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July 10, 2014

By: Facsimile, Email and Overnight Mail

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Hearing Officer
Planning Department
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**Re: Comments on Initial Study and Site Plan Review 14-003 for
KCS West Application to Develop a Manufacturing/Assembly
Facility**

Dear Ms. Koleda and Hearing Officer:

We are writing on behalf of **Antelope Valley Residents for Responsible Development** to submit preliminary comments on the City of Palmdale's Initial Study¹, prepared pursuant to the California Environmental Quality Act ("CEQA")² and its implementing Guidelines,³ for Site Plan Review 14-003, an application by KCS West to develop a manufacturing/assembly use consisting of one building totaling 427,507 square feet, and all related approvals (collectively "Project").⁴ According to the City, the Project would be located on approximately 35 acres of a 67.75 acre site on the south side of Avenue M, east of Sierra Highway and the Union Pacific Railroad ("Project Site").

KCS West seeks a site plan review, lot line adjustment, grading permits and building permits from the City of Palmdale authorizing the development of one building. The Project also requires authorizations from the Antelope Valley Air

¹ The Initial Study shall hereinafter be referred to as "Initial Study" or "IS".

² Pub. Resources Code, §§ 21000 et seq.

³ 14 Cal.Code Regs. § 15000 et seq.

⁴ Notice of Public Hearing by the Hearing Officer of the City of Palmdale, Legal Ad #140016.

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Quality Management District (“AVAQMD”), the Los Angeles County Waterworks District, the Sanitation Districts of Los Angeles County, and the State Water Resources Control Board and/or the Lahontan Regional Water Quality Control Board. The Project may also require incidental take permits from the U.S. Fish and Wildlife Service (“USFWS”) and the California Department of Fish and Wildlife (“CDFW”).

The City proposes to conduct no new or subsequent environmental review of the Project. Instead, the City prepared an Initial Study, which concludes that all potentially significant effects have been adequately analyzed in an 18 year old EIR certified in 1996 for the Palmdale Business Park Center Specific Plan (“1996 Business Park EIR”).⁵ The Initial Study claims that all potentially significant effects have been avoided or mitigated to the extent feasible pursuant to that earlier EIR, including revisions or mitigation measures that are imposed upon the Project. The Initial Study states that the City also relies on a 20 year old EIR certified in 1993 for the General Plan (“1993 General Plan EIR”). However, not surprisingly, the 1993 and 1996 EIRs are outdated.

In reviewing the Initial Study, the 1993 General Plan EIR, the 1996 Business Park EIR and other documents, three things have become apparent. First, the Project described in the Initial Study is just one part of a multi-million dollar and multi-phased project by Kinkisharyo International to manufacture and assemble up to 235 light rail vehicles (“LRVs”) for delivery to the City of Los Angeles. The Initial Study violates CEQA’s requirement to provide an adequate project description and CEQA’s prohibition against piecemeal environmental review.

Second, the 1993 General Plan EIR and 1996 Business Park EIR did not contemplate general industrial (M-2) zoning or manufacturing and assembly of LRVs on the Project Site. The Project is a new project with potentially significant impacts that triggers CEQA’s legal requirement to prepare an EIR.

Third, even if the Project is arguably within the scope of the project previously analyzed, all of the triggers requiring a subsequent EIR are present. We have identified substantial changes in the Project, including the general plan amendment and rezoning, the manufacturing of LRVs and the location of the industrial use, which require major revisions to the previous EIRs due to the involvement of new significant effects or a substantial increase in the severity of

⁵ *Id.*

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previously identified effects. We have identified substantial changes in the circumstances under which the Project is undertaken, such as changes in existing air quality, regulations, public health risks, water resources and biological resources, which require major revisions to the previous EIRs due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects. Furthermore, we have identified new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIRs was certified as complete over 18 years ago, showing that the Project is likely to result in new or more severe significant impacts on public health, water resources, biological resources and air quality, among other resources, which were not discussed or shown in the previous EIRs. Finally, we have identified mitigation measures considerably different from those analyzed in the previous EIRs that would substantially reduce one or more significant effects on public health, water resources, biological resources and air quality, among other resources, but the project proponents decline to adopt the mitigation measures.

We identify these changes, the new information and different mitigation measures below to enable the City to comply with CEQA and reduce the Project's significant impacts *before* the City considers approving the Project. Issuing any permits without preparing a new or subsequent EIR would violate CEQA and compromise public health and the environment. The City simply lacks substantial evidence to support its decision that a subsequent EIR is not required.

We prepared these comments with the assistance of air quality expert Petra Pless, Ph.D and biological resources expert Scott Cashen. Dr. Pless' and Mr. Cashen's technical comments are incorporated herein, attached hereto and submitted in addition to the comments in this letter. Accordingly, the City must address and respond to the comments of Dr. Pless and Mr. Cashen separately.

I. INTEREST OF COMMENTORS

Antelope Valley Residents for Responsible Development is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards and environmental and public service impacts of the Project. The association includes Palmdale residents Kathy Mac Laren, Ira Lockshin, Fidel Granillo, David Sazegar, Maurice Washington, Walter Andrew, Cari Bailey, and International Brotherhood of Electrical Workers Local 11 and their members and families and other individuals

that live and/or work in the City of Palmdale, Antelope Valley and Los Angeles County (collectively, “Antelope Valley Residents”).

The individual members of Antelope Valley Residents and the members of the affiliated labor organizations live, work, recreate and raise their families in the Antelope Valley, including the City of Palmdale. They would be directly affected by the Project’s environmental and health and safety impacts. Individual members may also work constructing the Project itself. They will be first in line to be exposed to any health and safety hazards that may be present on the Project Site. They each have a personal interest in protecting the Project area from unnecessary, adverse environmental and public health impacts.

The organizational members of Antelope Valley Residents also have an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for the members that they represent. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for businesses to locate and people to live there. This in turn jeopardizes future development by causing construction moratoriums and otherwise reducing future employment opportunities for construction workers. The labor organization members of Antelope Valley Residents therefore have a direct interest in enforcing environmental laws to minimize the adverse impacts of projects that would otherwise degrade the environment.

II. LACK OF TIMELY INFORMATION AND POTENTIAL NEED TO SUBMIT FURTHER COMMENTS

The City provided additional documents it claims are referenced or relied upon in the Initial Study only two days ago and has not yet made available documents related to its sale of property to Kinkisharyo.⁶ The City has also not yet responded to our requests for three documents, which appear to contain a flow chart of the manufacturing facility, but are unreadable. Other agencies with permitting jurisdiction over the Project have either not been informed about the Project or are in the process of collecting public records related to the Project. Access to these materials is essential to our review and evaluation of the City’s Initial Study and previous EIRs. Despite our efforts to obtain access to all materials referenced in the Initial Study and other relevant records as quickly as possible, the City has

⁶ Email from Susan Koleda to Janet Laurain, RE: Documents referenced in the Initial Study for Kinkisharyo Project (SPR 14-003) (July 8, 2014).
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provided insufficient time prior to the public hearing before the Hearing Officer to obtain the relevant documents and fully review the proposed Project. Accordingly, we provide these preliminary comments on the Initial Study, previous EIRs and the Project and, if necessary, we may submit supplemental comments at a future date.

III. THE CITY'S RELIANCE ON THE INITIAL STUDY, THE 1996 BUSINESS PARK EIR AND THE 1993 GENERAL PLAN EIR VIOLATES CEQA

CEQA has two basic purposes, neither of which is satisfied by the Initial Study, the 1993 General Plan EIR and the 1996 Business Park EIR. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental impacts of a project before harm is done to the environment.⁷ The EIR is the "heart" of this requirement.⁸ The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."⁹

To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and "reflect a good faith effort at full disclosure."¹⁰ An adequate EIR must contain facts and analysis, not just an agency's conclusions.¹¹ CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.¹²

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring imposition of mitigation measures and by requiring the consideration of environmentally superior alternatives.¹³ If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.¹⁴ CEQA imposes an affirmative

⁷ CEQA Guidelines § 15002(a)(1); *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal.App.4th 1344, 1354 ("*Berkeley Jets*"); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

⁸ *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

⁹ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹⁰ CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

¹¹ See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.

¹² Pub. Resources Code § 21100(b)(1); CEQA Guidelines § 15126.2(a).

¹³ CEQA Guidelines § 15002(a)(2) and (3); *Berkeley Jets*, 91 Cal.App.4th at 1354; *Laurel Heights Improvement Ass'n v. Regents of the University of Cal.* (1998) 47 Cal.3d 376, 400.

¹⁴ Pub. Resources Code §§ 21002.1(a), 21100(b)(3).

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obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.¹⁵ Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR to meet this obligation.

Under CEQA, an EIR must not only discuss measures to avoid or minimize adverse impacts, but must ensure that mitigation conditions are fully enforceable through permit conditions, agreements or other legally binding instruments.¹⁶ A CEQA lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility.¹⁷ This approach helps “insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug.”¹⁸

Following preliminary review of a project to determine whether an activity is subject to CEQA, a lead agency is required to prepare an initial study to determine whether to prepare an EIR or negative declaration, identify whether a program EIR, tiering or other appropriate process can be used for analysis of the project’s environmental effects, or determine whether a previously prepared EIR could be used with the project, among other purposes.¹⁹ The initial study must contain the following:

- (1) A description of the project, including the location of the project;
- (2) An identification of the environmental setting;
- (3) An identification of environmental effects...provided that the entries...are briefly explained to indicate that there is some evidence to support the entries. The brief explanation may be either through a narrative or a reference to another information source such as...an earlier EIR... A

¹⁵ *Id.*, §§ 21002-21002.1.

¹⁶ CEQA Guidelines, § 15126.4(a)(2).

¹⁷ *Kings County Farm Bur. v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28 (a groundwater purchase agreement found to be inadequate mitigation because there was no record evidence that replacement water was available).

¹⁸ *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

¹⁹ CEQA Guidelines §§ 15060, 15063(c).

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reference to another document should include, where appropriate, a citation to the page or pages where the information is found;

- (4) A discussion of the ways to mitigate the significant effects, if any;
- (5) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls; and
- (6) The name of the person or persons who prepared or participated in the Initial Study.²⁰

CEQA requires an agency to analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.²¹ A negative declaration may be prepared instead of an EIR when, after preparing an initial study, a lead agency determines that a project “would not have a significant effect on the environment.”²²

When an EIR has been prepared for a project, CEQA requires the lead agency to conduct subsequent or supplemental environmental review when one or more of the following events occurs:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.²³

²⁰ CEQA Guidelines § 15063(d) (emphasis added).

²¹ See, e.g., Pub. Res. Code § 21100.

²² *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597; Pub. Res. Code § 21080(c).

²³ Pub. Res. Code § 21166.

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The CEQA Guidelines explain that the lead agency must determine, on the basis of substantial evidence in light of the whole record, if one or more of the following events occur:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.²⁴

²⁴ CEQA Guidelines § 15162(a)(1)-(3).
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Only where **none** of the conditions described above calling for preparation of a subsequent or supplemental EIR have occurred may the lead agency consider preparing a subsequent negative declaration, an addendum or no further documentation.²⁵ In any case, however, the decision must be supported by substantial evidence.²⁶

A. The Project Description Fails To Comply With the Requirements of CEQA

The first and most basic step in evaluating a project is obtaining and disclosing an adequate project description. Here, the project description provided in the Initial Study fails to comply with the requirements of CEQA because it lacks critical information required to assess the Project's potentially significant impacts.

CEQA Guidelines section 15378 defines "project" to mean "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."²⁷ "The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term project does not mean each separate governmental approval."²⁸ Courts have explained that "[a] complete description of a project has to address not only the immediate environmental consequences of going forward with the project, but also all "*reasonably foreseeable* consequence[s] of the initial project."²⁹ "If a[n] . . . EIR. . . does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decisionmaking cannot occur under CEQA" and the environmental review document is inadequate as a matter of law.³⁰

²⁵ CEQA Guidelines § 15162(b).

²⁶ CEQA Guidelines §§ 15162 (a), 15164(e), and 15168(c)(4).

²⁷ 14 Cal.Code Regs, tit. 14, §15378 ("CEQA Guidelines").

