will remain significant after the identified mitigation measures are implemented. *See* DEIR, pp. 1-22, 1-28. As a result, the EIR must require all feasible mitigations to reduce these impacts. As explained by SWAPE, additional mitigation measures are available that are not included by the City. The measures include requiring electrified loading docks for all refrigeration units and the use of fuel cell trucks to reduce NOx emissions. SWAPE Comments, pp. 4-5. SCAQMD also provided a list of feasible mitigations that must be mandated for the Project. *See* FEIR, Letter B-3, pp. 3-4.

In addition, whether or not to implement several key measures included in the EIR is left to the future discretion of the City. *See, e.g.* DEIR, p. 1-22 (Mitigation Measure 4.3.6.5B) ("Prior to issuance of building permits, the project applicant shall provide evidence to the City that energy-efficient and low-emission methods and features of building construction shall be incorporated into the project design. These methods and features ***may include*** (but are not limited to) the following…") (emphasis added). The list of measures included in Mitigation Measure 4.3.6.5B should be mandatory and enforceable in order to be consistent with the CEQA Guidelines.

LIUNA Local 1184 appreciates the change in the FEIR to make the energy efficiency requirement set forth in Measure 4.3.6.5A mandatory rather than voluntary. However, a number of the requirements embedded within the mandatory efficiency standard should also be adjusted to be mandatory requirements or otherwise clarified. For example, there is a requirement that lease/purchase documents shall identify that tenants are merely encouraged to promote a list of air pollution reduction measures. *See* DEIR, 1-27 – 1-28, Table 1.C; FEIR, pp. 58-59, 61-62. The FEIR should be revised to make these feasible tenant/purchaser measures mandatory as well.

Measure 4.3.6.5A also includes a vague requirement to "[i]ncorporate energy efficient space heating and cooling equipment." This measure should be clarified to require that cooling for the main warehouse spaces at the Project shall be provided through evaporative coolers rather than air conditioners, or use new or different cooling technology that is at least as efficient. In addition, the mitigation should require the warehouse spaces to incorporate automated airflow and ventilation systems designed to minimize need for supplemental heating and cooling within the warehouse spaces. These measures are feasible, having been applied at other warehouse facilities. *See Coalition for Clean Air v. VWR Int'l LLC*, Consent Decree, attached as Exhibit D.

Currently, Measure 4.3.6.5A requires that "[a]ll buildings shall be designed to accommodate renewable energy sources, such as photovoltaic solar electricity systems, appropriate to their architectural design." FEIR, p. 197. This mitigation measure should be revised to require that photovoltaic, or comparable renewable energy sources, be actually installed on all buildings sufficient to provide all of the energy needs of the Project and, if feasible, surplus energy to help offset the Project's remaining pollution emissions. Given the size of the buildings' roofs, this measure is feasible and would reduce or help offset the Project's emissions of both ROGs, NOx, and GHGs.

Additionally, Mitigation Measure 4.3.6.5B currently appears inconsistent with Mitigation Measure 4.3.6.5A. Unlike Measure 4.3.6.5A, Measure 4.3.6.5B does not increase the improvement over energy efficiency standards to 20 percent as was proposed in the DEIR and which applies to the related Measure 4.3.6.5A. FEIR, pp. 194-201. In order to apply all feasible measures, Measure 4.3.6.5B's list of measures should be made mandatory (replace "may" with "shall") and the measure to exceed statewide energy efficiency requirements by 10 percent restored to a 20 percent exceedance. FEIR, pp. 194-96. In addition, a requirement that the Project use building automation systems to control and optimize the efficiency of its mechanical systems, including lighting, HVAC, exhaust dampers, fans, and ventilation louvers should be added to Measure 4.3.6.5B's list.

Until each of the above mitigation measures as well as those measures identified by SCAQMD are incorporated as enforceable measures into the Project approval, the City will not be in a position to make a finding of overriding considerations for the Project's NOx, ROG, and GHG emissions.

D. The EIR Does Not Include Additional Feasible Mitigation Measures to Further Reduce the Project's Significant Impacts From its Particulate Matter Emissions During Construction and, Without Requiring Additional Measures, the City Cannot Adopt a Statement of Overriding Considerations.

