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Via Email

Zai AbuBakar, Planning Manager
Planning Division
City of Fontana
8353 Sierra Avenue
Fontana, CA 92335
zabubakar@fontana.org

Re: **Sierra Lakes Commerce Center Recirculated Draft Environmental Impact Report** (SCH No. 2015031026)

Dear Ms. AbuBakar:

I am writing on behalf of Laborers International Union of North America, Local Union No. 783 and its members living in San Bernardino County (collectively "LIUNA" or "Commenters") regarding the Recirculated Draft Environmental Impact Report ("RDEIR") prepared for the Sierra Lakes Commerce Center Project, State Clearinghouse No. 2015031026 ("Project").

1

Commenters appreciate the City's attempt to cure some of the defects found in the initial DEIR and recirculation of a revised version of the DEIR. However, after reviewing the RDEIR, together with our team of expert consultants, it is evident that the document still contains numerous errors and omissions that preclude accurate analysis of the Project. As a result of these inadequacies, the RDEIR fails as an informational document and fails to impose all feasible mitigation measures to reduce the Project's impacts. Commenters request that the Fontana Planning Division, City Council, and your staffs address these shortcomings in a revised draft environmental impact report and recirculate the RDEIR prior to considering approvals for the Project.

2

Commenters have submitted expert comments from air quality expert Matthew Hagemann, P.G., C.Hg., who concludes that the DEIR fails to adequately evaluate the Project's air quality impacts. First, the RDEIR's air quality analysis improperly assumes only unrefrigerated land use, resulting in an underestimate of operational air emissions. Second, the RDEIR fails to incorporate all feasible mitigation measures to reduce the Project's significant operational NOx emissions. Finally, the Project's construction emissions were improperly and incompletely analyzed.

3

Mr. Hagemann also concludes that the Project's Hazards and Hazardous Waste section is inadequate because it fails to include an investigation of perchlorate and other contaminants to ensure the Project can be completed without harm to construction workers or to adjacent residents. Mr. Hagemann's comments and curriculum vitae are attached hereto as Exhibit 1 and are incorporated by reference in their entirety.

4

Commenters also submitted comments from expert biologist Shawn Smallwood, Ph.D., who critiques the RDEIR's failure to properly analyze the Project's impacts on biological resources. Specifically, Dr. Smallwood notes that there are many internal contradictions in the RDEIR, and the RDEIR's conclusions regarding the lack of special-status species on site are not supported by substantial evidence. Dr. Smallwood's comments and curriculum vitae are attached hereto as Exhibit 2 and are incorporated by reference in their entirety.

5

Finally, Commenters also submitted comments from expert transportation analyst Daniel Smith, Jr., P.E., a registered civil and traffic engineer. Mr. Smith points out numerous flaws and inconsistencies in the Traffic Impact Analysis that must be addressed in a revised DEIR. Mr. Smith's comments and curriculum vitae are attached hereto as Exhibit 3 and are incorporated by reference in their entirety.

6

Each of Mr. Hagemann, Dr. Smallwood, and Mr. Smith's comments require separate responses from the City. These experts and our own independent review demonstrate that the RDEIR remains inadequate and that a revised RDEIR should be prepared prior to Project approval to analyze all impacts and require implementation of all feasible mitigation measures.

7

I. PROJECT DESCRIPTION

The Project site encompasses 26.22 acres of land located in the northern portion of the City of Fontana, in Western San Bernardino County. RDEIR ES-1. The Project site is generally vacant, other than sparse vegetation, bare earth, and a dilapidated foundation in the southwest portion of the Project site. RDEIR ES-1. The site is surrounded by industrial uses to the north (vehicle and equipment storage), the Mid-Valley Sanitary Landfill to the east (in the City of Rialto), industrial uses (vehicle and equipment storage) to the south, and the Sierra Lakes residential development approximately 165 feet to the west. *Id.*

The Project includes the construction and operation of approximately 597,818 square feet of "high-cube" logistics warehouse use with four associated office space, all contained in a single building. RDEIR ES-2. Approximately 46 feet of internal clear height would be provided inside the building. The Project would include approximately 134 warehouse truck bays, and an additional 218 parking spaces. RDEIR ES-2. The Project is estimated to result in 1,576 passenger car equivalent trip-ends per day. App. I, p. 1.

8

In addition, the Project seeks to construct:

- 70,000 gallon water tank, 36 feet wide and 20 feet tall. RDEIR ES-2.

