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*Via Electronic Email and Hand Delivery*

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Chairperson Jeffrey D. Sims, and  
Honorable Member of the  
Moreno Valley Planning Commission  
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**RE: Comment on the Final Environmental Impact Report for the World Logistics Center Project (SCH # 2012021045)**

Chairperson Sims, Honorable Members of the Planning Commission and Mr. Sandzimier and Mr. Gross:

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 Union No. 1184" or "LIUNA" or "Commenters") regarding the Final Environmental Impact Report ("DEIR") prepared for the World Logistics Center Project, State Clearinghouse No. 2012021045 ("Project"). We have submitted detailed comments on the Draft EIR for the Project, which comments are incorporated herein by reference in their entirety.

We have reviewed the DEIR with the assistance of:

1. Traffic Engineer Tom Brohard, P.E.

2. Hydrogeologist, Matthew Hagemann, C.Hg., MS.
3. Biologist, Dr. Shawn Smallwood, Ph.D.
4. Agricultural Consultant, Gregory A. House.

These experts have prepared written comments that are attached hereto, and which are incorporated in their entirety. The City of Moreno Valley (“City”) should respond to the expert comments separately. These experts and our own independent review demonstrate that the FEIR is woefully inadequate and that a new supplemental EIR is required to be prepared and recirculated for public comment. Commenters urge the City to revise the EIR to adequately describe, analyze, and mitigate the Project and its impacts.<sup>1</sup> The revised EIR should be recirculated to allow public review and comment.

## **I. PROJECT DESCRIPTION**

The Project site encompasses 3,918 acres of land located in Rancho Belago, the eastern portion of the City of Moreno Valley, and is situated directly south of State Route 60 (SR-60) with the Badlands area to the east and northeast, the Mount Russell Range to the southwest, and Mystic Lake and the San Jacinto wildlife Area to the southeast. (DEIR, p. 3-19.)

The Specific Plan being evaluated in this EIR covers 2,610 acres and proposes a maximum of 40.4 million square feet of “high-cube logistics” warehouse distribution uses classified as “Logistics Development” (LD) and 200,000 square feet (approximately 0.5%) of warehousing-related uses classified as “Light Logistics” (LL). The lands within the WLC Specific Plan that are designated LL are existing rural lots, some containing residential uses, that will become “legal, non-conforming uses” once the WLC Specific Plan is approved. In addition, the LD designation includes land for two special use areas; a fire station and a “logistics support” facility for vehicle fueling and sale of convenience goods (3,000 square feet is assumed for planning purposes for the “logistics support”). (FEIR, p. 3-19).

The Project site primarily consists of active farmland. (DEIR, pp.3-1, 3-2.) Approximately 3,389 acres, or 89 percent of the 3,814-acre project area, are designated as Farmland of Local Importance and approximately 25 acres are designated as Unique Farmland. (DEIR, p. 4.2-7.) The site is also scattered with seven residences. (DEIR, p. 3-2.)

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<sup>1</sup> We reserve the right to supplement these comments at later hearings and proceedings for this Project. (See, *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109.)

## **II. STANDING**

Hundreds of members of Local Union No. 1184 live, work, and recreate in the immediate vicinity of the Project site. These members will suffer the impacts of a poorly executed or inadequately mitigated Project, just as would the members of any nearby homeowners association, community group, or environmental group. Hundreds of LIUNA Local Union No. 1184 members live and work in areas that will be affected by traffic, air pollution, and water pollution generated by the Project.

In addition, construction workers will suffer many of the most significant impacts from the Project as currently proposed, such as from air pollution emissions from poorly maintained or controlled construction equipment, possible risks related to hazardous materials on the Project site, and other impacts. Therefore, LIUNA Local Union No. 1184 and its members have a direct interest in ensuring that the Project is adequately analyzed and that its environmental and public health impacts are mitigated to the fullest extent feasible.