An additional feasible mitigation measure that also would assist in assuring that the Project's air quality pollution mitigations during construction are enforceable is a measure to require monitoring of dust plumes. SWAPE identifies "[m]onitoring for opacity for all construction activities, including grading, not just for "screening" and "turf overseeding" activities" as an additional feasible measure. Without such a measure, it is not clear how the implementation or effectiveness of many of the air pollution control measures during construction will be documented or enforced. SWAPE lays out the following monitoring requirement:

> Opacity monitoring should be conducted by qualified personnel using a Ringelmann chart. Monitoring with use of the Ringelmann Chart should be required when construction is occurring when wind speeds exceed 15 miles an hour, as gauged by a wind meter installed at the Project site. When a 20% opacity (Ringelmann 1) standard is exceeded, construction activities should cease until wind speeds drop to below 15 miles per hour. A log should be kept at the Project site to document when wind speeds exceed 15 miles per hour and the Ringelmann readings recorded during those periods, along with actions taken to comply when Ringelmann readings exceed the 20% opacity threshold.

SWAPE Comments, p. 4. Because this mitigation is feasible, would help to prevent any oversight of other mitigation measures, and would further reduce actual excessive emissions of PM10 at the Project site, it must be included in the mitigation requirements for construction-related air pollution.

E. The EIR Fails to Disclose the Project's Serious Cancer Risks to Neighbors and Workers.

a. The Project has significant air quality and health risk impacts because it will expose nearby residents to cancer risks of 22 cancers in one million for adults and 33 excess cancers in a million for children.

The EIR states that nearby residents and on-site workers will not be exposed to any significant health risks by the Project's construction. DEIR, p. 4.3-14. However, the EIR dramatically understates the health risks that will result from the Project's construction phase because the health risk assessment it relies upon assumes construction will only occur for four months rather than the 11.5 months reported in the EIR. SWAPE Comments, pp. 6-10. *See* DEIR, p. 4.3-13. This is despite the EIR's acknowledgement that "[a]lthough construction of the structures uses different types of equipment on site than during grading periods, similarities do exist in terms of equipment exhaust emissions and fugitive dust emissions." DEIR, p. 4.3-23. SWAPE prepared a screening-level HRA for construction-related DPM air quality impacts using the emissions and phasing data from the EIR and covering the full construction period. As SWAPE concludes, its risk assessment for nearby residences "shows that the adult exposure resulted in an additional 22 cancers in one million while the child exposure resulted in 33 excess cancers in a million. For both adult and child exposure parameters, the CEQA significance threshold of ten in one million excess cancer risk was exceeded during the construction period." SWAPE Comments, p. 9. In contrast to SWAPE's analysis, which fully discloses all of its inputs and models, "no modeling files or cancer risk calculations for the construction impacts analysis were provided in the DEIR or the FEIR" for the EIR's health risk assessment. *Id*., pp. 9-10. Hence, the substantial evidence available to the Commission and others indicates that cancer risks to the Project's neighbors are significant. This must be acknowledged in the EIR and additional mitigations required. As SWAPE concludes:

> An updated HRA should be prepared that incorporates all emissions from construction equipment over the entire duration of Project construction, and addresses the potential for significant air quality impacts to nearby sensitive receptors. Our analysis has demonstrated that by utilizing appropriate U.S. EPA and OEHHA exposure assessment methodologies, excess cancer risks consequent of Project construction have the potential to exceed CEQA thresholds of significance even under mitigated construction scenarios.

SWAPE Comments, p. 10.

b. The Project relied on a flawed health risk assessment in concluding that health risks to workers for the life of the Project would be insignificant.

The EIR also underestimates health risk impacts to workers to be employed at the Project site. SWAPE Comments, pp. 10-11. First, the Project's worker health risk assessment assumes

that trucks will be 87.5 percent diesel, explaining in its response to SCAQMD that the City believed such a number was appropriate because "[i]t is pure guesswork to predict how the diesel emissions will change over this period." FEIR, p. 66. Acknowledging uncertainty of future actions does not warrant then selecting a number based on the acknowledged guesswork. Rather than use the conditions that the City knows exist currently to prepare a reasonable estimate of future worker health risks, they made a guess that trucks using the Project would be 87.5 percent diesel. That number, by the FEIR's own admission, is not supported by substantial evidence. Likewise, SWAPE notes that the EIR suggests that a health risk assessment was prepared assuming operations were concentrated in 12-hours of each day rather than 24-hours. No such calculation was made in the health risk assessment for 12-hour days at the Project. SWAPE Comments, p. 11. A revised HRA for workers must be prepared and reviewed to determine if any changes to the EIR should be made prior to the Commission and City taking action on the EIR.