- Site-adjacent roadway improvements. RDEIR ES-3.
- A new storm drain system to convey onsite flows to 2 detention basis. RDEIR ES-2.
- Offsite improvements such as requisite water, sewer, and storm drain facilities that will serve the project. RDEIR ES-2.

8

II. LEGAL STANDARDS

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report (“EIR”) (except in certain limited circumstances). *See, e.g.*, Pub. Res. Code § 21100. The EIR is the very heart of CEQA. *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” *Comms. for a Better Env’t v. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109.

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 Cal. Code Regs. (“CEQA Guidelines”) § 15002(a)(1). “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. 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.” *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.

9

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures. CEQA Guidelines § 15002(a)(2) and (3); *see also Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Bd. of Sups.* (1990) 52 Cal.3d 553, 564. The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.” CEQA Guidelines § 15002(a)(2). If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.” Pub.Res.Code (“PRC”) § 21081; CEQA Guidelines § 15092(b)(2)(A) & (B).

The EIR is the very heart of CEQA. *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. CEQA requires that a lead agency analyze all potentially significant environmental impacts of its proposed actions in an EIR. PRC § 21100(b)(1); CEQA Guidelines § 15126(a); *Berkeley Jets*, 91 Cal.App.4th 1344, 1354. The EIR must not only identify the impacts, but must also provide “information about how adverse the impacts will be.” *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831. The lead agency may deem a particular

impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692. “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” *Cmtys. for a Better Env’t v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 109.

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’” *Berkeley Jets*, 91 Cal. App. 4th 1344, 1355 (emphasis added), quoting, *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 391 409, fn. 12. A prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.” *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 722]; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal. App. 4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 946. As discussed below, and in the attached expert comment letters of expert Matthew Hagemann, P.G., C. Hg., expert biologist Dr. Shawn Smallwood, and expert traffic engineer Mr. Daniel Smith, Jr., P.E., the RDEIR for this Project fails to adequately analyze and mitigate the Project’s impacts.

9

III. THE DEIR FAILS TO ACCURATELY ANALYZE THE PROJECT’S BIOLOGICAL IMPACTS.

A. THE DEIR FAILS TO ESTABLISH AN ACCURATE BASELINE FOR SENSITIVE BIOLOGICAL RESOURCES.

Establishing an accurate baseline is the *sine qua non* to adequately analyzing and mitigating the significant environmental impacts of the Project. See 14 CCE § 15125(a); *Save Our Peninsula, supra*, 87 Cal.App.4th at pp. 121-123. Unfortunately, the RDEIR’s failure to investigate and identify the occurrences of sensitive biological resources at the Project site resulted in a skewed baseline. Such skewed baseline ultimately “mislead(s) the public” by engendering skewed and inaccurate analyses of environmental impacts, mitigation measures and cumulative impacts for biological resources. See *San Joaquin Raptor Rescue Center, supra*, 149 Cal.App.4th at p. 656; *Woodward Park Homeowners, supra*, 150 Cal.App.4th at pp. 708-711.

10

An accurate baseline of biological resources was not established because testing methods were inappropriate and cursory, leading to an inaccurate baseline. According to Dr. Smallwood, the fact that even the cursory surveys at the Project site conducted for the RDEIR detected 32 species of wildlife “suggests a high local species richness.” Smallwood Comment, p. 2. Had the surveys continued into other seasons and had the consulting biologists used appropriate survey methods, the number of species detected would have been much greater. Smallwood Comment, pp. 2-3.

11

As Dr. Smallwood explains in his comment letter, targeted methods are needed to detect special-status species. Smallwood Comment, pp. 2-3. For example, the biologists did not use appropriate methods to survey at night, including use of acoustic detectors and thermal cameras to detect special-status species of bats and owls. Smallwood Comment, p. 3. The biologists also did not rake the soil and turn over debris to find special-status species of reptile. *Id.* “[I]t is inappropriate to repeatedly conclude that special-status species are absent and project impacts will be less than significant when these conclusions are based on cursory survey efforts for wildlife species at the project site.” Smallwood Comment, pp. 4-5. By failing to use appropriate survey methods, the RDEIR fails to establish an accurate baseline.

12

B. THE RDEIR FAILS TO ANALYZE THE PROJECT’S IMPACTS ON 20 SPECIES OF WILDLIFE AND IMPACTS ON STOP-OVER HABITAT OF MIGRATORY BIRDS.