## **III. LEGAL STANDARDS**

### **A. FEIR.**

The lead agency must evaluate comments on the draft EIR and prepare written responses in the final EIR. (PRC §21091(d)) The FEIR must include a “detailed” written response to all “significant environmental issues” raised by commenters. As the court stated in *City of Long Beach v. LA USD* (2009) 176 Cal.App.4th 889, 904:

The requirement of a detailed written response to comments helps to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and that public participation in the environmental review process is meaningful.

The FEIR’s responses to comments must be detailed and must provide a reasoned, good faith analysis. (14 CCR §15088(c)). Failure to provide a substantive response to comments renders the EIR legally inadequate. (*Rural Land Owners Assoc. v. City Council* (1983) 143 Cal.App.3d 1013, 1020).

The responses to comments on a draft EIR must state reasons for rejecting suggested mitigation measures and comments on significant environmental issues. “Conclusory statements unsupported by factual information” are not an adequate response. (14 CCR §15088(b, c); *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3rd 348). The need for substantive, detailed response is particularly appropriate when comments have been raised by experts or other agencies. (*Berkeley Keep Jets v. Bd. of Port Comm’rs* (2001) 91 Cal.App.4th 1344, 1367; *People v. Kern* (1976) 72 Cal.app.3d 761). A reasoned analysis of the issue and references to supporting evidence are required for substantive comments raised. (*Calif. Oak Found. v. Santa Clarita* (2005) 133 Cal.App.4th 1219).

The FEIR abjectly fails to meet these legal standards, as it is riddled with conclusory statements lacking any factual support or analysis.

## **B. SUPPLEMENTAL EIR**

Recirculation of an EIR prior to certification is required “when the new information added to an EIR discloses: (1) a new substantial environmental impact resulting from the project or from a new mitigation measure proposed to be implemented (cf. CEQA Guidelines, § 15162, subd. (a)(1), (3)(B)(1)); (2) a substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance (cf. CEQA Guidelines, § 15162, subd. (a)(3)(B)(2)); (3) a feasible project alternative or mitigation measure that clearly would lessen the environmental impacts of the project, but which the project's proponents decline to adopt (cf. CEQA Guidelines, § 15162, subd. (a)(3)(B)(3), (4)); or (4) that the draft EIR was so fundamentally and basically inadequate and conclusory in nature that public comment on the draft was in effect meaningless.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal. 4th 1112, 1130, citing *Mountain Lion Coalition v. Fish & Game Comm'n* (1989) 214 Cal.App.3d 1043.)

Significant new information requiring recirculation can include:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (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.

(CEQA Guidelines, § 15088.5(a).)

The FEIR fails to analyze significant environmental impacts pertaining to the Project and to fully consider available mitigation measures to address those impacts. A revised EIR is required to be prepared and recirculated to address these deficiencies.

#### **IV. THE FINAL EIR FAILS ADEQUATELY TO DISCLOSE AND MITIGATE SIGNIFICANT PROJECT IMPACTS.**

##### **A. THE PROJECT WILL HAVE MASSIVE TRAFFIC IMPACTS THAT HAVE NOT BEEN ADEQUATELY MITIGATED.**

Traffic Engineer Tom Brohard, PE, has submitted comments concluding that the Project will have massive and significant traffic impacts that have not been adequately mitigated. A new EIR is required to analyze these impacts and propose all feasible mitigation measures. (Brohard Comments, Exhibit A).

The Project will generate 69,542 daily trips, with 4590 trips in the AM peak hour and 5010 trips in the PM peak hour. This will double the existing AM and PM peak hour traffic on SR60, creating 60 direct traffic impacts and 205 cumulative traffic impacts. (Brohard Comment, p.1-2). Nevertheless, the FEIR fails to include adequate or enforceable traffic mitigation measures and fails to disclose several direct traffic impacts.