²⁸ CEQA Guidelines, 15378 subd. (c).

²⁹ *Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, emphasis added; see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449-50.

³⁰ *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal.App.4th 1186, 1201.
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The Initial Study provides a truncated description of the Project without details necessary to assess the reasonably foreseeable consequences of the Project and enable informed decisionmaking:

Site Plan Review (SPR) 14-003 is a request to develop a manufacturing/ assembly use consisting of one building totaling 427,507 square feet on approximately 35 acres of a 67.75 acre site. The building will include approximately 300,267 square feet of manufacturing/assembly, 20,046 square feet of office and 100,194 square feet of warehouse. The manufacturing use is a light rail vehicle assembly facility. The use will be fenced and will include associated parking and landscape areas. The project entrance will align with 4th Street East, an existing roadway within the City of Lancaster, and will include the installation of a traffic signal. An anticipated second phase, not permitted under this approval, will allow for the expansion of the use with a second building and the installation of a rail spur off of the Union Pacific Railroad.³¹

This brief project description and the additional sparse information in the Initial Study are inadequate to assess the reasonably foreseeable consequences of the Project for purposes of CEQA review.

The Initial Study fails to meet CEQA's requirements for an adequate project description for two reasons. First, the Initial Study fails to explain how the Project compares to the Project analyzed in the 1993 General Plan FEIR and the 1996 Business Park EIR. CEQA requires the City to determine whether substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new or more severe significant effects.³² However, the City fails to evaluate the Project's proposed changes from the project analyzed in the 1993 General Plan EIR and the 1996 Business Park EIR.

Second, the Initial Study simply lacks sufficient information required for environmental review. According to Dr. Petra Pless, basic information and information necessary for analysis of air quality and public health impacts include:

³¹ IS, p. 3.

³² CEQA Guidelines § 15162(a)(1).

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- Identification of the owner of the site and future owner and operator of the facility (KCS West, the Applicant, is a general contractor);
- A site plan showing the layout for the site (*e.g.*, the location of the manufacturing building identifying the assembly bays for the LRVs, spray booth, abrasive blasting booth, etc.; the number of parking spaces; the location of the future rail spur and the additional building);
- Information about facility construction including a construction schedule; information about the quantity of cut-and-fill, the type, horsepower, and number of construction equipment on site, the quantity and type of materials delivery, the number of truck trips per day, the number of construction workers, the number of work-hours per day and work-days per week; etc.
- A narrative describing the manufacture and assembly of LRVs (*e.g.*, installation and interconnection of propulsion control equipment, propulsion cooling equipment, brake equipment, energy sources for auxiliaries and controls, heating and air conditioning, communications equipment, motors, wheels and axles, suspensions and frames; vehicle track and climate room testing, etc.) and the major equipment involved (*e.g.*, hydraulic lift, gantry crane, test track.);
- Identification of the parts that would be manufactured at the site or sourced elsewhere (*e.g.*, truck/bogie, car shell, exterior and underfloor items, interior items such as seats, handles and displays, propulsion system and controls, friction break and pneumatic controls, wheels, passenger doors and controls, coupler and draft gear, heating and ventilation system, mirrors, displays, lights, etc.);
- A narrative describing the processes that are associated with manufacturing and assembly of LRVs (*e.g.*, parts manufacturing, welding, spray painting, upholstery, abrasive blasting, testing, etc.);
- A description of mobile and stationary air pollutant emission units on site (*e.g.*, forklift, furnace, boiler, spray booth, water treatment facility, emergency generator, etc.) and abatement technologies (*e.g.*, thermal oxidizer, electrostatic precipitator, baghouse, etc.);
- A description of sources of water pollution (*e.g.*, car wash);

- Information about the work force including the number of full- and part-time employees, number of shifts per day, and number of work-days per day and year;
- Information about vehicle traffic including the number of daily and annual employee vehicle, visitor vehicle and truck trips to and from the site;
- Information about the types and quantities of materials that would be delivered to the site;
- The types and quantities of hazardous and nonhazardous liquid and solid waste that would be generated and their proposed disposal;
- The daily and annual demand and sources for sanitary water and process water, generation of and on-site treatment or disposal of waste water;
- A description how and where (on-site/off-site) the completed LRVs would be tested and how they would be delivered to the recipient (*e.g.*, via rail or truck); and
- The anticipated operating life of the project and information about its future disassembly.³³

The Initial Study also fails to provide basic information and information necessary for analysis of water supply impacts, including the amount of water use for construction, the amount of water use for operation, the amount of water required for fire suppression and other uses. The Initial Study fails to provide even the most basic information necessary to analyze the project.

The Application for Site Plan Review submitted by KCS West provides little additional information about the Project, other than that it will have 298 parking spaces (8 handicapped) and 250 employees; will contain a source of hazardous air pollutant emissions; will store or use hazardous materials; will not be within 1,000 feet of the outer boundary of a school site or general acute care facility; and will include paint spray booths, spray adhesive application, natural gas-fired oven, and abrasive blasting subject to permitting by the AVAQMD.³⁴

³³ Letter from Petra Pless, D.Env., Pless Environmental, Inc. to Tanya A. Gulesserian, Re: City of Palmdale's Initial Study for Site Plan Review No. 14-003 (Application by KCS West to Develop a Manufacturing/Assembly Building on Assessor's Parcel Nos. 3126-022-911 and -913 plus a Portion of -906, -912 and -915) (July 10, 2014) (Attachment A) (hereinafter "Attachment A: Pless Comments").

³⁴ Application, pp. 1-2 (PDF file "SPR 14-003 application.pdf") and p. 2 (PDF file "SPR 14-003 App P2.pdf").

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This lack of an adequate project description renders the public review process for the Initial Study and Site Plan Review meaningless. Without an adequate project description, informed decisionmaking cannot occur under CEQA and the environmental review document is inadequate as a matter of law.³⁵

Based on information obtained in response to Public Records Act requests to the City, other permitting agencies, agencies in other states, and from the internet, the Project is different than contemplated in the 1996 Business Park EIR and 1993 General Plan EIR and much more substantial than described in the Initial Study. In 2012, the Los Angeles County Metropolitan Transportation Authority ("Metro") awarded a \$299 million contract to Kinkisharyo International, LLC ("Kinkisharyo"), the U.S. subsidiary of Kinki Sharyo Co., Ltd., based in Osaka, Japan, to supply 78 new LRVs.³⁶ This base contract also includes four options for delivery of an additional 157 LRVs for a total of 235 LRVs, valued at \$890 million. The new cars are needed for the second phase of the Expo Line and the Gold Line Foothill and Crenshaw/LAX lines, the Regional Connector and fleet replacement.³⁷ In 2013, Metro exercised two of the base contract options (69+28) totaling 97 additional LRVs for \$397 million,³⁸ which brings the current total to 175 ordered LRVs.

According to Metro, "KI is contractually committed to generating new jobs that must reach \$33.9 million in wages and benefits for the base contract, and up to \$97.9 million in wages and benefits for the base contract and all options. The projected total number of full time equivalent jobs is expected to reach 200 across the USA, with most of those jobs being generated at the final assembly facility in Palmdale, CA."³⁹ To fulfill its contractual obligation to create jobs in the United States, Kinkisharyo agreed to assemble the rail cars in Los Angeles County⁴⁰;

³⁵ *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal.App.4th 1186, 1201.

³⁶ Kinki Sharyo, Contracted with Los Angeles County Metropolitan Transportation Authority to Supply 78 New Light Rail Vehicles; http://www.kinkisharyo.co.jp/eng/e_news/e_news120829.htm.

³⁷ Kim Upton, The Source, Transportation News and Views, New Light-Rail Car Makes Its First Public Appearance, May 13, 2014; <http://thesource.metro.net/tag/kinkisharyo/>.

³⁸ Kinki Sharyo, The Los Angeles County Metropolitan Transportation Authority (Metro) Board of Directors has Approved the Increased Budget for the Procurement of Option 1 and 4 (Total 97 Vehicles) of P3010 Light Rail Vehicle; http://www.kinkisharyo.co.jp/eng/e_news/e_news130731.htm.

³⁹ Metro, April 17, 2014, *op. cit.*

⁴⁰ Los Angeles World Airports, Report to the Board of Airport Commissioners, Subject: Lease with Kinkisharyo International, LLC and Rental Rates for Facilities at Palmdale Land Holdings, April 21, 2014; http://lawa.granicus.com/MetaViewer.php?view_id=4&clip_id=169&meta_id=16278.

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Palmdale is located in the center of northern Los Angeles County, about 60 miles north of the City of Los Angeles.

According to the *Railway Gazette*, “Kinkisharyo has previously assembled 512 cars in the U.S., beginning with Boston in the late 1980s. These were followed by orders from Dallas, Hudson-Bergen LRT [a New Jersey transit line], Newark City Subway, San Jose, and more recently Seattle and Phoenix. Each contract has been carried out in a locally-sourced ‘pop-up’ plant or at the customers’ maintenance facilities, using bodyshells supplied from Japan.”⁴¹

Kinkisharyo’s plan to deliver the 175 LRVs ordered by Metro involves two phases. During Phase I, design and manufacture of 78 LRVs take place in Japan and only the final assembly takes place in the U.S., specifically at the currently vacant Hangar 704 and Building 702 located at U.S. Air Force Plant 42’s Site 9, a 307-acre parcel at the Palmdale Regional Airport, which are leased by Kinkisharyo from the City of Los Angeles.⁴² Phase I is currently underway pursuant to a CEQA exemption (for issuance of leases of existing facilities at municipal airports involving negligible or no expansion of use and/or alteration or modification of the facilities or its operations beyond that previously existing or permitted) and an authority to construct (“ATC”) permit for a spray booth (adhesive application) from the AVAQMD on June 5, 2014.⁴³ The first two pilot cars will be assembled and tested in Japan before delivery to Metro, currently scheduled for January 2015. The remaining 76 LRVs under the Phase I contract will be assembled in Palmdale at Site 4; the current schedule anticipates delivery of the first car by August 2015, at a rate of four (4) cars per month, with delivery of the last car in February 2017.⁴⁴

Under Phase II, *i.e.*, the Project under review in the Initial Study, manufacture of some of the components for the 97 LRVs and their final assembly would occur at the proposed new facility. Phase II includes an LRV manufacturing and assembly facility consisting of one building totaling 427,507 square feet on approximately 35 acres of a 67.75 acre site. Phase II also involves the expansion of the manufacturing and assembly facility with a second building and the installation

⁴¹ *Railway Gazette*, July 31, 2013, *op. cit.*

⁴² Lease Between City of Los Angeles, Department of Airports and Kinkisharyo International, LLC, at Site 9, Palmdale, California, Located at Palmdale Airport Land Holdings;
http://clkrep.lacity.org/online/docs/2014/14-0707_misc_a_5-28-14.pdf.

⁴³ AVAQMD, Authority to Construct, Owner or Operator Co. #2123, Equipment Location Fac. #3475, Kinkisharyo International, LLC, 2825 East Avenue P, Palmdale, CA 93550, June 5, 2014.

⁴⁴ Metro, April 17, 2014, *op. cit.*

of a rail spur off of the Union Pacific Railroad.⁴⁵ The Project Site is currently owned by the City although press reports indicate that the City intends to sell the land to Kinkisharyo for \$1.3 million and bring utilities and infrastructure to the property.⁴⁶ In response to a records request for access to the records related to the sale of the property, the City wrote that it was unable to provide access and required a 14-day extension of time to collect the responsive documents.⁴⁷ The targeted completion date for the manufacturing and assembly facility is May 2015.⁴⁸ Delivery of the 95 cars will occur over the course of 24 months.⁴⁹

The Initial Study's lack of an adequate project description renders the City's comparison to the project description in the 1996 Business Park EIR and analysis of significant impacts meaningless. This defect in the City's Initial Study is a fatal error. The City must withdraw the Initial Study and prepare a new or subsequent EIR, which complies with CEQA.

B. The Initial Study Violates CEQA's Prohibition Against Piecemeal Environmental Review

A public agency may not segment a large project into two or more smaller projects in order to mask serious environmental consequences. CEQA prohibits such a "piecemeal" approach and requires review of a project's impacts as a whole.⁵⁰ CEQA mandates "that environmental considerations do not become submerged by chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences."⁵¹ Before approving a project, a lead agency must assess the

⁴⁵ IS, p. 3.