The RDEIR fails to establish a baseline or conduct any assessment of 20 species of wildlife likely to be impacted by the Project. Smallwood Comment, pp. 6-8. For example, the RDEIR contains no discussion of the Project’s potential impact on raptors. *Id.* at 6. According to Dr. Smallwood, it is possible for northern harriers to nest on site, and for other raptors to either forage or use the site for stop-over habitat. *Id.* at 6-8. The RDEIR’s biological assessment is incomplete and must be revised to assess the Project’s impact on these additional species, listed in Table 1 of Dr. Smallwood’s comments.

13

In addition, the RDEIR does not contain any assessment of the Project’s potential impacts on stop-over habitat of migratory birds. Dr. Smallwood explains that most migratory species need to make stops to rest during migration. Smallwood Comment, p. 9. Where the migratory species stop is referred to as “stop-over habitat.” *Id.* “As stop-over habitat is converted to anthropogenic uses, migratory birds face higher energy costs trying to find alternative stop-over habitat or they might not be able to complete their migrations.” *Id.* The RDEIR must be revised to analyze the Project’s impacts on stop-over habitat and the movement of migratory birds. *Id.* at 10.

14

C. THE RDEIR’S CONCLUSIONS REGARDING BIOLOGICAL IMPACTS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

For a number of reasons, the biological impacts assessment is not supported by substantial evidence, and minimizes the Project’s actual impacts. Dr. Smallwood’s comments point out a number of internal contradictions regarding the Project’s impacts on special-status species. Smallwood Comment, p. 2. The species assessments often summarized the habitat requirements of special-status species and then, despite these habitat summaries resembling the habitat conditions actually occurring on site, concluding that the species does not occur on the site or is unexpected to occur due to lack of suitable habitat. *Id.* For example, the RDEIR concludes that the burrowing owl “[d]oes not occur on-site due to a lack of suitable habitat” (3.3-8), but then later states that “[d]ue to the overall presence of suitable habitat, including suitable

15

burrows, the Project site has the potential to support burrowing owls in the future” (3.3-12). *Id.* In addition, the RDEIR often characterizes a species’ habitat too narrowly, or focuses only on one aspect of a species’ habitat (like roosting or nesting habitat). *Id.* “Species habitat is often broader than characterized in the RDEIR, and the loss of foraging or stop-over habitat can be just as adverse to a species as loss of nesting or roosting habitat.” *Id.*

15

Dr. Smallwood found the RDEIR’s analyses of the following species to lack foundation:

San Diego black-tailed jackrabbit

The RDEIR lacks substantial evidence to conclude that “the loss of habitat for the jackrabbit would not be considered a substantial, adverse impact to the species.” RDEIR 3.3-18. No explanation or evidence is provided for why the loss of habitat would not constitute a substantial adverse impact to the species. Smallwood Comment, p. 5. As expert biologist Dr. Smallwood notes in his comments, “habitat loss is the principle reason this species is declining and is of special status. Losing more habitat must be seen as a significant adverse impact to San Diego black-tailed jackrabbit.” *Id.*

16

White-tailed kite

The RDEIR lacks substantial evidence to conclude that “[t]he Project site does not contain any trees suitable for nesting kites, nor are there suitable trees in the immediate vicinity of the site for nesting.” RDEIR 3.3-17. Rather, photos included in the RDEIR show suitable next trees at the east end of the Project site. Smallwood Comment, p. 5. Moreover, using Google Earth imagery, Dr. Smallwood located suitable nest trees in fields to the north and south of the Project site. *Id.*

17

California horned lark

The RDEIR admits that California horned larks likely occur on the Project site because of suitable habitat. RDEIR 3.3-27. But then the RDEIR goes on to dismiss any possibility that the Project will have any impact on the California horned lark based on a claim that the species is relatively abundant in the region. *Id.* The RDEIR contains no evidence to support a finding that California horned larks are relatively abundant in the region. As Dr. Smallwood points out, there is a reason the California horned lark is a species of concern – its habitat is undergoing rapid destruction. Smallwood Comment, p. 5.

18

Coast horned lizard

The RDEIR characterizes the vegetation cover at the Project site as coastal sage scrub and alluvial scrub, and characterizes the coast horned lizard habitat as including coast sage scrub, but then concludes that the coast horned lizard is “not expected to occur due to lack of suitable habitat.” RDEIR 3.3-7, 3.3-3. The conclusion that the coast horned lizard is unlikely to be present is inconsistent with the RDEIR’s own habitat characterization. Smallwood Comment, p. 5. The conclusion is further undermined because the biologists did not perform the appropriate, focused surveys for coast horned lizards. *Id.* at 5-6. Without appropriate surveys, the RDEIR’s conclusion that the Project will have no impact on coast horned lizards is not supported by substantial evidence. *Id.* at 6.