Traffic Engineer Brohard identifies 18 direct traffic impacts of the Project that are not identified in the EIR or its traffic study. Direct traffic impacts are when the Project alone causes an intersection or road segment to fall below the acceptable Level of Service (LOS). Mr. Brohard identified 18 direct traffic impacts that are either ignored entirely or identified improperly as cumulative impacts. This is a significant omission since a Project must fully mitigate all of its direct traffic impacts, while it need only contribute a "fair share" to mitigate cumulative impacts. Thus, by failing to identify these impacts properly, the EIR fails to ensure adequate mitigation. Mr. Brohard identified the following direct traffic impacts that are not identified in the EIR:

1. Eastbound SR-60 from Euclid to Grove. Degrades from LOS D to LOS E in AM peak hour;
2. Eastbound SR-91 from Central to 14<sup>th</sup> St. Degrades from LOS D to LOS E in AM Peak hour;
3. Cactus Ave from Redlands Blvd. to Cactus Ave Extension – Degrades from LOS A to LOS E;
4. Gilman Springs Rd/Bridge Street – Degrades from LOS C to LOS D in PM Peak hour;
5. San Timoteo Canyon Rd./Alessandro Rd. – Degrades from LOS C to LOS F in PM peak hour.
6. Eastbound SR-60 from Euclid to Grove – Degrades from LOS D to LOS E in AM peak hour;
7. Eastbound SR-60 from Central to Fair Isle Drive/Box Springs Rd. – Degrades from LOS D to LOS E.
8. Gilman Springs Rd/Bridge St. – Degrades from LOS C to LOS D;
9. Eastbound SR-60 from Pigeon Pass Rd/Fredrick St. to Heacock St. – Degrades from LOS D to LOS E in AM peak hour;

10. Eastbound SR-60 from Heacock to Perris Blvd. – Degrades from LOS C to LOS E in AM peak hour.
11. SR-60 Eastbound on-ramp from Central Ave. – Degrades from LOS D to LOS F.
12. Gilman Springs Rd. from Alessandro to Bridge St. – Degrades from LOS D to LOS F.
13. Lasselle St/Cactus Ave – Degrades from LOS C to LOS D in PM peak hour.
14. Central Ave/Chicago Ave – Degrades from LOS D to LOS E in AM peak hour.
15. Westbound SR-60 from Reservoir St. to Ramona Ave. – Degrades from LOS D to LOS E.
16. Westbound SR-60 from Redlands Blvd. to Theodore St. – Degrades from LOS D to LOS E in PM peak hour.
17. Eastbound SR-60 from Main St. to SR-91 – Degrades from LOS D to LOS E.
18. SR-60 Eastbound on-ramp from Theodore St. – Degrades to LOS F in PM peak hour.

Since the FEIR fails to disclose the impacts above to be direct impacts of the Project, it does not adequately mitigate the impacts. Instead, the EIR relies on “fair share” contributions to unspecified mitigation programs that may or may not ever be implemented. This approach is legally inadequate since the EIR must require a Project to fully mitigate all of its direct impacts. A new EIR is required to disclose all of the above as direct impacts, and to propose that the Project fund and implement fully all feasible mitigation measures to reduce those impacts.

The EIR improperly relies on deferred mitigation measures. Mitigation Measure 4.15.7.4G states, “City shall work directly with Western Riverside Council of Governments to request that Transportation Uniform Mitigation Fee funding priorities be shifted to align with the needs of the City, including improvements identified in the World Logistics Center Specific Plan traffic impact analysis. Toward this end, City shall meet regularly with Western Riverside Council of Governments.” This is plainly deferred mitigation that will be developed (or not) after Project approval. CEQA prohibits such deferred mitigation since there is no way to determine if the mitigation will be adequate, or if it will ever be implemented at all.