⁴⁶ William C. Vantuono, *RailwayAge*, Kinkisharyo Plans New Palmdale, Calif., Site, Tuesday, June 17, 2014; <http://www.railwayage.com/index.php/passenger/light-rail/kinkisharyo-plans-new-palmdale-calif-site.html?channel=61>.

⁴⁷ Letter from David Walter to Tanya Gulesserian, Re: June 25, 2014 Request for Additional Public Records Regarding Sale of Property for Kinkisharyo Rail Car Assembly Facility (July 7, 2014).

⁴⁸ The Antelope Valley Times, Kinkisharyo to Build Rail Manufacturing Site in Palmdale, June 11, 2014; <http://theavtimes.com/2014/06/11/kinkisharyo-to-build-rail-manufacturing-site-in-palmdale/>.

⁴⁹ Metro, April 17, 2014, *op. cit.* (28 LRVs over 7 months (Option 1) and 69 LRVs over 17 months).

⁵⁰ CEQA Guidelines, § 15378, subd. (a); *Burbank- Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.

⁵¹ *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 283-84; *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1452.

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environmental impacts of all reasonably foreseeable phases of a project.⁵² “The significance of an accurate project description is manifest where,” as here, “cumulative environmental impacts may be disguised or minimized by filing numerous, serial applications.”⁵³

The California Supreme Court held that an EIR must treat activities as part of the project where the activities at issue are “a reasonably foreseeable consequence of the initial project and the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.”⁵⁴ Both elements are met here.

The Initial Study purports to analyze the environmental impacts from construction and operation of a narrowly defined Project, *i.e.*, “manufacturing / assembly use consisting of one building totaling 427,507 square feet on approximately 35 acres of a 67.75 acre site.”⁵⁵ However, the Initial Study does not analyze Phase I, the *uses* associated with Phase I or II, or the anticipated expansion of the manufacturing and assembly facility with a second building and the installation of a rail spur, which are part of Kinkisharyo’s plan for Phase II. These activities are “a reasonably foreseeable consequence of the initial project and the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.”⁵⁶

As Dr. Petra Pless explains, Phase I and Phase II are parts of one multi-million dollar project to supply Metro with the new LRVs it requires for expansion and maintenance of its network.⁵⁷ Phase I and Phase II are the direct consequences of Metro awarding an initial contract inclusive of four (4) future options to Kinkisharyo. The rail spur is critical to enabling the testing of LRVs manufactured and assembled at the plant. Thus, the cumulative impacts of all operations should have been evaluated as one project. Dr. Pless also explains that operations of both

⁵² *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396-397 (EIR held inadequate for failure to assess impacts of second phase of pharmacy school’s occupancy of a new medical research facility).

⁵³ *Arvin Enterprises v. South Valley Area Planning Commission* (2002) 101 Cal.App.4th 1333, 1346.

⁵⁴ *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 396.

⁵⁵ IS, p. 3.

⁵⁶ *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 396.

⁵⁷ Attachment A: Pless Comments.

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phases may occur at the same time, resulting in concurrent impacts including, *e.g.*, emissions of air pollutants, traffic, water supply, hazardous and non-hazardous waste generation and disposal, among others.⁵⁸ These separately proposed projects must be analyzed as one Project in a new or subsequent EIR.

The fact that the contract and leasing and use of Site 9 has already been approved does not negate the requirement for preparing a new or subsequent EIR which analyzes the whole of the Project. The requirement to evaluate the whole of a project applies even where one of the phases has already undergone prior environmental review. It was precisely such piecemealing that was rejected by the Second District in the *Natural Resources Defense Council v. City of Los Angeles* case.⁵⁹ In that case, the Port of Los Angeles analyzed Phase 2 of a three-phase project in a negative declaration. The Court held that an EIR was required to analyze the entire three-phase project as a whole, even though earlier CEQA review had been completed on Phase I of the project.⁶⁰ Similarly here, the City must prepare a new or subsequent EIR to analyze the impacts of the Project, together with the contract, leasing and use of Site 9, and the rail spur extension and additional building, rather than analyzing one individual proposal, “one building,” as an unrelated and distinct project. These defects in the City’s analysis are fatal errors. The City must withdraw the Initial Study and prepare a new or subsequent EIR, which complies with CEQA.

C. The Project Is A New Project Not Contemplated In, Or Within The Scope Of, The Previous EIRs

The Initial Study concludes that “all potentially significant impacts (a) have been analyzed adequately in an earlier EIR pursuant to applicable standards and (b) have been avoided or mitigated to the extent feasible pursuant to that earlier EIR, including revisions or mitigation measures that are imposed upon the project.”⁶¹

The potential environmental effects of the development and use of the project site have been reviewed previously as part of the project evaluated in the Final EIR [“FEIR”] prepared for the Palmdale

⁵⁸ *Id.*

⁵⁹ *Natural Resources Defense Council v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 284.

⁶⁰ *Id.*

⁶¹ Initial Study for Site Plan Review 14-003, City of Palmdale Planning Division (June 30, 2014), p. 6.

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Business Park Center Specific Plan project. Preparation of subsequent environmental documents other than this initial study is not required pursuant to Public Resources Code Section 21166 and State CEQA Guidelines Section 15162, since: 1) the project will cause no substantial changes in any portion of the project which was described in the FEIR which would require major revisions to the FEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; 2) no substantial changes have occurred with respect to the circumstances under which the project is undertaken which will require major revisions to said FEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified environmental effects; and 3) no new information of substantial importance, which was not known or and could not have been know [sic] with the exercise of reasonable diligence at the time the FEIR was certified as complete, has been provided.⁶²

The City's conclusion is incorrect.

The Project is an entirely new project that was not contemplated in the 1996 Business Park EIR or 1993 General Plan EIR. In *Save our Neighborhood v. Lishman*, 140 Cal.App.4th 1288 (2006), the Court held that, as a matter of law, Section 21166 did not apply to a new project even if it has many of the same characteristics as an earlier project approved for the same site. In that case, the City approved a negative declaration for a gas station, convenience store with car wash, restaurants, lounge, and 106-unit motel, totaling 15,000 square feet of retail uses. The Court found that a project involving the same land and mixes of uses, albeit without restaurants or a lounge or other similar retail uses, but with a 102-unit hotel and convention facilities, different proponents and using completely different drawings, materials and configurations of structures, is a new project, instead of a change to an existing project.

Here, the Project is an entirely new project that was not contemplated in the 1996 Business Park EIR or the 1993 General Plan EIR. The land use designation for the Project Site in the 1993 General Plan is Specific Plan- Antelope Valley

⁶² *Id.* The City also cites to its earlier analysis in the City of Palmdale General Plan FEIR (SCH No. 87120908), dated January 25, 1993 ("1993 General Plan FEIR"). However, no further reference to this FEIR is made.

Business Park. As such, the 1993 General Plan EIR analyzed the 1993 General Plan's land use designation of Specific Plan- Antelope Valley Business Park on the Project Site.⁶³ In fact, according to the 1993 General Plan EIR, "individual proposed projects are not known and cannot be analyzed at this time."⁶⁴ Therefore, even individual proposed projects within the General Plan's designated land uses were not known, not described and not analyzed in the 1993 General Plan EIR.

The 1996 Business Park EIR analyzed Lockheed Corporation's proposal for business park, golf course, commercial and airport-related, light industrial (M-1) uses on a 632.2 acres located at the intersection of Sierra Highway and Avenue M in the City of Palmdale.⁶⁵ According to the project description in the 1996 Business Park EIR,

A total of 61.42 acres of community commercial land uses are proposed in the northern portion of the project site, along Avenue M. A business park would be located on a total of 26.15 acres in the center of the site. The business park would be surrounded by the proposed 9-hole Executive Golf Course which will occupy approximately 55 acres. The other 18-hole golf course would occupy most of the southern and western portions of the project site. Airport-related industrial uses would occupy the eastern portion of the site, adjacent to Air Force Plant 42. A total of 165.61 acres of light industrial uses would be placed in the remainder of the site. A small area (5.9 acres) of open space, associated with the proposed drainage system, would occur in the northeast corner.⁶⁶

A map of the specific plan project site depicts the boundaries of the specific plan analyzed in the 1996 Business Park EIR.⁶⁷

The Initial Study describes the Project Site as being designated Industrial (IND) in the General Plan and General Industrial (M-2) in the Zoning Ordinance. However, neither the 1993 General Plan EIR nor the 1996 Business Park EIR described such designation for the site or analyzed potentially significant impacts

⁶³ 1993 General Plan EIR, p. 2-10 and http://www.cityofpalmdale.org/Portals/0/Documents/Maps/11-26-2012_GIS_00041-02_LandUse.pdf.

⁶⁴ *Id.* at p. 4-93.

⁶⁵ 1996 Business Park EIR, p. 2-1.

⁶⁶ *Id.*

⁶⁷ Attachment B, p. 9.

from these new land use and zoning designations, pursuant to CEQA. In fact, it was not until 2009 that the City of Palmdale amended the General Plan land use designation for the entire 613.4-acre business park from Palmdale Business Park Specific Plan (SP-10) to Industrial (IN) under the guise of an early action related to the Palmdale Hybrid Power Project (PHPP).⁶⁸ In so doing, the City did not conduct environmental review, but instead relied on a statutory exemption from CEQA review, pursuant to CEQA Guidelines Section 15271, for early actions undertaken by a public agency relating to any thermal power plant site or facility if the thermal power plant site and related facility will be the subject of an EIR. The City also approved a zone change for the entire 613.4-acre business park from SP-10 to General Industrial (M-2) under the same rationale. However, the Project Site was not part of the PHPP Application for Certification before the California Energy Commission,⁶⁹ and the California Energy Commission did not analyze the General Plan amendment and rezone on the Project Site in its environmental review document for the PHPP.⁷⁰

The Project is a new project and is different than the projects analyzed in the 1993 General Plan FEIR and the 1996 Business Park EIR. The City agrees. In considering the re-designation of land use and zoning on the Project site, the City specifically stated, “the Palmdale Business Park Specific Plan is no longer a useful planning tool for the site.”⁷¹ ***The City specifically explained that “[a]ny future development proposed on the remaining portion of the site will be reviewed in the future as required by CEQA.”***⁷² ***The City also agreed that “any future development proposals will be evaluated for impacts*** to traffic and circulation, environmental resources, public services, safety, noise, and building design elements and will be modified accordingly to not have a substantial adverse impact on the surrounding properties.”⁷³ Therefore, the Project is a new project, which is

⁶⁸ City of Palmdale Resolution No. CC 2009-041.

⁶⁹http://www.energy.ca.gov/sitingcases/palmdale/documents/applicant/afc/volume_01/5.7%20Land%20Use.pdf at Figure 5.7-1 and Figure 5.7-3a.

⁷⁰ <http://www.energy.ca.gov/2010publications/CEC-700-2010-001/CEC-700-2010-001-FSA.PDF>

⁷¹ Planning Department Report to City Council, Subject: General Plan Amendment (GPA) 09-01 and Zone Change (ZC) 09-01 generally located on the south side of Avenue M, east of Sierra Highway and the Union Pacific Railroad, west of the alignment of 15th Street East and USAF Plant 42, and north of the alignment of Avenue M-12 and USAF Plant 42, p. 3 (Attachment C).

⁷² *Id.* at p. 5 (emphasis added).

⁷³ Attachment: B: City of Palmdale, County of Los Angeles, CA, Ordinance No. 1373 AN ORDINANCE OF THE CITY OF PALMDALE, CALIFORNIA APPROVING ZONE CHANGE (ZC) 09-01 AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF PALMDALE, CALIFORNIA, BY RECLASSIFYING CERTAIN REAL PROPERTY HEREIN DESCRIBED AS ZONE CHANGE (ZC) 3106-009cv

different than the projects analyzed in the 1993 General Plan EIR and 1996 Business Park EIR. The City is required to prepare a new EIR to analyze the Project's potentially significant impacts.