19

Orange-throated whiptail

Similar to the coast horned lizard analysis, the RDEIR characterizes orange-throated whiptail habitat as including coast sage scrub, but then concludes that the orange-throated whiptail is “not expected to occur due to a lack of suitable habitat.” RDEIR 3.3-7. The conclusion that the orange-throated whiptail is unlikely to be present is inconsistent with the RDEIR’s own habitat characterization. Smallwood Comment, p. 6. The conclusion is further undermined because the biologists did not perform the appropriate, focused surveys for orange-throated whiptail. *Id.* Without appropriate surveys, the RDEIR’s conclusion that the Project will have no impact on orange-throated whiptail is not supported by substantial evidence. *Id.* at 6.

20

Additional Species

The same logical inconsistencies made with the coast horned lizards and the orange-throated whiptail were made for the rosy boa, silvery legless lizard, California horned lark, American badger, northwestern San Diego pocket mouse, pallid San Diego pocket mouse, and southern grasshopper mouse. Smallwood Comment, p. 6. For each of these species, the Project site’s vegetation cover is consistent with the RDEIR’s habitat description for the species. Smallwood Comment, p. 6. Therefore, the RDEIR’s finding that the species are unlikely to be present based on habitat availability is not supported by substantial evidence. *Id.* Moreover, since no suitable surveys were performed for these species, there is no substantial evidence to conclude the species are unlikely to occur based on presence/absence surveys. *Id.*

21

Los Angeles Pocket Mouse

Dr. Smallwood also points out that the RDEIR attempts to downplay the presence of the Los Angeles pocket mouse, claiming that because only one individual was detected, the species occurs on site at trace levels. Smallwood Comment, p. 3 (citing RDEIR 3.3-18). As Dr. Smallwood explains, there are many other more plausible expansions for why only one individual was captured during the survey. *Id.* Many factors can affect trapping success, including, the lunar cycle, time of night, local assembly of small mammals, food availability, the presence of a carnivore hunting the site, and trapping methods. Smallwood Comment, pp. 3-4.

22

IV. THE DEIR FAILS TO ADEQUATELY DISCLOSE, ANALYZE, AND MITIGATE ALL POTENTIALLY SIGNIFICANT AIR QUALITY IMPACTS.

A. THE RDEIR AIR QUALITY ANALYSIS IMPROPERLY ASSUMES ONLY UNREFRIGERATED LAND USE, RESULTING IN AN UNDERESTIMATE OF OPERATIONAL EMISSIONS.

Despite not knowing whether or not the Project’s future tenants will require refrigerated warehouse space, the RDEIR’s Air Quality Analysis is based on the assumption that the Project’s entire land use type is “unrefrigerated warehouse,” and therefore uses emissions factors for unrefrigerated warehouses and unrefrigerated trucks. Hagemann Comment, p. 2. The

23

RDEIR does not analyze the additional environmental effects that will result if one or more of the Project's tenants require refrigeration. Refrigerated warehouses release more air pollutants and greenhouse gas emissions when compared to unrefrigerated warehouses. Hagemann Comment, pp. 2-3. By relying exclusively on unrefrigerated land use emissions, the air quality analysis greatly underestimates the Project's potential air quality and greenhouse gas impacts. This violates CEQA.

23

Here, it is reasonably foreseeable that one or more of the Project's tenants will require refrigeration. Indeed it is completely possible that all four tenants would require refrigerated warehouse space. The RDEIR states, "[f]uture tenants have not been identified for the project and it is not known whether refrigerated space will be needed by one or more tenants in the future." RDEIR 2-7. Additionally, the RDEIR's noise analysis admits that "the buildings could house a tenant that uses cold storage." RDEIR 3.9-53. It is just as likely that one or more tenants will require refrigeration as it is that none of them will. Moreover, if tenants to require refrigeration, it will change the scope of the Project's environmental effects. Hagemann Comment, pp. 2-3. Therefore, the RDEIR must include an analysis of the environmental effects of the Project having tenants that require refrigeration. *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 396.