Feasible mitigation measures for significant environmental effects must be set forth in an EIR for consideration by the lead agency's decision makers and the public before certification of the EIR and approval of a project. The formulation of mitigation measures generally cannot be deferred until after certification of the EIR and approval of a project. Guidelines, section 15126.4(a)(1)(B) states: "Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way. "[R]eliance on

tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decisionmaking; and[,] consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment." (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92.) The Findings and EIR are replete with such deferred mitigation. A supplemental EIR is required to clearly define mitigation measures in a manner that can be analyzed and reviewed by the public and governmental decision makers.

The EIR also improperly relies on fee-based mitigation without defining mitigation measures or ensuring that specific adequate measures will ever be implemented. CEQA prohibits this approach. Mitigation fees are not adequate mitigation unless the lead agency can show that the fees will fund a specific mitigation plan that will actually be implemented in its entirety. (*Napa Citizens for Honest Gov. v. Bd. Of Supervisors* (2001) 91 CallApp.4th 342 (no evidence that impacts will be mitigated simply by paying a fee); *Anderson First Coal. v. City of Anderson* (2005) 130 Ca.App.4th 1173 (traffic mitigation fee is inadequate because it does not ensure that mitigation measure will actually be implemented).

**B. THE PROJECT WILL HAVE SIGNIFICANT AIR QUALITY IMPACTS THAT HAVE NOT BEEN DISCLOSED IN THE FEIR AND HAVE NOT BEEN ADEQUATELY MITIGATED.**

The Final EIR is so patently deficient in the area of air quality, that the California Air Resources Board (CARB) has taken the highly unusual step of filing a formal comment letter criticizing the FEIR and requesting preparation of a supplemental EIR to remedy the obvious defects. (See CARB Comment letter dated June 8, 2015 (Exhibit. B).

CARB points out that the FEIR dismisses health impacts of diesel particulate matter (DPM) based on a single recent study, the Advanced Collaborative Emissions Study (ACES). The FEIR repeatedly references that the ACES study concludes that the "application of new emissions control technology to diesel engines have virtually eliminated the health impacts of diesel exhaust." CARB states:

"First, the use of only one study as the basis for this analysis is not sufficient for the purpose of providing a comprehensive analysis of health risk from project construction and operations. The ACES study is only one of many scientific studies related to health risk and emissions, and therefore, cannot serve as substantial evidence regarding the project impact to human health. In fact, there are many other studies that conclude that diesel particulate matter (PM) is a health hazard. For example, the International Agency for Research on Cancer evaluated the scientific literature as a whole and concluded in 2012 that diesel PM is carcinogenic to humans (class 1). Second, and more importantly, the ACES study's methodology and findings render it inadequate for inclusion in an

environmental document, and cannot serve as substantial evidence supporting a finding that the project will not result in significant cancer risk impacts. Therefore, use of and reference to the ACES study should be removed throughout the FEIR.”

CARB points out the DPM is listed as a known human carcinogen by the California Office of Environmental Health Hazard Assessment (OEHHA). The EIR cannot simply ignore the legal conclusions of CARB and OEHHA, the California agencies with regulatory authority over the issue of airborne carcinogens. Yet the Final EIR does exactly this, based on a single study conducted on rats.

Matthew Hagemann, C.Hg., and environmental scientist Jessie Jaeger of the consulting firm SWAPE point out this same defect. (SWAPE Comment Letter p.2 (Exhibit C)). Mr. Hagemann concludes that using standard California risk assessment methodology, the Project will have significant cancer impacts from DPM on nearby residences above the SCAQMD CEQA significance thresholds. Mr. Hagemann calculated cancer risk of 15.7 per million, well above the 10 per million CEQA significance threshold set by SCAQMD. SCAQMD requires the use of the CARB risk assessment methodologies, not the ACES study.