D. Changed Project, Changed Circumstances and New Information Regarding the General Industrial Zoning Designation and LRV Manufacturing and Assembly Project Require Preparation of A Subsequent EIR

Even if the Project is not considered "new" as a matter of law, as explained above, the City is required to prepare a subsequent EIR. Here, the zoning designation and an LRV manufacturing and assembly facility and associated uses constitute a substantial change in the project and circumstances under which the project is undertaken, which will require major revisions of the previous EIRs due to the involvement of new or more severe significant effects. It also constitutes new information, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIRs were certified, showing that the Project will have one or more significant effects not discussed in the previous EIRs.

The Initial Study describes the Project Site as being designated Industrial (IND) in the General Plan and General Industrial (M-2) in the Zoning Ordinance. However, neither the 1993 General Plan EIR nor the 1996 Business Park EIR analyzed potentially significant impacts from these new land use and zoning designations, pursuant to CEQA. As explained above, it was not until 2009 that the City of Palmdale amended the General Plan land use designation for the entire 613.4-acre business park from Palmdale Business Park Specific Plan (SP-10) to Industrial (IN) under the guise of an early action related to the PHPP,⁷⁴ if the thermal power plant site and related facility will be the subject of an EIR. The City

09-01, A REQUEST TO AMEND THE ZONING DESIGNATION ON 613.4 ACRES FROM SP-10 (PALMDALE BUSINESS PARK SPECIFIC PLAN) TO M-2 (GENERAL INDUSTRIAL) LOCATED ON THE SOUTH SIDE OF AVENUE M, EAST OF SIERRA HIGHWAY AND THE UNION PACIFIC RAILROAD, WEST OF THE ALIGNMENT OF 15TH STREET EAST AND USAF PLANT 42, AND NORTH OF THE ALIGNMENT OF AVENUE M-12 AND USAF PLANT 42 (ZC 09-01), p. 4 (emphasis added).

(<http://docketpublic.energy.ca.gov/PublicDocuments/Regulatory/Non%20Active%20AFC's/08-AFC-9%20Palmdale%20Hybrid%20PP/2009/August/TN%2053028%2008-27-09%20E-mail%20Responses%20to%20New%20Data%20Request%20.pdf>)

⁷⁴ City of Palmdale Resolution No. CC 2009-041.

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specifically stated that “[a]ny future development proposed on the remaining portion of the site will be reviewed in the future as required by CEQA.”⁷⁵ The City also agreed that “any future development proposals will be evaluated for impacts to traffic and circulation, environmental resources, public services, safety, noise, and building design elements and will be modified accordingly to not have a substantial adverse impact on the surrounding properties.”⁷⁶

The current Project requires a General Industrial zoning designation, as opposed to the Light Industrial zoning designation that was analyzed in the 1996 Business Park EIR. The two different zoning designations have different allowable uses, which raise different environmental impacts. The Light Industrial zoning designation allows light manufacturing of transportation equipment, but only for motor vehicles and only where operations are conducted primarily indoors.⁷⁷ The General Industrial zoning designation, which is part of the Project, allows light to heavy manufacturing of transportation equipment, including for railroad equipment.⁷⁸ The General Industrial zoning designation allows for a full range of manufacturing associated with heavy industrial land uses, and outdoor operations and storage are permitted.⁷⁹

In the Initial Study, the City concludes that there are no new or more severe impacts from the industrial development and outdoor operations, because the

⁷⁵ Attachment C: Planning Department Report to City Council, Subject: General Plan Amendment (GPA) 09-01 and Zone Change (ZC) 09-01 generally located on the south side of Avenue M, east of Sierra Highway and the Union Pacific Railroad, west of the alignment of 15th Street East and USAF Plant 42, and north of the alignment of Avenue M-12 and USAF Plant 42, p. 5.

⁷⁶ City of Palmdale, County of Los Angeles, CA, Ordinance No. 1373 AN ORDINANCE OF THE CITY OF PALMDALE, CALIFORNIA APPROVING ZONE CHANGE (ZC) 09-01 AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF PALMDALE, CALIFORNIA, BY RECLASSIFYING CERTAIN REAL PROPERTY HEREIN DESCRIBED AS ZONE CHANGE (ZC) 09-01, A REQUEST TO AMEND THE ZONING DESIGNATION ON 613.4 ACRES FROM SP-10 (PALMDALE BUSINESS PARK SPECIFIC PLAN) TO M-2 (GENERAL INDUSTRIAL) LOCATED ON THE SOUTH SIDE OF AVENUE M, EAST OF SIERRA HIGHWAY AND THE UNION PACIFIC RAILROAD, WEST OF THE ALIGNMENT OF 15TH STREET EAST AND USAF PLANT 42, AND NORTH OF THE ALIGNMENT OF AVENUE M-12 AND USAF PLANT 42 (ZC 09-01), p. 4. (<http://docketpublic.energy.ca.gov/PublicDocuments/Regulatory/Non%20Active%20AFC's/08-AFC-9%20Palmdale%20Hybrid%20PP/2009/August/TN%2053028%2008-27-09%20E-mail%20Responses%20to%20New%20Data%20Request%20.pdf>)

⁷⁷ City of Palmdale Zoning Ordinance, Chapter 6, Article 61, sections 61.01, 61.02(A) and 61.05(A)(14).

⁷⁸ City of Palmdale Zoning Ordinance, Chapter 6, Article 62, sections 62.01, 62.02 and 62.04

⁷⁹ City of Palmdale Zoning Ordinance, Chapter 6, Article 62, Section 62.01.

Project would comply with permit requirements from other agencies, such as a National Pollutant Discharge Elimination System (NPDES) requirement from the Lahontan Regional Water Quality Control Board. The City fails to provide any evidence to support this conclusion.

CEQA requires the City's conclusions to be supported by substantial evidence.⁸⁰ Furthermore, the City must provide the reader with the analytic bridge between its ultimate findings and the facts in the record.⁸¹

The Project includes assembly of LRVs, an LRV manufacturing facility, development of a rail spur and an additional building. As is typical with LRV manufacturing facilities in the United States, rail spurs are required for testing LRVs and other uses.⁸² Furthermore, as is typical of LRV manufacturing facilities, outdoor operations and storage occurs.⁸³ Manufacturing and outdoor operations and storage result in significant impacts associated with increased stormwater runoff from impervious surfaces, increase exposure of soils to wind and water, runoff of constituents that could impact surface water quality and increased hazards and contamination, among other impacts. In fact, the City admits:

A variety of construction materials could be stored on a future project site and some of these could include constituents that could impact surface water quality conditions, such as fuels, lubricants, solvents, coatings, etc. Without proper construction controls, loose sediments and a variety of construction materials could be captured within runoff from the site and potentially threaten on-site water quality or downstream receiving waters. Post construction, impervious surfaces would increase due to site development, including road widening and a new building pad. As a result, there could be an increase in site runoff during storm events, compared to current conditions.⁸⁴

The City's reliance on compliance with NPDES permits and other regulation lacks foundation because it fails to disclose and evaluate how compliance with these

⁸⁰ CEQA Guidelines §§ 15162 (a), 15164(e), and 15168(c)(4).

⁸¹ *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506.

⁸² See, i.e. <http://solanoedcpressreleases.blogspot.com/2009/06/may-2009-table-of-contents-real-estate.html>; http://articles.chicagotribune.com/2012-07-20/business/ct-biz-0720-metra-new-illinois-plant-20120720_1_rail-cars-nippon-sharyo-new-cars.

⁸³ IS, pp. 36-37.

⁸⁴ IS, pp. 36-37.

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permits and regulations will result in no new or more severe significant impacts than identified in the 1996 Business Park EIR. Substantial evidence shows that the new zoning designation and Project will result in new or more severe significant impacts requiring preparation of a subsequent EIR.

E. Changed Circumstances, New Information and Different Mitigation Measures Regarding Air Quality and Public Health Require Preparation of a Subsequent EIR

Since the City certified the 1996 Business Park EIR (and 1993 General Plan EIR), new information and changed circumstances regarding air quality in Antelope Valley and new state and federal air quality laws and regulations has become available requiring subsequent review of air quality and public health impacts. In addition, mitigation measures, which are considerably different than those considered in the previous EIRs, is feasible and would reduce significant impacts. Therefore, the City is required to prepare a new or subsequent EIR. The attached comments of Dr. Petra Pless provide substantial evidence regarding these changed circumstances, new information and different mitigation measures and are incorporated herein.⁸⁵ Some of the issues raised by Dr. Pless are also discussed below.

In a remarkably similar case addressing the issue of “new information,” a California Court of Appeal specifically concluded that “the possibility of substantially increased health risk from toxic emissions” constituted new information requiring subsequent environmental review.⁸⁶ In that case, Security Environmental Systems challenged the air district’s decision to require subsequent environmental review (after it had previously approved a negative declaration) for a hazardous waste incineration facility. The Court concluded that the air district properly found that new information required subsequent environmental review, pursuant to CEQA. In discussing the nature of the new information, the Court found:

[T]he air district did not rely on any single piece of “new information” to reach its conclusion that construction of a hazardous waste incineration facility would potentially emit significant amounts of toxic

⁸⁵ Attachment A: Pless Comments.

⁸⁶ See *Security Environmental Systems, Inc. v. South Coast Air Quality Management District* (“*Security Environmental Systems, Inc.*”) (1991) 229 Cal.App.3d 110, 125, 280 Cal.Rptr. 108, 115. 3106-009cv

emissions. “As a result of an accumulation of information from various sources over a period of time the District became concerned with the possibility of a substantially higher risk to the health of the persons who would be subject to the emissions from the hazardous waste incinerator. The “new information” included CARB source test reports and an EPA cosponsored conference on hospital waste incinerators.”⁸⁷

The Court also noted that “[i]f the emissions were substantially higher there would be a much more significant cancer risk associated with the proposed incinerator than previously assumed. This information and the associated substantially increased risk would meet the criteria set forth in [the CEQA Guidelines].”⁸⁸

The Court found that “the availability of new emission control technology which may lessen that risk constitutes new information requiring an EIR to set forth the **present** significant environmental effects of the proposed project and any mitigating measures to minimize the significant environmental effects and alternatives to the proposed project.”⁸⁹ The Court concluded that under CEQA Guidelines Section 15162, “mitigation measures and alternatives not previously considered in the negative declaration would substantially lessen one or more significant effects upon the environment.”⁹⁰ The Court noted that previously infeasible mitigation was now feasible:

[N]ew information is available in the form of technology for controlling acid gases, particulates and their associated dioxins and furans. It has further been determined that a previously known [emission] control system is now cost effective due to new information, thus qualifying its use on hazardous waste incinerators as technologically feasible [best available control technology].⁹¹

Thus, new information raising the possibility of substantially increased health risk and the availability of new emission control technology which may lessen that risk require subsequent environmental review under CEQA.

⁸⁷ *Id.* At 124.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* At 124-125.

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**1. After 1996, The California Air Resources Board
Designated Diesel Particulates as a Toxic Air
Contaminant**

Dr. Petra Pless reviewed the Initial Study and previous EIRs and concludes that new information shows that the Project will result in significant impacts from diesel exhaust requiring preparation of a subsequent EIR.⁹² The Project will result in emissions from diesel combustion from construction equipment and from deliveries by ships and trucks.

i. New Information Regarding Designation

On August 27, 1998, after extensive scientific review and public hearing, the California Air Resources Board (“CARB”) formally identified particulate emissions from diesel-fueled engines as a toxic air contaminant (“TAC”). In May 2002, the U.S. EPA, after another exhaustive review, concluded that “long-term (*i.e.*, chronic) inhalation exposure is likely to pose lung cancer hazard to humans, as well as damage the lung in other ways depending on exposure. Short-term (*i.e.*, acute) exposures can cause irritation and inflammatory symptoms of a transient nature... The assessment also indicates that evidence for exacerbation of existing allergies and asthma symptoms is emerging.”⁹³

Because diesel particulates were not a designated TAC in 1996, the 1996 Business Park EIR did not quantify emissions from all sources of diesel particulates associated with the project or analyze the extent of public health impacts from all sources of diesel emissions. For example, the 1996 Business Park EIR did not include a detailed analysis of impacts from all sources of diesel particulates, including, but not limited to, diesel exhaust emissions from vessels transporting LRV parts to the United States.