The RDEIR attempts to justify its failure to analyze tenants that require refrigeration by saying:

[T]he project will include a condition of approval that will only permit tenants not requiring refrigeration. At this time, the project applicant has no plans of selling or leasing to any tenant requiring refrigeration; should any future tenants requiring refrigeration be identified, a new or amended Conditional Use Permit (CUP) will be required, along with supporting environmental analysis as required under CEQA.

24

RDEIR 2-7.

But a CEQA evaluation of refrigerated uses at some future time would piecemeal the environmental impacts of the project, which CEQA prohibits. "[T]he requirements of CEQA cannot be avoided by chopping up proposed projects into bite-sized pieces' which, when taken individually, may have no impact on the environment." *Ass'n for a Cleaner Env't. v. Yosemite Community College Dist.* (2004) 116 Cal.App.4th 629, 638 (citations omitted). CEQA requires an analysis of the environmental impacts of the Project as a whole now, not at some future time.

Failing to account for the Project's potential partial use as refrigerated warehouse is a significant omission. Refrigerated trucks tend to idle much longer than typical hauling trucks, even up to an hour. Hagemann Comment, p. 2. Energy usage from warehouses equipped with industrial size refrigerators and freezers is also much greater when compared to unrefrigerated warehouses. *Id.* In addition, according to the July 2014 SCAQMD *Warehouse Truck Trip Study*

Data Results and Usage presentation, trucks that require refrigeration resulted in greater truck trip rates when compared to non-refrigerated trucks.¹ *Id.* at p. 3

24

By not including any refrigerated warehouse land uses in the Air Quality Analysis, the emissions from this potential land use are grossly underestimated. An updated RDEIR must be prepared to account for the possibility of refrigerated warehouse needs by tenants. Hagemann Comment, p. 3.

B. ADDITIONAL FEASIBLE MITIGATION MEASURES ARE AVAILABLE TO FURTHER MITIGATE THE PROJECT'S SIGNIFICANT OPERATIONAL NO_x EMISSIONS.

The RDEIR concludes that the Project's operational NO_x emissions are significant and unavoidable. RDEIR 3.2-24. The RDEIR provides that "there are no additional feasible mitigation measures that would reduce the operational NO_x emissions to levels that are less than significant." RDEIR 3.2-24. This conclusion is incorrect, and is not supported by substantial evidence.

Mr. Hagemann's expert comment letter, attached hereto as Exhibit 1, lists numerous additional feasible mitigation measures that the RDEIR failed to incorporate, which would further reduce the Projects' operational NO_x emissions, potentially to a less-than-significant level. Hagemann Comment, pp. 9-10. To this effect, Mr. Hagemann suggests the following additional feasible mitigation measures that would avoid, minimize, and mitigate the Project's operational mobile-source emissions of NO_x, which were not considered in the RDEIR, but have been proposed by the SCAQMD for similar projects:

25

- Require project applicant to provide electric vehicle charging stations that are accessible for trucks.
- Limit the daily number of trucks allowed at the facility to the levels analyzed in the RDEIR. If higher truck volumes are anticipated to visit the site, the Lead Agency should commit to re-evaluating the project through CEQA prior to allowing this higher activity level.
- Limit the truck trip miles allowed to levels analyzed in the RDEIR. If higher truck trip miles are anticipated or required, the Lead Agency should commit to re-evaluating the project through CEQA prior to allowing this higher activity level.
- Design the site so that any check-in points for trucks are well inside the facility to ensure that there are no trucks queuing outside of the facility.
- Provide food options, fueling, truck repair, and/or convenience stores on-site to minimize the need for trucks to traverse through residential neighborhoods.
- Improve traffic flow through signal synchronization.

¹ <http://www.aqmd.gov/docs/default-source/ceqa/handbook/high-cube-warehouse-trip-rate-study-for-air-quality-analysis/finaltrucktripstudymisc072514.pdf?sfvrsn=2> , p.7

- Have truck routes clearly marked with trailblazer signs so that trucks will not enter residential neighborhoods.
- Provide minimum buffer zones of 300 meters between truck traffic and sensitive receptors.
- Require accelerated phase-in for non-diesel powered trucks.

In addition to mobile-source mitigation measures, the following on-site area source mitigation measures recommended by SCAQMD will reduce the Project's operational NOx emissions:

- Require Energy Star heating, cooling, and lighting devices and appliances.
- Limitations on the use of outdoor lighting to only what is needed for safety and security purposes.
- Require use of electric or alternatively fueled sweepers with HEPA filters.