When a regulatory agency with appropriate jurisdiction (such as CARB) has adopted a CEQA significance threshold and methodology for calculating an impact, the lead agency must apply that duly adopted methodology. *Comtys. for a Better Env't v. So. Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 327 (impact is significant because it exceeds “established significance threshold for NOx ... constitute[ing] substantial evidence supporting a fair argument for a significant adverse impact”); *Lotus v. Dep't of Transportation* (2014) 223 Cal. App. 4th 645, 652; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4). The EIR essentially ignores CARB’s and OEHHA’s official findings that DPM is a known human carcinogen, relying on the recent ACES report conducted on a small number of rats. This ignores decades of scientific research finding that DPM is a potent human carcinogen, and ignores all relevant regulatory agencies. Since the ACES study conflicts with duly adopted CEQA thresholds, it is entitled to no deference and does not constitute substantial evidence. “A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’” (*Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal. App. 4th 1344, 1355). CEQA does not allow such an approach.

A supplemental EIR is required to properly calculate and disclose this impact under California law, using duly adopted California health risk assessment methodology – not the unapproved ACES study. Once disclosed, the EIR must propose all feasible mitigation measures. Mr. Hagemann points out that feasible mitigation should include installation of Minimum Efficiency Reporting Value (MERV) filters rated at 13 or above at all residential units where incremental cancer risks exceed one in one hundred thousand (FEIR Volume I, p. 665-666).



CARB concludes that feasible mitigation should include a requirement of zero-emission and near-zero-emission vehicles at the Project where feasible. (CARB Comment Letter, p. 4). Since the FEIR dismissed this impact using spurious, unapproved calculation methods, the FEIR also failed to require implementation of these and all other feasible mitigation measures.

**C. THE PROJECT WILL HAVE SIGNIFICANT BIOLOGICAL IMPACTS THAT HAVE NOT BEEN ADEQUATELY DISCLOSED OR MITIGATED.**

Dr. Shawn Smallwood points out that the Project will have numerous biological impacts on special status species in the area that have not been disclosed or mitigated in the Final EIR. (Smallwood Comment Ltr. (Exhibit D)).

Dr. Smallwood concludes that the Project will have significant impacts on burrowing owls, and that the surveys done for the Project were conducted using an improper, unscientific and biased method that would fail to identify burrowing owls on site. For example, the burrowing owl survey performed for the FEIR states, "Burrowing owls are crepuscular owls, being most active during the early morning or evening hours." Dr. Smallwood points out, "In fact, burrowing owls are most active at night. Burrowing owl surveys should be performed on the project site by professionals with more experience with burrowing owls, and the surveys should follow the guidelines of CBOC 2013 and CDFG (2012)." The EIR consultant, FirstCarbon, appears to be wholly unqualified to conduct burrowing owl surveys since they are unfamiliar even with the times that burrowing owls are active. This study is therefore entitled to no deference since it is unscientific. "A 'clearly inadequate or unsupported study is entitled to no judicial deference.'" (*Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal. App. 4th 1344, 1355, quoting, *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal. 3d 376, 391 409, fn. 12 (1988)).

Dr. Smallwood also concludes that the Project will have significant impacts on wildlife movement, contrary to the EIR. Dr. Smallwood states:

According to the FEIR (1-38), the project will not restrict the movement of wildlife between the Badlands and the SWAN and Mystic Lake areas. This conclusion was incorrect. Constructing several thousands of acres of warehouses and trucking infrastructure between the Badlands and Mount Russell will most definitely restrict wildlife movement across the valley (Figure 1). Animal species that have for thousands of years been capable of crossing the valley between the Badlands and Mount Russell will no longer be able to do so. The Mount Russell range will be isolated from the Badlands for the first time, and so the project's impacts will fragment habitat in the region.



**Figure 1.** Likely movement trajectories of wildlife across the project area (red boundary), including avian flights along the valley (blue arrows) and avian and terrestrial wildlife movements between the Badlands and Mount Russell and Lake Perris (yellow arrows).

Dr. Smallwood concludes that the Project will have significant cumulative impacts on habitat loss when considered together with large industrial scale solar photovoltaic and wind projects being constructed in the area. The FEIR fails to consider these cumulative impacts.