The Initial Study also does not mention diesel particulate matter and, thus, fails to analyze the potential health impacts of combustion exhaust emissions from the diesel-powered construction fleet, trucks and other vehicles. These analyses are outdated in light of new information that diesel particulates, from any source, constitute a TAC.

⁹² Attachment A: Pless Comments.

⁹³ U.S. Environmental Protection Agency, Health Assessment Document for Diesel Engine Exhaust, EPA/600/8-90/057F, May 2002.

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ii. New Information Regarding Significant Public Health Impacts

In 1996, the City did not know, and could not have known, that a detailed analysis of diesel particulate emissions was necessary. Dr. Pless explains that “[l]agging emission standards and very old equipment in the fleet have made construction equipment one of the largest sources of toxic diesel particulate matter (soot) pollution in California. An estimated 70% of California’s construction equipment is currently not covered by federal and state regulations because it is too old.”⁹⁴ Also, “[c]louds of soot emitted with the exhaust from construction equipment can travel downwind for miles, then drift into heavily populated areas.”⁹⁵

Dr. Petra Pless provides substantial evidence from numerous sources that diesel exhaust is a serious public health concern.⁹⁶ Dr. Pless explains that diesel exhaust is a complex mixture of gaseous and solid materials. The visible emissions in diesel exhaust are known as diesel particulate matter (“DPM”), which includes carbon particles or “soot.” Diesel exhaust has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death. Fine diesel particles are deposited deep in the lungs and can result in increased respiratory symptoms and disease; decreased lung function, particularly in children and individuals with asthma; alterations in lung tissue and respiratory tract defense mechanisms; and premature death.⁹⁷

As mentioned above, neither the previous EIRs nor the Initial Study assess the Project’s significant impacts on air quality from DPM. This conclusion is outdated in light of new information regarding significant public health impacts from diesel particulates, which was not considered in the previous EIRs.

⁹⁴ Attachment A: Pless Comments.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Attachment A: Pless Comments.

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iii. New Information Regarding Available Mitigation Measures To Reduce Air Quality and Public Health Impacts from Diesel Particulates

Again, because diesel particulates were not a designated TAC in 1994, the 1996 Business Park EIR did not propose all feasible mitigation measures to reduce potentially significant air quality and public health impacts from diesel particulates. Mitigation measures that are different than those analyzed in the 1996 Business Park EIR include use of cleaner fuel, add-on control devices, and conversion to cleaner engines, all of which could reduce the Project's significant impacts from DPM emissions.⁹⁸ Other public agencies, such as the California Energy Commission, have routinely required these measures to mitigate diesel exhaust impacts.

Given the substantial and new information in listing diesel particulates as a TAC and about the harmful public effects of diesel exhaust, CEQA requires subsequent environmental review to assess the health risks from these emissions. Also, in light of new information regarding feasible mitigation measures, the City should evaluate potentially significant impacts and identify feasible mitigation measures to reduce impacts to a less than significant level.

2. New Information Concerning Sensitive Receptors across the Street from the Project Site

The Initial Study does not provide an update regarding sensitive receptors near the Project Site and does not analyze Project impacts on new receptors that were not previously considered. Since the 1996 Business Park EIR was certified, the City has grown and new sensitive receptors have located close to the Project Site. For example, the Lancaster Adult Day Center at 42020 4th Street E is located directly across the Street from the Project Site.⁹⁹ Dr. Pless explains that the proximity of the Lancaster Adult Day Care Center in particular raises serious concerns. The AVAQMD 2011 CEQA and Federal Conformity Guidelines require that CEQA review for industrial project within 1000 feet include an evaluation whether it would exposes sensitive receptors to a cancer risk greater than or equal to 10 in a million and/or a hazard index (non-cancerous) greater than or equal to

⁹⁸ BAAQMD 12/99, p. 60.

⁹⁹ See Google maps at

<https://www.google.com/maps/search/Lancaster+Adult+Day+Center/@34.648512,-118.0970296,14z>.
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1¹⁰⁰, thus, requiring a health risk assessment for the Project. The Initial Study provides no such analysis. Therefore, new information concerning sensitive receptors shows that the Project will result in significant impacts that have not been analyzed.

F. Changed Circumstances, New Information and Different Mitigation Measures Regarding Water Supplies Require Preparation of a Subsequent EIR

1. The City Failed to Prepare a Water Supply Assessment

State law requires the City to prepare a Water Supply Assessment (“WSA”) for the Project, which was not done in this case. The City’s failure to prepare a WSA violates both the Water Code and CEQA.

When a project meets the criteria defined in section 10912 of the Water Code and is subject to CEQA, a WSA is required.¹⁰¹ Water Code section 10912 defines “project” as a proposed industrial, manufacturing, or processing plant occupying more than 40 acres of land or having more than 650,000 square feet of floor area.¹⁰²

In *Center for Biological Diversity v. County of San Bernardino*, the court found that the County’s EIR did not include a WSA as required under section 10910 and the information about the availability of water for a proposed composting facility was “pure speculation.”¹⁰³ The EIR stated that the project would either use well water, water trucked onto the site, or a combination of these sources, and there was no analysis of actual water availability.¹⁰⁴ The Court held that the County’s speculative assessment of water resources for the composting facility harkened back to the days where water availability was addressed after, rather than before, new construction.¹⁰⁵ The Court also found that the composting facility qualified as a “project” under Water Code section 10912.¹⁰⁶ The Court rejected the Applicant’s assertion that section 10912 only applies to “large scale buildings located on large

¹⁰⁰ Attachment A: Pless Comments.

¹⁰¹ Water Code § 10912; Pub. Res. Code §21151.9.

¹⁰² *Id.* at § 10912, subd. (a)(5).

¹⁰³ *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 888. (hereafter *Center for Biological Diversity*).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at p. 24.

¹⁰⁶ See *id.*

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square footage or plots of land.”¹⁰⁷ The open-air composting facility qualified as a project because it met the acreage threshold, even if the structures on the site were small.¹⁰⁸

Kinkisharyo’s Phase I assembly buildings and proposal to build and operate a LRV manufacturing and assembly facility, an additional building and rail spur qualifies as a “project” under Water Code section 10912. The whole Project is comprised of at least the following elements:

- Phase I of the Project is an assembly facility located at Hangar 704 and Building 702 at U.S. Air Force Plant 42, Site 9, 2825 East Avenue P in Palmdale. The leased premises consist of 252,177 square feet of building space and common space for vehicular movement and parking.¹⁰⁹ There is no indication of how many acres the facility is comprised of.
- Phase II of the Project is a request to develop a manufacturing/ assembly use consisting of one building totaling 427,507 square feet on approximately 35 acres of a 67.75 acre site. Phase II also includes expansion of the manufacturing and assembly use with a second building and the installation of a rail spur off of the Union Pacific Railroad.¹¹⁰ The Initial Study does not disclose the square footage or acreage of the additional building and rail spur.

Based on the information available to date, the whole Project is a “project” within the meaning of section 10912 of the Water Code because it is an industrial manufacturing facility that meets the 650,000 square footage threshold¹¹¹ and, presumably, the 40-acre acreage threshold, either of which alone trigger the requirement to prepare a WSA.¹¹²

The City was required to prepare a WSA and include it with the Initial Study prepared for the Project. The City failed to do so. The City must now prepare a

¹⁰⁷ *Id.* at p. 25.

¹⁰⁸ *Id.*

¹⁰⁹ Report to the Board of Airport Commissioners, Subject: Lease with Kinkisharyo International, LLC and Rental Rates for Facilities at Palmdale Land Holdings, p.2 (http://clkrep.lacity.org/online/docs/2014/14-0707_misc_5-28-14.pdf)

¹¹⁰ IS, p. 3.

¹¹¹ 252,177 + 427,507 = 679,684 square feet of industrial/manufacturing facilities.

¹¹² 427,507 square feet/ 35 acres = 252,177/x; x = 21 acres; 21 acres + 35 acres = 56 acres.

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WSA and include it in a subsequent EIR for the Project.¹¹³ The WSA must specifically identify the Project's proposed water demand,¹¹⁴ which is not disclosed in the Initial Study, and show that water is available to serve the Project. A complete description of the Project's water demand includes the amount of water needed for construction and the amount of water needed for operation/maintenance, as well as the amount of water that would be stored onsite for fire suppression and other uses. The WSA must also provide detailed information about the source and availability of water that would be used to meet these demands. If the water supply for the proposed project includes groundwater, the WSA must describe the groundwater basin, how much water will be pumped from the basin, where the pumping will occur and the sufficiency of groundwater supplies.¹¹⁵ The WSA must also identify any existing water supply entitlements, water rights, or water service contracts.¹¹⁶ The WSA is intended "to assist local governments in deciding whether to approve the projects."¹¹⁷

To date, the City has provided none of this information in a WSA or in the Initial Study or previous EIRs. Therefore, as proposed, the City's approval of the Project would clearly violate the Water Code and CEQA.

2. New and More Severe Significant Impacts on Water Supplies

Regardless of whether or not a WSA is required, the Initial Study's and previous EIR's analysis of the Project's impacts on water supplies is inadequate under CEQA. As explained above, the project description and analysis in the Initial Study fail to state how much water the Project proposes to consume. Despite this lack of information, the Initial Study assumes that some amount of water will be used and claims that groundwater impacts identified in the previous EIR remain significant and unavoidable. The Initial Study also concludes that impacts from the lack of sufficient water available to serve the Project from existing entitlements and resources and the need for new or expanded entitlements are less than significant. The Initial Study is devoid of any support for its conclusions.

¹¹³ *Id.* at § 10911(b).

¹¹⁴ See *id.* at § 10910.

¹¹⁵ *Id.* at § 10910, subd. (f).

¹¹⁶ *Id.* at § 10910, subd. (d).

¹¹⁷ *O.W.L. Foundation v. City of Rohnert Park* (2008) 168 Cal.App.4th 568, 576.
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Substantial evidence show that substantial changes have occurred with respect to the circumstances under which the Project is undertaken which will require major revisions of the previous EIRs due to the involvement of new or more severe significant impacts on groundwater supplies and from the lack of sufficient water supplies available to serve the Project from existing entitlements and resources and the need for new or expanded entitlements. Furthermore, substantial evidence shows that new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIRs were certified as complete shows (a) the project will have significant effects from the lack of sufficient water supplies available to serve the Project from existing entitlements and resources and the need for new or expanded entitlements, which were not discussed in the previous EIR, (b) significant effects on groundwater resources that were previously examined will be substantially more severe than shown in the previous EIRs, and (c) mitigation measures, which are considerably different from those analyzed in the previous EIRs, such as the use of recycled water, would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure.¹¹⁸

i. More Severe Impacts on Groundwater Supplies and New Mitigation Measures

The Initial Study states that water would be provided from L.A. County Waterworks District No. 40 ("District No. 40"), which may utilize existing groundwater wells. The Initial Study states that the previous EIR found this to be a significant and unavoidable impact on groundwater supplies, required no further mitigation and claimed that there are no new or more severe impacts.¹¹⁹ The Initial Study fails to comply with CEQA.

CEQA requires the City to assess whether a change in circumstances or new information shows that significant and unavoidable impacts are more severe than shown in the previous EIR. CEQA also requires the City to determine whether there are additional mitigation measures, previously found not to be feasible or which are different than previously considered, which would reduce the impacts on water supplies. The City failed to conduct the required analysis.

¹¹⁸ CEQA Guidelines § 15162(a)(1)-(3).

¹¹⁹ Initial Study, p. 38.

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District No. 40 supplies retail water service to customers within its service territory. The sources of water supply include the native groundwater supply and imported water supply, which Antelope Valley-East Kern Water Agency ("AVEK") has obtained from the State Water Project for delivery to retail water purveyors, such as District No. 40. However, the native groundwater supply available to District No. 40 is limited in amount and is the subject of a pending adjudication involving "scores of other parties who claim the right to a portion of that limited groundwater supply."¹²⁰ None of this information was disclosed by the City in the Initial Study.