All feasible mitigation, including the above measures, should be considered in a revised RDEIR in an effort to further reduce the Project's operational NOx emissions, potentially to a less-than-significant level. Hagemann Comment, pp. 9-10.

C. CONSTRUCTION EMISSIONS WERE IMPROPERLY AND INCOMPLETELY ANALYZED.

1. Air Quality Analysis fails to evaluate emissions from construction debris transport.

In addition to the material produced from grading 175 acres, trash and additional debris produced from other activities, such as building construction, will result in excess construction debris. Hagemann Comment, p. 7. While some of this may be used onsite, it will most likely be transported offsite. *Id.* However Mr. Hagemann's review of the CalEEMod output files revealed that transport of this material was not included in the model estimates. *Id.* (citing RDEIR App. A, pp. 97-124). As a result, the emissions produced from material movement, including truck loading and unloading, and additional hauling truck trips, have not been accounted for. *Id.* Since the DEIR fails to disclose the volume of material that will be transported off-site during construction, Mr. Hagemann was unable to determine the additional number of hauling trips that would be needed to transport the construction waste off-site. *Id.* Nonetheless, "[t]ransportation of this construction material will produce additional pollutant emissions, and by omitting this information from the Air Quality Assessment and the DEIR, the total emissions during Project construction are underestimated."

Construction debris will be produced during Project construction as a result of clearing and grading activities. Hagemann Comment, p. 3. These materials will need to be disposed of off-site, an activity that is usually conducted by heavy duty hauling trucks. *Id.* As a result, the waste generates the need for additional hauling trips to and from the Project site. Mr. Hagemann's review of the Air Quality Analysis found that no value was input for materials imported or exported from the site, and as a result, no hauling trips were included in the air

25

26

quality model. *Id.* “Using accurate values for material imported and exported is critical to properly estimating the correct number of hauling trips to and from the site during Project construction.” *Id.* By failing to include the amount of material that will be imported and exported from the site in the CalEEMod model, the RDEIR’s air quality analysis is incomplete.

To determine the amount of material that will need to be exported during Project construction, Mr. Hagemann conducted an analysis using the information provided in the RDEIR and its appendices. Hagemann Comment, pp. 3-7. Mr. Hagemann’s analysis found that, in total, during the “site preparation” phase of construction, 16,322 tons of waste will be generated. Hagemann Comment, p. 7. This translates into approximately 1,614 hauling truck trips. *Id.* The RDEIR failed to consider any of these additional hauling trips, and therefore the Project’s construction emissions are greatly underestimated. Hagemann Comment, p. 7.

26

2. Updated Air Quality Model Demonstrates Potentially Significant Construction Emissions.

Using CalEEMod, Mr. Hagemann prepared an updated model to determine the project’s construction emissions accounting for the material export and hauling trips, as discussed above. Hagemann Comment, pp. 7-8. The results of Mr. Hagemann’s updated model are summarized in the table below. The “RDEIR CalEEMod Model” values represent the mitigated emissions estimates disclosed in Table 3.2-14 (p. 3.2-37), and the “SWAPE CalEEMod Model” values represent the emissions estimates from Mr. Hagemann’s updated model. Hagemann Comment, p. 8.

Maximum Daily Construction Emissions (With Mitigation)						
<i>pounds per day:</i>						
	VOC	NOx	CO	SOx	PM10	PM2.5
RDEIR CalEEMod Model	58	88	74	0	11	7
SWAPE CalEEMod Model	58	118	85	0	14	9
SCAQMD Threshold	75	100	550	150	150	55
<i>Exceeded?</i>	<i>No</i>	<i>Yes</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>

27

As the table shows, under the updated model, emissions of each criteria pollutant increased, with some substantially increasing. *Id.* at p. 8. Critically, when properly calculated, Mr. Hagemann’s analysis demonstrates that the Project’s maximum daily NOx emissions will be 118 lbs/day, which exceeds the applicable SCAQMD CEQA significant impact threshold of 100 lbs/day. *Id.* In other words, when all aspects of Project construction are included in the air quality analysis, the Project creates a significant environmental impact. An updated RDEIR should be prepared to adequately model the Project’s emissions during construction activities.

3. The RDEIR Fails to Evaluate the Health Risks Posed to Sensitive Receptors During Construction.

The RDEIR concludes that the health risk posed to nearby sensitive receptors from exposure to diesel particulate matter (“DPM”) emissions released during Project construction is less than significant. RDEIR 3.2-46. It makes this finding without quantifying the risk and comparing it to the applicable threshold. Hagemann Comment, p. 11 (citing RDEIR 3.2-46). Without a health risk assessment, the RDEIR’s conclusion regarding health risks from construction-related DPM is not supported by substantial evidence.