Dr. Smallwood concludes that as a mitigation measure, the EIR should require all 2000 acres of rooftops on the Project be covered with solar panels. While the EIR currently requires solar panels sufficient to offset energy use by the office space in the Project itself, this leaves much of the rooftop area open for further solar development. Covering all 2000 acres of rooftops with solar panels would generate 282 megawatts of electricity. (Smallwood Comment, p. 8). This would offset the need to construct additional solar panels on habitat in the area. It would also help to offset air quality impacts from DPM and nitrogen oxides (NOx) discussed by CARB and SWAPE.

**D. THE PROJECT WILL HAVE SIGNIFICANT AGRICULTURAL IMPACTS THAT ARE NEITHER DISCLOSED NOR MITIGATED IN THE EIR.**

The Project would result in the conversion to non-agricultural use of 2,201 acres of land designated as Farmland of Local Significance within the Specific Plan area, as well as 25 acres of Unique Farmland. The FEIR and findings conclude that the conversion of the 2201 acres of Farmland of Local Significance is a less than significant impact, and proposes to mitigate only the loss of 25 acres of Unique Farmland. (Proposed Findings, p. 73).

Agricultural consultant Gregory House concludes that the Project will have significant agricultural impacts, contrary to the conclusion of the FEIR. (House Comment letter, Exhibit E). The FEIR concludes that the Land Evaluation and Site Assessment Score (LESA) is 60.4. This indicates a significant impact to agriculture. However, the Parsons-Brinckerhoff study concludes that since the Site Assessment portion of the cumulative score is less than 20 – 19.5 – the Project does not have a significant impacts on agriculture.

Mr. House calculates that the Site Assessment score was improperly calculated. In particular, the Parsons-Brinckerhoff study concluded that citrus farming is no longer economically viable on the site because the price of water would allegedly be greater than the value of the citrus produced. However, Mr. House notes that recycled water is available in sufficient quantities from the Eastern Municipal Water District (EMWD). Mr. House notes that contrary to the conclusion of the EIR, this water is adequate for citrus irrigation. Mr. House also calculates that the recycled water could be used in sufficient quantities to irrigate mandarins and lemons and that those citrus crops could be produced at a significant profit of about \$2400 to \$4000 per acre. (House Comment Letter, p.3).

Taking these facts into consideration, the Site Assessment portion of the LESA score increases to between 20.1 to 22 – above the 20 threshold. This means that the Project has a significant impact on agricultural resources that must be disclosed in the EIR. The EIR is deficient for failing to disclose this impact. This also means that the EIR must propose all feasible mitigation measures to reduce the impact to agriculture. Typical mitigation would be a requirement to create agricultural offsets at, at least, a 1:1 ratio for the entire 2200 acres of lost agricultural land – not just 25 acres. *Mira Mar Mobile Community v. City of Oceanside* (4th Dist. 2004) 119 Cal. App. 4th 477.

**E. THE EIR FAILS TO ANALYZE URBAN DECAY IMPACTS.**

The Final EIR contains a two-sentence “section” on urban decay. (FEIR p. 5-7). While this section references another section of the FEIR, 4.13, that section contains no substantive analysis of urban decay at all. A supplemental EIR is required to analyze the urban decay impacts of the Project and to propose feasible mitigation measures.

Placing 40 million square feet of warehouse space in the city, together with massive amounts of traffic snarling, diesel engine exhaust above cancer thresholds, nitrogen oxide pollution, and other impacts may surely cause urban decay. The EIR fails to analyze this impact entirely – other than a two-sentence statement.