Furthermore, the imported water supply available to District No. 40 from AVEK is likewise limited. According to one recent presentation by District No. 40, there are a substantial number of lots awaiting water service.¹²¹ In the City of Lancaster, 13,315 lots were awaiting water service, with a projected annual water demand of 16,000 acre-feet.¹²² In the City of Palmdale, 16,313 lots were awaiting water service, with a projected annual demand of 19,600 acre-feet.¹²³ In unincorporated areas, 38 lots are awaiting service, with a projected annual water demand of 50 acre-feet.¹²⁴

Depending upon the results of the pending adjudication, District No. 40 believes that "the total combined water supply available to [the District] from native groundwater sources and from imported water sources is insufficient to satisfy existing water service commitments within its service area."¹²⁵ Thus, the District cannot make additional commitments to provide water to additional customers unless arrangements are made to obtain additional imported water supplies to service the additional demand.¹²⁶

¹²⁰ Memorandum of Understanding between Antelope Valley-East Kern Water Agency and Los Angeles County Waterworks District No. 40, Antelope Valley, for New Water Supplies (2013) (hereinafter "MOU"), Para. B (Attachment E) (hereinafter "Attachment E: MOU").

¹²¹ Los Angeles County Waterworks District No. 40, Antelope Valley, Dan Efstathiou, Deputy Director, County of Los Angeles, Department of Public Works power point presentation. (http://webcache.googleusercontent.com/search?q=cache:oe9LGRGUWcYJ:web.scag.ca.gov/wptf/pps/wptf120904_DeanEfstathiou.ppt+&cd=1&hl=en&ct=clnk&gl=us).

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ MOU.

¹²⁶ MOU

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In sum, there are changed circumstances and substantial new information showing that the Project's significant impacts on groundwater resources will be even more severe. However, new mitigation measures, which are different than those previously considered, will reduce significant impacts to groundwater. Specifically, the Project can use recycled water to reduce the Project's significant groundwater impacts. This new mitigation measure must be considered in the City's subsequent EIR for the Project.

ii. New Significant Impacts From the Lack of Sufficient Water Supplies Available to Serve the Project from Existing Entitlements and Resources and the Need for New or Expanded Entitlements

The City's determination that water can be provided from L.A. County Waterworks District No. 40, which may utilize existing groundwater wells, is pure speculation. As the Initial Study acknowledges, in 2008, District 40 determined that water supply limits for existing and committed water demands were effectively reached.¹²⁷ Yet, the Initial Study summarily concludes that the Project will result in a less than significant water supply impact from the lack of sufficient water supplies available to serve the Project from existing entitlements and resources and the need for new or expanded entitlements. The basis for the City's finding is that the Project will comply with local ordinances and will secure new water to meet its annual demands through a process established in an Memorandum of Understanding between District 40 and AVEK.¹²⁸ However, District 40 secured an MOU with AVEK in an effort to secure new water entitlements.¹²⁹ The MOU's process is to obtain a new entitlement. Therefore, new information shows that the Project will result in a new significant impact under CEQA.

A significant percentage of District No. 40's water supply is imported from the State Water Project ("SWP") via the Antelope Valley-East Kern Water Agency ("AVEK"), but this allocation is not fully reliable. In 2013, AVEK received only 49,490 of its 141,400 acre-foot allocation from the SWP.¹³⁰

¹²⁷ Initial Study, p. 59.

¹²⁸ *Id.*

¹²⁹ Attachment E: MOU.

¹³⁰ Water Supply Report prepared for RE Clearwater and RE Yakima Projects, Kern County (August 2013), p. 16.

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On September 3, 2013, the County of Los Angeles Department of Public Works sought the County Board of Supervisors approval of an MOU between AVEK and District No. 40 for new water supplies.¹³¹ According to the County, “the District does not have sufficient reliable water supply to serve additional developments within and adjacent to its service boundaries.”¹³² Furthermore, the District “cannot directly hold new water supplies from the State Water Project. That right is reserved by contract to the State Water Project contractors, one of which is AVEK.”¹³³ The Department urged the County to approve the MOU because it would “provide the legal basis for contracting with AVEK to purchase, hold, and deliver new water supplies to the District, separate and apart from supplies provided by AVEK’s current entitlement of 141,400 acre-feet per year.”¹³⁴

The MOU would purportedly allow District No. 40 to continue issuing Will Serve Letters to developers because it provides a framework for the District and AVEK “to work together to secure the water supplies necessary to meet the District’s present and future water demands.”¹³⁵ Prior to obtaining a Will Serve Letter, development applicants would be required to submit a request to the District, and the District would identify the local water resources available to the address the anticipated water demand for the connections sought by the applicant, which may include recycled water, or such other local resources that the District determines are acceptable.¹³⁶ Development applicants must also submit a deposit, set at \$10,000 per acre-foot in 2013, to purchase needed water supply and enter into a water supply agreement with the District.¹³⁷ AVEK would use these funds to negotiate and execute a contract for additional Table A water or other permanent water supplies that would be allocated to the District for use in providing water service to the developer’s project and for “AVEK’s cost of completing the environmental assessment under the California Environmental Quality Act and the National Environmental Policy Act (if required)...”¹³⁸ Upon receipt of the deposit, AVEK would confirm its commitment to acquiring the additional requested water supplies and the District may then commit to provide water service to the

¹³¹ Attachment E: MOU.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

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development applicant.¹³⁹ AVEK will undertake all steps to identify and purchase additional State Water Project Table A amounts or other water supply entitlements in the amounts requested, but “AVEK cannot guarantee success.”¹⁴⁰ Thus, the MOU process involves obtaining a new entitlement – a significant impact under CEQA. None of this information was disclosed by the City in the Initial Study.

Substantial evidence shows that the Project will result in new significant impacts from the lack of sufficient water supplies available to serve the Project from existing entitlements and resources and the need for new or expanded entitlements

iii. More Severe Significant Impacts Due to California's Drought Conditions

The Initial Study entirely fails to analyze the Project's impacts in light of the increasing drought conditions in California, which also affect Antelope Valley groundwater supplies and the availability of State Water Project water.

The West is experiencing a historic drought.¹⁴¹ According to the latest report from the U.S. Drought Monitor, which is produced in partnership between the National Drought Mitigation Center at the University of Nebraska, Lincoln, the U.S. Department of Agriculture (“USDA”), and the National Oceanic and Atmospheric Administration (“NOAA”), the entire state is experiencing at least a severe drought.¹⁴² There are five categories listed on the U.S. Drought Monitor, ranging in order of severity from abnormally dry, moderate drought, severe drought, extreme drought and exceptional drought.¹⁴³ About 78 percent of California is experiencing extreme drought; Los Angeles County is included in that category. To put that number into perspective, zero percent of the state was experiencing extreme drought one year earlier.¹⁴⁴

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ The National Drought Mitigation Center, U.S. Drought Monitor, National Drought Summary for July 9, 2014; <http://droughtmonitor.unl.edu/Home/Narrative.aspx>.

¹⁴² The National Drought Mitigation Center, U.S. Drought Monitor, July 9, 2014; <http://droughtmonitor.unl.edu/Home/StateDroughtMonitor.aspx?CA>.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

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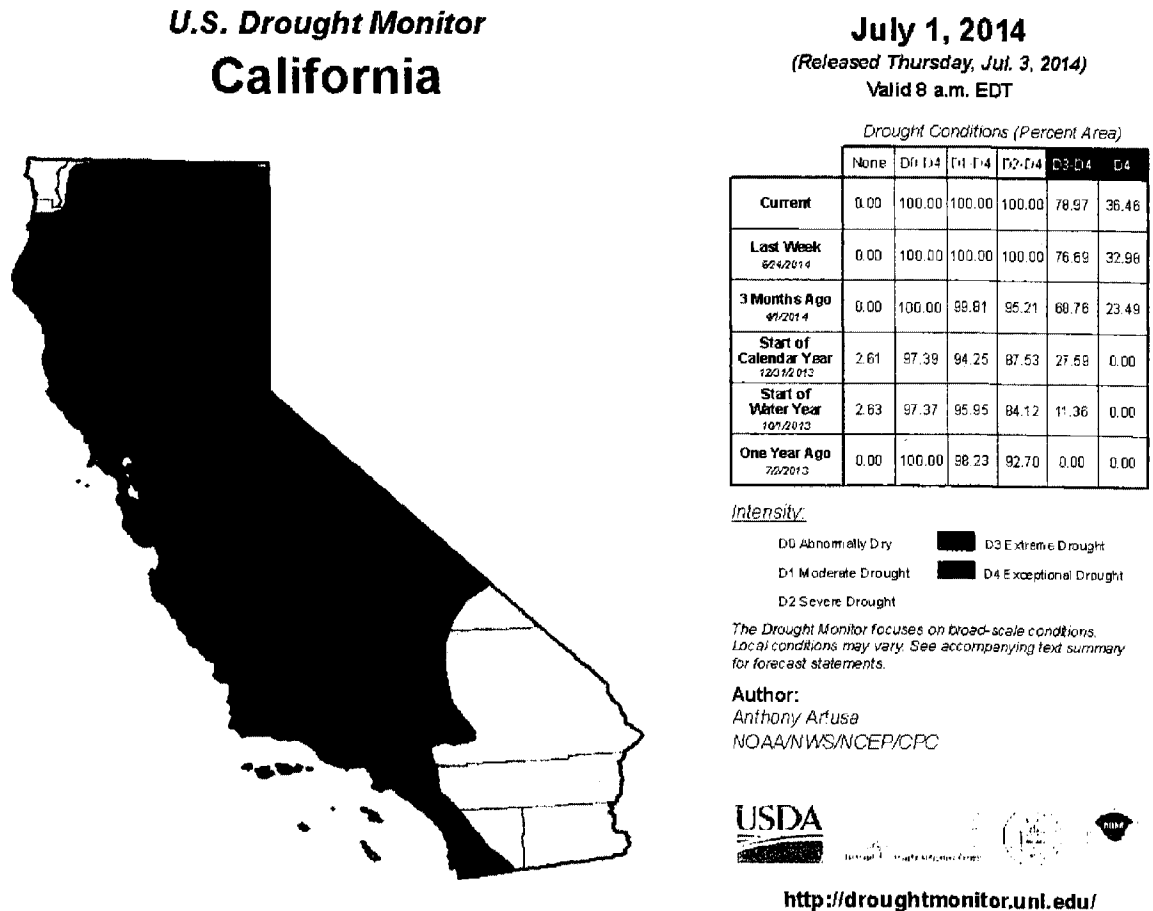


Figure 1: Drought status in California

From: The National Drought Mitigation Center, U.S. Drought Monitor, California, July 9, 2014; <http://droughtmonitor.unl.edu/Home/StateDroughtMonitor.aspx?CA>

Neither the previous EIRs nor the Initial Study address these changed circumstances and new information showing that the Project will have a more severe significant impact on water supplies, triggering the legal requirement to prepare a subsequent EIR.

G. New or More Severe Impacts on Public Health from the Current Valley Fever Epidemic Require Preparation of a Subsequent EIR

The Initial Study and previous EIRs completely fail to describe and analyze the potential presence of *Coccidioides immitis* (cocci), a fungus which causes Coccidioidomycosis, commonly known as Valley Fever, in the Project soils and the Project's significant impacts on public health from dispersal of the fungus during construction and operation of the Project. Consequently, no mitigation is required to limit the public's or workers' potential exposure to cocci, even though feasible mitigation is readily available. The current Valley Fever epidemic constitutes a change in circumstances and new information within the meaning of CEQA Guidelines section 15162, triggering the requirement to prepare a subsequent EIR. The availability of feasible mitigation measures, which are different than those measures analyzed in the previous EIRs and would reduce significant public health impacts, also triggers the requirement to prepare a subsequent EIR.