The RDEIR’s attempt to justify the omission of a health risk assessment (“HRA”) is unavailing. The RDEIR states that “the DPM emissions during construction are short-term in nature” and the “determination of risk from DPM is considered over a 70-year exposure time,” and therefore exposure to DPM during construction is anticipated to have a less than significant health impact. RDERIR 3.2-46. But just because construction occurs over a short period of time does not mean that the Project’s health risks are necessarily insignificant. Hagemann Comment, p. 11. According to the Office of environmental Health Hazard Assessment (OEHHA), the organization responsible for health risk assessments in California, all short-term projects lasting longer than two months should be evaluated for cancer risks to nearby sensitive receptors. Hagemann Comment, p. 11. Since construction of the Project is estimated to take nine month (RDEIR 3.2-29-30), an HRA is required.

Mr. Hagemann prepared a screening-level health risk assessment using the AERSCREEN air dispersion model. Hagemann Comment, p. 11. As Mr. Hagemann explains, if an unacceptable air quality hazard is determined using AERSCREEN, a more refined modeling approach is required prior to approval of the Project. *Id.* at 12.

Using the AERSCREEN model, Mr. Hagemann calculated the excess cancer risk for each sensitive receptor location for adults, children, and infant receptors suing applicable HRA methodologies prescribed by OEHHA. Hagemann Comment, p. 12. The result of Mr. Hagemann’s analysis is that the excess cancer risks to adults, children, and infants during Project construction for sensitive receptors 50 meters away are 1.37, 7.91, and 26.4 in one million, respectively. *Id.* at 13. The exposure for infantile sensitive receptors of an increase of 26.4 in one million exceeds the SCAQMD threshold of 1 in one million. *Id.*

Since the cancer risk for infants exceeds the CEQA threshold, a refined health risk assessment must be prepared to examine air quality impacts generated by Project construction using site-specific meteorology and specific equipment usage schedules. *Id.* An updated RDEIR must be prepared to adequately analyze the Project’s health risk impact, and to include mitigation measure to reduce the impact to a less-than-significant level. *Id.*

4. Additional Mitigation Measures are Needed to Mitigate Significant Construction Emissions.

Since, as demonstrated above, the Project will have a significant environmental impact from construction-related NOx emissions, all feasible mitigation measures must be required to reduce or eliminate the environmental impact. Mr. Hagemann recommends the following mitigation measures, proposed by the South Coast Air Quality Management District (“SCAQMD”) for similar projects to reduce NOx emissions from construction activities:

- Require the use of 2010 and newer diesel haul trucks (e.g., material delivery trucks and import/export) and if the Lead Agency determines that 2010 model year or newer diesel trucks cannot be obtained the Lead Agency shall use trucks that meet EPA 2007 model year NOx emissions requirements.
- Consistent with measures that other lead agencies in the region (including Port of Los Angeles, Port of Long Beach, Metro and City of Los Angeles) have enacted, require all onsite construction equipment to meet EPA Tier 3 or higher emissions standards according to the following:
 - All offroad diesel-powered construction equipment greater than 50 hp shall meet Tier 3 offroad emissions standards. In addition, all construction equipment shall be outfitted with BACT devices certified by CARB. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by a Level 3 diesel emissions control strategy for a similarly sized engine as defined by CARB regulations.
 - Post-January 1, 2015: All offroad diesel-powered construction equipment greater than 50 hp shall meet the Tier 4 emission standards, where available. In addition, all construction equipment shall be outfitted with BACT devices certified by CARB. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by a Level 3 diesel emissions control strategy for a similarly sized engine as defined by CARB regulations.
 - A copy of each unit’s certified tier specification, BACT documentation, and CARB or SCAQMD operating permit shall be provided at the time of mobilization of each applicable unit of equipment.
 - Encourage construction contractors to apply for SCAQMD “SOON” funds. Incentives could be provided for those construction contractors who apply for SCAQMD “SOON” funds. The “SOON” program provides funds to accelerate clean up of off-road diesel vehicles, such as heavy duty construction equipment.
- Provide temporary traffic controls such as a flag person, during all phases of construction to maintain smooth traffic flow.
- Schedule construction activities that affect traffic flow on the arterial system to off-peak hour to the extent practicable.