It is well established that an EIR must analyze urban decay impacts of a Project. Yet, the DEIR and FEIR are virtually silent on the potentially significant impacts related to urban decay or blight. The approval and construction of the Project clearly could result in significant impacts regarding the creation of urban decay or deterioration in the area. Yet, this impact is not addressed in the EIR. Consideration of this topic in environmental documents prepared under CEQA has increased over the recent years in direct response to the California Appeals Court Decision (December 2004) in *Bakersfield Citizens for Local Control v. City of Bakersfield*. In that decision, the Court determined that CEQA Guidelines Section 15054 requires such research and analysis, “when the economic or social effects of a project cause physical change, this change is regarded as a significant effect in the same manner as any other physical change resulting from the project.” In addition, in the *Anderson First Coalition v. City of Anderson* (June 2005), the Court found that social or economic changes that may have a physical impact should be considered in an EIR. While such EIR analyses are most often associated with big box or retail complexes that have the potential to result in urban decay by redirecting sales from existing businesses, urban decay impacts can also occur as a result of uses that present a nuisance thereby impacting other land uses in an area or as a result of uses that result in an area no longer being viable for existing or planned land uses as may well be the case here.

In *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) (124 Cal.App.4th 1184) (*Bakersfield Citizens*), the court expressly held that an EIR must analyze a project’s potential to cause urban decay if there is substantial evidence showing that the project may lead to such impacts. The court pointed out that CEQA requires the project proponent to discuss the project’s economic and social impacts where “[a]n EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic and social changes.” (CEQA Guidelines §§ 15131(a) and 15064(f).) *Bakersfield Citizens* concerned a proposal to construct two WalMart Stores within 3 miles of each other. Evidence was submitted that the stores could cause urban decay by forcing local downtown stores to close. The court held that this impact must be analyzed in the EIR. Most of the cases cited by the *Bakersfield Citizens* court concerned other retail developments with alleged urban decay impacts. (See, *Citizens Assoc. for Sensible Dev. of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 170 171 (shopping mall threatens downtown businesses and urban decay); *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 445-446 (shopping mall may cause “business closures” in downtown area); *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1019 (insufficient evidence that Borders bookstore may threaten local bookstores); see also, *Anderson First Coalition v. City of Anderson* (2005) 30 Cal.Rptr.3d 738 (shopping



center); *American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062, 1074 (urban decay impacts of supercenter must be analyzed); *Gilroy Citizens for Responsible Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911, 920 (EIR adequately analyzed urban decay impacts of supercenter.)

The *Bakersfield Citizens* court also cited an industrial and a prison project that were alleged to have blighting impacts. The court noted that in *Christward Ministry v. Superior Court* (1986) (184 Cal. App. 3d 180, 197) (*Christward Ministry*) an agency was required to analyze in the EIR the potential that odors, noise, and traffic from a garbage dump could adversely impact a nearby religious retreat center. The *Bakersfield Citizens* court noted that this was a type of “urban blight” impact. The court also noted that in *City of Pasadena v. State of California* (1993) (14 Cal.App.4th 810) (*City of Pasadena*) the “blighting” impact of a parole office on a nearby residential neighborhood was recognized (however the court held that insufficient evidence had been presented to establish that the parole office may have an urban blight impact.

The proposed World Logistics Project may have a blighting impact on the City of Moreno Valley and the surrounding area, much like the blighting impact of the waste dump discussed in *Christward Ministry, supra*, or the parole office discussed in *City of Pasadena, supra*. The proposed Project will have a blight and a cumulative blight impact together with other sources of toxic pollution in the area by generating toxic emissions, noise, truck traffic, and other impacts. These impacts depress property values, drive people and businesses away, and create a downward spiral of urban blight. A UCLA study published in the American Journal of Public Health (March 1991) found that communities living downwind of sources of air pollution suffer significantly reduced lung function. Psychological studies show that poor air quality and unpredictable industrial noise events adversely affect psychological well-being, concentration levels, and workplace performance. (S. Klitzman and J. Stellman, “The Impact of the Physical Environment on the Psychological Well-Being of Office Workers,” 29(6) Soc. Sci. Med. 733-742 (1989).)

These documented impacts, and other impacts identified in the EIR and the comments on the EIR, constitute substantial evidence that the Project may have adverse urban decay impacts on the area that must be analyzed in a supplemental DEIR. The EIR is deficient for ignoring such impacts entirely.