F. The EIR Continues to Fail to Require Feasible Mitigations to the Project's Destruction of Farmland, Including Requiring the Applicant to Locate and Purchase an Equivalent or More Acreage of Farmland Conservation Easements Outside of the City and Western Riverside County.

In response to LIUNA's comments noting the absence of any measures to mitigate the Project's destruction of 82.55 acres of Prime Farmland and 36.4 acres of Farmland of Local Importance, the City continues to claim that it is excused from mitigating this impact simply because it intends to eventually destroy all remaining farmland within the City and because there is no program established by either the City or the County of Riverside for those governmental entities to manage conservation easement or land purchases for mitigation. *See* FEIR, p. 218. Neither of these excuses relieves the City and the Project Applicant from having to mitigate the Project's significant impacts on farmland. Farmland conservation easements are feasible within Riverside County. The State of California has a program to facilitate such easements, providing grants and easement template applicable anywhere in the State of California, including Riverside County. *See* Exhibit E. There is no need for the City or County to create some bureaucratic program in order for the City to require the Project applicant to mitigate the 119-acres of farmland by purchasing easements or farmland of equivalent quality somewhere in Riverside or even other nearby counties. Private organizations also exist to facilitate the creation of farmland easements, including one located in Riverside County – the Riverside Land Conservancy. *See* Exhibit F.

The City claims that a 2010 Court of Appeal decision – *Building Industry Association of Central California v. County of Stanislaus* (2010) 190 Cal.App.4th 582 – conditioned the use of conservation easements as CEQA mitigation on the presence of a city- or county-wide program. FEIR, p. 218 ("That case concluded that it is appropriate to mitigate at a 1:1 ratio for the loss of prime agricultural land through the acquisition of an offsite agricultural easement if such a program is established by a county or regional governmental entity"). No such rule is found in the case. Instead, the pertinent rule is that the Court of Appeal upheld a requirement included in Stanislaus County's General Plan requiring either 1:1 mitigation of developed

farmland based primarily on private purchases of farmland conservation easements. *See* 190 Cal.App.4th at 601 ("Under the FMP, although the developer is required to arrange for the granting of a conservation easement in order to obtain a development approval, most likely by a purchase, ***no particular landowner*** is required to grant the conservation easement") (emphasis added). The case was not even a CEQA case so it certainly did not preclude mitigation under CEQA of destroyed farmland through a conservation easement unless some governmental program was in place. Nor is there any reason to restrict mitigation farmland to western Riverside County, given the county-wide and indeed statewide problem of farmland conversion. In short, there is no reason the applicant cannot take the steps necessary to purchase one or more farmland conservation easements for farmland of similar quality to that being destroyed by the Project somewhere in Riverside County or other nearby counties in southern California. Because the Project's destruction of farmland is significant and unavoidable, the City must incorporate all feasible mitigation measures. Requiring the applicant to obtain farmland conservation easements for comparable quality farmland in other areas is plainly feasible and must be included.

G. Additional Details for Sampling Soils for Residual Pesticides Should be Required.

The FEIR has added a mitigation measure to require additional soil sampling prior to issuance of a grading permit. FEIR, p. 222. LIUNA Local 1184 believes that, because the additional information will not be available prior to the certification of the EIR, this change does not cure the baseline concerns raised in their previous comment letter. In addition, unless additional details are added to the mitigation, it amounts to improper deferred mitigation. SWAPE recommends the following additional details:

> The mitigation measure (MM 4.6.6.1A) should be revised to include specifics on the number of samples to be collected, the chemical analytes, and to provide for documentation of the sampling and analysis of the results prior to FEIR certification. The mitigation measure should also include a commitment to compare sampling results to health-protective regulatory screening levels such as U.S. EPA Regional Screening Levels and California Human Health Screening Levels, and to mitigate any exceedances of the screening levels through further evaluation of health risks and the removal of any contaminated soil that may pose a risk to human health.

SWAPE Comments, p. 2. LIUNA Local 1184 request that the EIR's mitigation be changed to address these details.

VI. CONCLUSION

For the foregoing reasons, as well as each of the comments raised in LIUNA Local 1184's DEIR comments, LIUNA Local 1184 recommends that the Commission continue the matter for future consideration pending completion of a supplemental EIR addressing the above

concerns. Thank you for your attention to these comments. Please include this letter and all attachments hereto in the record of proceedings for this project.

Sincerely,

Michael Lozeau
Lozeau Drury LLP
Attorneys for LIUNA Local Union No. 1184