Dr. Pless explains that spores, or arthroconidia, are released into the air when infected soils are disturbed, *e.g.*, by construction activities, agricultural operations, dust storms, or during earthquakes.¹⁴⁵ The disease is endemic (native and common) in the semiarid regions of the southwestern United States.¹⁴⁶ Dr. Pless provides a figure illustrating that the Antelope Valley, including the Project site, is located squarely within the established endemic range of Valley Fever.¹⁴⁷ In the past few years, the disease has become an increasing concern for health officials in the U.S., California, and Los Angeles County.¹⁴⁸

Dr. Pless provides substantial new information regarding the devastating public health impacts from contracting Valley Fever. According to Dr. Pless, typical symptoms of Valley Fever include fatigue, fever, cough, headache, shortness of breath, rash, muscle aches, and joint pain. Symptoms of advanced Valley Fever include chronic pneumonia, meningitis, skin lesions, and bone or joint infections and can lead to death.¹⁴⁹ According to a journal article published in 2012, between

¹⁴⁵ Attachment A: Pless Comments.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

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1990 and 2008, more than 3,000 people have died in the United States from Valley Fever with about half in California.¹⁵⁰

Dr. Pless provides substantial evidence that, while Valley Fever has been recognized as a disease for decades, “it was not an established or reasonably foreseeable concern as a wide-spread problem that needed analysis and mitigation when the 1996 Business Park EIR was certified. Dr. Pless explains, in detail, substantial changes in the circumstances since the prior EIRs were certified over 18 years ago, which require major revisions of the previous EIRs due to the involvement of new significant public health impacts that have not been analyzed by the City. In particular, Dr. Pless provides substantial evidence that, in recent years, reported Valley Fever cases, particularly in the Southwest, have increased dramatically.¹⁵¹ The U.S. Centers for Disease Control and Prevention documented a tenfold increase in reported cases from 1998 to 2011 and, by 2007, “the rate of diagnosis for Valley Fever had consistently surpassed the rate of diagnosis for West Nile Virus, Hepatitis B, Streptococcal infections, Tuberculosis and Whooping cough and is now on par with Lyme disease and HIV and is not far from Salmonellosis and Syphilis.”¹⁵²

Dr. Pless also summarizes recent reports on Valley Fever in Los Angeles County, and in Antelope Valley in particular. A report prepared by the Los Angeles County Department of Public Health shows that, since 2000, there have been two 4-year time periods in which 19 of the 24 health districts of the County of Los Angeles have had at least a 100% increase in Valley Fever cases. In 2010, while the Los Angeles County-wide average was 2.4 reports per 100,000 people, the Antelope Valley rate was 23.1 per 100,000, 10 times higher, and the rate has been increasing.¹⁵³ Since about 2000, the rate of diagnosis has gone up dramatically and the current situation is characterized as an epidemic.¹⁵⁴

Dr. Pless summarizes new reports and studies showing that the populations that are at-risk for contracting Valley Fever include those that live, work and recreate in Antelope Valley. Dust exposure, such as that caused by the Project’s

¹⁵⁰ *Id.*, citing Jennifer Y. Huang, Benjamin Bristow, Shira Shafir, and Frank Sorvillo, Coccidioidomycosis-associated Deaths, United States, 1990–2008; <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3559166/>.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

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grading, construction and operation, is one of the primary risk factors for contracting Valley Fever.¹⁵⁵ Specific occupations and outdoor activities associated with dust generation, such as construction, farming, road work, military training, gardening, hiking, camping, bicycling, or fossil collecting, increase the risk of exposure and infection.¹⁵⁶ Other risk factors include diabetes, malnutrition and socioeconomic status. Dr. Pless provides evidence that these significant risks are real: “One study reported that at study sites, “generally 50% of the individuals who were exposed to the dust or were excavating dirt at the sites were infected.”¹⁵⁷ Finally, Dr. Pless explains that the potentially exposed population is hundreds of miles away because the very small spores can travel as much as 500 miles.¹⁵⁸ In addition to the Lancaster Adult Day Center located directly across the street from the Project Site¹⁵⁹ there are thousands of homes within a 500 mile radius.

Dr. Pless also provides substantial evidence that the current drought conditions could increase the incidence of Valley Fever, which provides an opportunity for feasible mitigation. According to Dr. Pless,

during drought years the number of organisms competing with *Coccidioides ssp.* decreases and the fungus remains alive but dormant. When rain finally occurs, the arthroconidia germinate and multiply more than usual because of a decreased number of other competing organisms. When the soil dries out in the summer and fall, the spores can become airborne and potentially infectious.[] The current severe drought conditions throughout California, officially declared as a State of Emergency by Governor Brown on January 17, 2013[], may well further increase the occurrence of Valley Fever cases. Thus, major onsite and offsite soil-disturbing construction activities should be timed to occur outside of a prolonged dry period. After soil-disturbing activities conclude, all disturbed soils should be sufficiently stabilized to prevent air-borne dispersal of cocci spores.¹⁶⁰

Dr. Pless goes on to explain that no project design features, conditions of approval or mitigation measures have been required by the City that would

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ PHPP, Final Staff Assessment, p. 4.5-32; App. G-7.

¹⁶⁰ Attachment A: Pless Comments (internal footnotes omitted).

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mitigate the Project's health impacts from Valley Fever to a less than significant level. Dr. Pless provides an in-depth discussion of why the City's standard design features and condition of approvals (including the AVAQMD Rule 403) associated with dust control are insufficient to mitigate the Project's health impacts from Valley Fever to a less than significant level. In short, Dr. Pless explains that conventional dust control measures are inadequate to address potentially significant impacts from exposure to Valley Fever spores because they focus on visible dust. According to Dr. Pless,

visible dust is only an indicator that *Coccidioides ssp.* spores may be airborne in a given area. Freshly generated dust clouds usually contain a larger proportion of the more visible coarse particles. However, these larger particles settle more rapidly and the remaining fine respirable particles may be difficult to see.

Spores of *Coccidioides ssp.* have slow settling rates in air due to their small size (2 to 5 micrometers), low terminal velocity, and possibly also due to their buoyancy, barrel shape and commonly attached empty hyphae cell fragments.[] Thus spores, whose size is well below the limits of human vision, may be present in air that appears relatively clear and dust free. Such ambient, airborne spores with their low settling rates can remain aloft for long periods and be carried hundreds of kilometers from their point of origin. Thus, implementation of dust control measures only when visible dust is present will not provide sufficient protection for both site workers and the general public.¹⁶¹

Mitigation measure which are considerably different from those analyzed in the previous EIRs would substantially reduce the Project's significant impacts on public health from Valley Fever. These measures should be evaluated in a new or subsequent EIR for the Project. Dr. Pless concludes her comments with a strong recommendation that the City impose mitigation measures specific to preventing exposure to *C. immitis* spores. Dr. Pless provided an extensive list of mitigation measures specific to preventing or reducing the risks of Valley Fever, which were developed by State and county agencies (including the California Department of Public Health, the California Department of Industrial Relations, the Kern County

¹⁶¹ Attachment A: Pless Comments (internal footnote omitted).
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Public Health Services Department and the San Luis Obispo County Public Health Department) and based on scientific studies.¹⁶²

Dr. Pless concludes that all of the health-protective measures are feasible for the Project and should be required in an enhanced dust control plan to reduce the risk for construction workers, on-site employees and off-site receptors of contracting Valley Fever.¹⁶³ However, Dr. Pless also concludes that, even if all the feasible mitigation measures were adopted, the risk cannot be mitigated to a level below significance and would therefore require a Statement of Overriding Considerations by the City.¹⁶⁴

H. New and More Severe Significant Impacts to Biological Resources and Different Feasible Mitigation Measures Require Preparation of a Subsequent EIR

The Initial Study, 1996 Business Park EIR and 1993 General Plan EIR fail to recognize changed circumstances and new information showing new and more severe significant impacts on biological resources, including desert tortoise, Swainson's hawk, special status plants, burrowing owl, Joshua tree woodland, and Mohave ground squirrel, among others. The documents also fail to acknowledge that previously required mitigation measures are now obsolete. Finally, the documents fail to recognize mitigation measures that are different than previously considered and will reduce significant impacts. As a result, the City must prepare a subsequent EIR.

As a preliminary matter, the Initial Study incorrectly states the findings made in the 1996 Business Park EIR. According to the Initial Study's discussion of biological resources:

The EIR identified the removal of approximately 600 acres of plant communities and wildlife habitat during grading and construction activities as a significant impact. Four mitigation measures were identified which would mitigate the potential impacts to sensitive or special status species *to a less than significant level*, including compliance with the City's Native Desert Preservation Ordinance and

¹⁶² Attachment A: Pless Comments.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

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obtaining appropriate permits from California Department of Fish and Wildlife (see Appendix A for complete listing).¹⁶⁵

However, the 1996 Business Park EIR *did not* conclude potential impacts would be mitigated to a less than significant level. To the contrary, it concluded “[t]he biological impacts of the proposed project would remain significant after the implementation of the recommended mitigation measures.”¹⁶⁶ Therefore, the Initial Study fails to accurately disclose the City’s findings in the previous EIR that the City relies upon.

1. Obsolete Mitigation Measures Constitute Substantial Changes in Circumstances and New Information Showing Significant Impacts Are More Severe

According to expert biologist Scott Cashen, three out of the four mitigation measures identified in 1996 Business Park EIR are now obsolete.¹⁶⁷ This is a change in circumstances and new information within the meaning of CEQA Guidelines section 15162(a)(2) and (3) showing that the Project will result in more severe significant impacts than previously identified. The four mitigation measures were:

1. Modifying development to accommodate two Joshua Tree Preservation Areas (Zones A and B), and a Joshua Tree Restoration Area (Zone C).
2. Retaining large expanses of desert scrub vegetation wherever possible.
3. Encouraging the planting of drought resistant native shrubs and trees around the proposed buildings and golf course to minimize water usage and to promote quality wildlife habitat.
4. Having the Project proponent ascertain and comply with any applicable requirements of the USFWS and CDFW.

Mr. Cashen explains that, with respect to mitigation #1, not only are the two Joshua Tree Preservation Areas and the Joshua Tree Restoration Area no longer a part of the Project, but those areas have been approved for development of the

¹⁶⁵ IS, p. 22 (emphasis added).

¹⁶⁶ Palmdale Business Park EIR, p. 3-46.

¹⁶⁷ Letter from Scott Cashen, M.S., Senior Biologist to Tanya A. Gulesserian, Subject: Comments on the Initial Study Prepared for the Kinkisharyo Manufacturing Facility Project: Site Plan Review 14-003 (Attachment D) (hereinafter “Attachment D: Cashen Comments”).

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Palmdale Hybrid Power Project.¹⁶⁸ With respect to mitigation #2, Mr. Cashen found that the Initial Study is contradicted by the Biological Resources Assessment, which indicates that the entire Project area will be graded.¹⁶⁹ Mr. Cashen also concludes that “any native vegetation remaining in the Project area will have limited value to terrestrial wildlife because it will be enclosed within the Project’s chain-link fence.”¹⁷⁰ This is a change in the proposed Project, which results in new or more severe impacts on biological resources. With respect to mitigation #3, Mr. Cashen concludes that the Project’s 1.71 acres of landscaping, plus an additional 0.65 acres of hydroseed around the proposed retention basin, on a 67.75 acre site¹⁷¹ is a “trivial amount of landscaping (much of which would be located along Avenue M)” which “will not provide ‘quality’ habitat or any measurable benefit to wildlife.”¹⁷² These obsolete mitigation measures constitute substantial changes in circumstances and new information, that was not known and could not have been known, showing that significant impacts on biological resources will be more severe than previously analyzed.

2. New and More Severe Significant Impacts to and Different Mitigation for Desert Tortoise

Mr. Cashen explains that, in 2011, scientists discovered that the federal and state listed threatened desert tortoises in California and the Southwest are two different species instead of one.¹⁷³ According to Mr. Cashen, the new study means that each desert tortoise species has even fewer surviving tortoises than previously understood. This is important new information showing the Project’s significant impacts may be more severe.