## **V. INADEQUATE FINDINGS.**

Findings must be made for each identified significant impact, and must be supported by substantial evidence in the record. (*Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1222 1224.) Findings must present some explanation to supply the logical step between the ultimate finding and the facts in the record. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.) When alternatives or mitigation measures are rejected as infeasible, the

findings must reveal the agency's reasons for reaching that conclusion. Conclusory statements are inadequate. (*Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1034-1035.) Finally, detailed findings force decision makers to draw legally relevant sub-conclusions which support their ultimate decisions. In so doing, the agency minimizes the likelihood that it will randomly leap from evidence to conclusions. (*Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1034.) CEQA requires that for each significant impact, the agency must make findings that: (1) through changes it avoided or substantially lessened the project's impacts; (2) or, such changes were the responsibility of another agency; (3) or, specific economic, legal, social, technological or other considerations made mitigation infeasible. (CEQA Guidelines, § 15091.)

As discussed above, the EIR failed to disclose numerous significant impacts on traffic, biology, air pollution, urban decay, agriculture and others. Since significant impacts have not been disclosed, the City cannot find that all impacts have been mitigated or avoided if feasible, and cannot issue a statement of overriding considerations.

Also, the EIR fails to impose many feasible mitigation measures that have been proposed by experts and even regulatory agencies such as the CARB. Having failed to impose all feasible mitigation measures, the City cannot make the findings required by CEQA.

Across the board, the City's findings contain only ultimate decisions absent proper factual and/or legal sub-conclusions connecting them to the final decision. The City did not make findings to support its decision to approve the Project despite its significant, unmitigated impacts; its unsupported statement of overriding considerations, its failure to mitigate traffic and air quality impacts; and its failure to disclose impacts to agriculture and urban decay.

In *Preservation Action Council*, Petitioners requested that Respondent City of San Jose reject a proposal by Lowe's Inc. to build a 162,000 square-foot garden center because there was a feasible, reduced-sized alternative that would preserve an historic building. (Id. at 906-7.) Petitioners had submitted comments showing the feasibility of a two-story Lowe's which would avoid tearing down the historic structure. (Ibid.) The City of San Jose rejected the two-story option, based on Lowe's claim that a reduced-sized alternative would be economically infeasible. (Id. at 907.) But the Court rejected the City's finding on this issue as unsupported: "The FEIR provides no independent facts or analysis to support that claim. While it was not necessary for the evidentiary basis for this claim to be contained in the FEIR itself, it was necessary for such a basis to exist in the administrative record." (Id. at 917.) The Court found that neither the final EIR or the administrative record contained the meaningful detail or independent analysis necessary to validate Lowe's claim that the reduced-size alternative was infeasible, nor did the City Council make a specific finding on the claim that the reduced-size store would be much less profitable. (Id. at 917-18.)


Here the City made the same mistake. As discussed by CARB, the EIR fails to impose feasible mitigation of zero-emission or near-zero-emission trucks. As discussed by Mr. Hagemann, the EIR fails to impose the feasible mitigation of air filtration devices to reduce airborne cancer risks. As discussed by Dr. Smallwood, the EIR fails to impose the feasible mitigation of 1:1 of requiring solar panels on the entire roof area. As discussed by Mr. House, the EIR fails to impose the feasible mitigation measure of 1-to-1 offsets for agricultural land. These and many other feasible mitigation measures are not implemented, and the findings provide no substantial evidence to support a finding of infeasibility.

A supplemental EIR is required to analyze these and all other feasible mitigation measures to reduce Project impacts.

## VI. CONCLUSION

For the foregoing reasons, LIUNA Local Union No. 1184 and its members living in the City of Moreno Valley and the surrounding areas, urge the City to continue the matter for future consideration pending completion of a supplemental EIR addressing the Project's significant impacts and mitigation measures. 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,



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