Mr. Cashen reviewed the Initial Study, the previous EIRs and the Applicant’s Biological Resources Assessment (“BRA”) and concludes that the Initial Study lacks substantial evidence to conclude that no desert tortoise are on the Project Site, even though the site is within the species’ range. This is because the documents fail to adhere to the USFWS 2010 directive to use survey protocols to determine the presence and abundance of desert tortoises on project sites within the range of the

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

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species.¹⁷⁴

Mr. Cashen also explains that new information regarding actions required to recover the species show that previously identified impacts are more severe and different mitigation measures are available to reduce significant impacts. Neither the Initial Study, the BRA, nor the previous EIRs discuss the Project's significant impacts on the recovery of the desert tortoise in light of the USFWS's 2011 Revised Desert Tortoise (Mojave Population) Recovery Plan. Mr. Cashen concludes that this is a critical flaw because the Revised Recovery Plan explains changes in circumstances and new information indicating the Project could have more severe significant impacts on desert tortoise. Specifically, new information from the Revised Recovery Plan shows that "resource subsidies (e.g., food, water, and perch sites) associated with the Project will benefit the raven population (and other predators of the desert tortoise)."¹⁷⁵ Mr. Cashen explains, "[b]ecause ravens may forage in tortoise habitat many miles away from the subsidy, the Project could have a significant adverse impact on the desert tortoise—even if no tortoises occur on the site itself."¹⁷⁶ The EIRs and IS do not disclose this substantial new information that was not known at the time the previous EIRs were certified showing that the Project will result in a much greater impact to desert tortoise than previously analyzed.

Mr. Cashen explains that, in 2010, the Desert Managers Group provided the following summary of impacts on desert tortoise from ravens perching on various land uses:

Over the past few decades, common raven (*Corvus corax*; raven) populations have increased substantially and its distribution has expanded in the California desert, primarily in response to human-provided subsidies of food, water, and nest sites associated with a variety of land uses. Ravens are a known predator of the desert tortoise (*Gopherus agassizii*), a species listed as threatened under the federal Endangered Species Act (ESA) and the California ESA (CESA). A large number [of] projects are currently proposed in the California deserts within the range of the desert tortoise. Due to the locations of these projects, associated infrastructure, and the increase in human activities that will occur if these projects are approved, a corresponding

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

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increase in raven presence and predation on desert tortoises is anticipated throughout the region. The direct, indirect, and cumulative impacts from these projects throughout the range of the desert tortoise have been and will continue to be substantial. As discussed below, conservation efforts at both the project and regional level will be required to address impacts to the desert tortoise from an increase in raven populations throughout the desert.¹⁷⁷

For the Project, Mr. Cashen concludes,

The detention basin associated with the Project will provide water for ravens, and the perimeter fence will provide perch sites. The Project also has the potential to provide food and nest sites for ravens. The Antelope Valley area is already subject to elevated raven predation pressure and any loss of juvenile tortoises due to the further addition of raven subsidies could have a long-term effect on the tortoise population by reducing the recruitment of juvenile tortoises into the adult life stages.¹⁷⁸

Because the Initial Study and previous EIRs do not include any mitigation measures (e.g., raven management plan) to address the Project's contribution to the raven population, impacts to the desert tortoise are significant. However, mitigation measures, which are considerably different from those analyzed in the previous EIRs, would substantially reduce significant impacts to desert tortoise. Mr. Cashen provides a detailed list of different mitigation measures that could be applied in this case. For these reasons, the City is required to prepare a subsequent EIR.

3. New and More Severe Significant Impacts to and Different Mitigation for Swainson's Hawk

In 2010, CDFW explained that the Antelope Valley currently supports approximately 10 breeding pairs of Swainson's hawks.¹⁷⁹ Swainson's hawks in the Antelope Valley are known to nest in Joshua trees.¹⁸⁰ Mr. Cashen explains that,

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

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although Mr. Hagan observed 117 Joshua trees within the Project study area, he failed to conduct the newly devised focused surveys needed to determine whether Swainson's hawks are currently using any of those trees for nesting.¹⁸¹ Mr. Cashen explains that this is significant because Mr. Hagan detected nine bird nests (one active and eight inactive) in Joshua trees on the Project Site, but failed to identify the nest types.¹⁸² In 2010, the California Energy Commission's Final Staff Assessment for the Palmdale Hybrid Power Project concluded impacts to the Swainson's hawk would be significant absent mitigation.¹⁸³

Here, the Initial Study and the EIRs did not analyze the Project's significant impacts to the Swainson's hawk. The documents also do not incorporate mitigation measures for significant impacts to the Swainson's hawk. Mr. Cashen provides several examples of mitigation measures that are available to reduce the Project's significant impacts to Swainson's hawk, none of which are considered in the Initial Study or previous EIRs. For these reasons, the City is required to prepare a subsequent EIR.

4. New and More Severe Significant Impacts to and Different Mitigation for Special-Status Plants

Mr. Cashen explains that, according to the California Native Plant Society's 2014 *Inventory of Rare and Endangered Plants*, nine special-status plant species (Rare Plant Rank 1B or 2) associated with desert scrub and/or Joshua tree woodland habitats are known to occur in the Project region (Lancaster East and surrounding eight topographic quadrangles).¹⁸⁴ This is new information that was not known and could not have been known at the time the previous EIR was certified showing that the Project's proposal to grade most of the site will result in significant impacts to special-status plants. Furthermore, Mr. Cashen found that the BRA indicates *Cryptantha* sp. was detected on the Project site, but failed to identify the species "to the taxonomic level necessary to determine rarity."¹⁸⁵ The EIRs and Initial Study do not disclose these new circumstances and new information, which show the Project will result in significant impacts to special-status plants. For these reasons, the City is required to prepare a subsequent EIR.

¹⁸¹ *Id.*

¹⁸² BRA, p. 6.

¹⁸³ *Id.*, p. 4.2-53.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

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5. New and More Severe Significant Impacts to and Different Mitigation for Burrowing Owl

CDFW issued a revised *Staff Report on Burrowing Owl Mitigation* in 2012 (“2012 Staff Report”) to address new information that burrowing owls continued to decline throughout much of their range.¹⁸⁶ According to Mr. Cashen, Mr. Hagan did not comply with the new survey protocols and could not effectively survey for burrowing owls. Mr. Cashen concludes that “the City lacks the information needed to fully disclose and evaluate Project impacts to burrowing owls, and perhaps more importantly, to ensure effective mitigation.”¹⁸⁷

Mr. Cashen also explains that the 2012 Staff Report set forth new mitigation measures to address impacts to burrowing owls, because measures in the earlier 1995 report “were proven ineffective in the conservation of burrowing owls.”¹⁸⁸ Mr. Cashen explains that the mitigation measures recommended in CDFW’s 2012 Staff Report are considerably more rigorous than the City’s mitigation measures in the Initial Study. He provides a list of feasible mitigation that is different than previously considered and would reduce significant impacts on burrowing owls.

6. New or More Severe Impacts to and Different Mitigation Measures for Impacts to Joshua Tree Woodland

Mr. Cashen provides substantial new information showing that the Project will result in new and more severe significant impacts to Joshua tree woodlands than disclosed in the Initial Study, BRA and previous EIRs. The Initial Study requires the Applicant to transplant two Joshua trees per acre of disturbed land, *if possible*.¹⁸⁹ However, “[t]here have not been any scientifically documented successful cases of Joshua tree transplantation.”¹⁹⁰ Mr. Cashen provides several feasible mitigation measures that are different than previously considered that would reduce significant impacts on Joshua tree woodlands.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ IS. p. 25.

¹⁹⁰ Attachment D: Cashen Comments.

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7. New or More Severe Impacts to and Different Mitigation Measures for Mohave Ground Squirrel

Mr. Cashen provides substantial new showing that the Project will result in new and more severe significant impacts to Mohave ground squirrel than disclosed in the Initial Study, BRA and previous EIRs. The Initial Study requires the Applicant to obtain an incidental take permit from the CDFW. However, CEQA prohibits deferring the mitigation strategy without setting forth any performance standards. Mr. Cashen provides several feasible mitigation measures that are different than previously considered that would reduce significant impacts on Mohave ground squirrel.¹⁹¹

I. New Information Regarding Development in Antelope Valley and New Significant or More Severe Cumulative Impacts

Circumstances in Palmdale and the surrounding areas in Antelope Valley have changed dramatically since the 1993 General Plan EIR and 1996 Business Park EIR were certified. Development has vastly outpaced investments in infrastructure and public services in the area. This was not contemplated by the 1996 EIR, which failed to envision the pace of development in the area. As set forth below, these substantial changes in circumstances surrounding the Project show a substantial increase in the severity of previously identified impacts, requiring subsequent environmental review under CEQA.¹⁹² Also set forth below is new information that the Project will result in new or substantially more severe significant cumulative impacts.¹⁹³

CEQA section 21083 requires a finding that a project may have a significant effect on the environment if “the possible effects of a project are individually limited but cumulatively considerable. . . . ‘Cumulatively considerable’ means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” “Cumulative impacts” are defined as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” (CEQA Guidelines §

¹⁹¹ *Id.*

¹⁹² Pub. Res. Code § 21166(b).

¹⁹³ Pub. Res. Code § 21166(c).

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15355(a).) “[I]ndividual effects may be changes resulting from a single project or a number of separate projects.” (CEQA Guidelines section 15355(a).)

The importance of an adequate cumulative impacts analysis was reaffirmed in *Communities for a Better Environment v. Calif. Resources Agency* (2002) (“*CBE v. CRA*”) 103 Cal.App.4th at 114, where the court stated:

Cumulative impact analysis is necessary because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.

Finally, even if the Project had “de minimis” air quality impacts (which it does not), a cumulative impact analysis would still be required. In *Kings County Farm Bureau v. City of Hanford*, 221 Cal. App. 3d at 718, the court concluded that an EIR inadequately considered an air pollution (ozone) cumulative impact. The court said: “The [EIR] concludes the project’s contributions to ozone levels in the area would be immeasurable and, therefore, insignificant because the [cogeneration] plant would emit relatively minor amounts of [ozone] precursors compared to the total volume of [ozone] precursors emitted in Kings County. The EIR’s analysis uses the magnitude of the current ozone problem in the air basin in order to trivialize the project’s impact.” The court concluded: “The relevant question to be addressed in the EIR is not the relative amount of precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.”¹⁹⁴

¹⁹⁴ *Los Angeles Unified v. City of Los Angeles*, 58 Cal. App. 4th at 1024-1026 found an EIR inadequate for concluding that a project’s additional increase in noise level of another 2.8 to 3.3 dBA was insignificant given that the existing noise level of 72 dBA already exceeded the regulatory recommended maximum of 70 dBA. The court concluded that this “ratio theory” trivialized the project’s noise impact by focusing on individual inputs rather than their collective significance. The relevant issue was not the relative amount of traffic noise resulting from the project when compared to existing traffic noise, but whether any additional amount of traffic noise should be considered significant given the nature of the existing traffic noise problem.

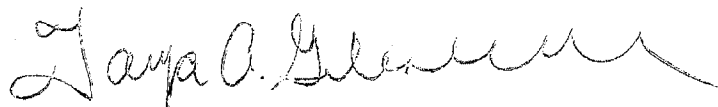
The *Kings County* case was reaffirmed in *Communities for a Better Environment v. Calif. Resources Agency*, 103 Cal. App. 4th at 118, when the court struck down an attempt by the California Resources Agency to create a “de minimis” exception to CEQA’s cumulative impacts analysis requirement. The court held that even if a Project had only de minimis impacts, it may still have a significant cumulative impact when viewed in conjunction with other past, present and reasonably foreseeable future projects.

In this case, the 1996 EIR did not, and could not have, considered the massive changes that have occurred in Antelope Valley over the past 18 years. Subsequent environmental review should be prepared to analyze the Project’s impacts together with the impacts from other proposed, pending and future development in the region, as required by CEQA. At a minimum, all phases of Kinkisharyo’s plans for development should be considered in a cumulative impact analysis. In addition, the City must evaluate, not merely mention, cumulative impacts from the California Energy Commission’s 2010 approval of the Palmdale Hybrid Power Plant immediately adjacent to the Project. The Initial Study and the previous EIRs do not analyze the Project’s impacts together with the power plant. The cumulative impact of these projects will produce massive amounts of air pollution that will exacerbate the already unacceptable pollution levels in the region. The City must evaluate this new information regarding significant impacts in a subsequent EIR.

IV. CONCLUSION

For the reasons set forth above, Antelope Valley Residents urges the City to prepare a new or subsequent EIR for Kinkisharyo’s proposed LRV manufacturing and assembly facility before the City considers approval of the Site Plan Review and all related permits.

Sincerely,



Tanya A. Gulesserian

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Attachments

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