- Reroute construction trucks away from congested streets or sensitive receptor areas.

Hagemann Comment, pp. 8-9. An updated RDEIR should be prepared to include these additional mitigation measures.

29

V. HAZARDS AND HAZARDOUS WASTE IMPACTS HAVE NOT BEEN ADEQUATELY ANALYZED OR MITIGATED.

In response to our previous comments on the DEIR, the RDEIR acknowledges that the Project site is located within the boundaries of a known hazardous waste site (the Rialto Ammunition Storage Plan), which is included on the California Cortese list.

Despite acknowledging that the Project is located on a hazardous waste site, the RDEIR still fails to include an investigation of perchlorate and other contaminants, and unexploded ordinance, to ensure the Project can be completed without harm to construction workers or to adjacent residents. Hagemann Comment, p. 13. The RDEIR states that “soil vapor sampling conducted as part of the Phase II ESA did not reveal the presence of perchlorate in project site soils.” RDEIR3.6-13. However, a closer look at the Phase II ESA reveals that no samples were collected and analyzed for perchlorate. Hagemann Comment, p. 14.

30

The RDEIR should be revised to include a sampling investigation for the presence of perchlorate in the soil, under regulatory oversight by the Department of Toxic Substances Control, and any impacts from potential contamination must be mitigated to levels that would not put construction workers and future workers at risk from exposure. *Id.*

VI. TRAFFIC IMPACT ANALYSIS IS INCOMPLETE AND FLAWED.

A. THE PROJECT IS INCONSISTENT WITH THE CITY OF FONTANA’S CIRCULATION MASTER PLAN.

According to the RDEIR, Sierra Avenue is designated as a Major Highway in the City of Fontana’s Circulation Master Plan. RDEIR App. I, p. 19. The City’s Circulation Master Plan defines “Major Highways” as follows:

Major Highways can accommodate six or eight travel lanes and may have raised medians. These facilities carry high traffic volumes and are the primary thoroughfares linking Fontana with adjacent cities and the regional highway system. *Driveway access to these roadways is typically limited to provide efficient high volume traffic flow.*

31

RDEIR App. I, p. 19 (emphasis added); Smith Comment, p. 2.

In accordance with this definition, the Sierra Lakes residential development directly opposite the project on the west side of Sierra Avenue has only a single access point (Clubhouse Drive) along its entire 3800 feet of frontage of Sierra Avenue. Smith Comment, p. 2. In

contrast, the Project's site plan includes a total of three access driveways on its approximately 1,000 foot frontage along the east side of Sierra Avenue. *Id.* According to Mr. Smith, the single access point provided for the Sierra Lakes residential development "is far more consistent with the intent of the Fontana Circulation Master Plan than the proposed Project with 3 driveways in 1000 feet." *Id.*

31

Mr. Smith recommends that the Project extend Clubhouse Drive though to Mango Avenue and that the Project's primary access come from those streets. *Id.* The DEIR is deficient because it fails to not the inconsistency between the Project's site plan and the City's Circulation Master Plan. *Id.*

B. THE RDEIR FAILS TO ACCOUNT FOR TRAFFIC FROM ADDITIONAL CUMULATIVE PROJECTS.

The Transportation and Traffic section of the RDEIR states that a significant reason that a revised DEIR was prepared was to address comments regarding the list of cumulative projects analyzed in the original traffic analysis. RDEIR 3.11-1. For the RDEIR, the City of Fontana and the City of Rialto found 19 additional cumulative projects, in addition to the 14 reflected in the DEIR, for a total of 33 cumulative projects. *Id.* However, as Traffic Engineer Dan Smith points out, RDEIR Exhibit 3.11-9 shows only 14 cumulative project site, the same number and locations shown on the corresponding Exhibit 3.11-9 of the original DEIR. Smith Comment, p. 2. Similarly, the RDEIR says that "Exhibit 3.11-9 shows the cumulative development location map" (RDEIR 3.11-41) but that map only shows the original 14 projects discussed in the DEIR. RDEIR 3.11-45 (Exhibit 3.11-9). In addition, the Opening Year Cumulative Analysis (Exhibit 3.11-10 of both volumes) shows that projected Opening Year Cumulative Volumes for the year 2016 are identical in the RDEIR and the DEIR.

32

Accordingly, Mr. Smith concludes that "the RDEIR failed to account for the traffic from additional cumulative projects that it was purportedly commissioned to address." The RDEIR must be further revised so that the Transportation and Traffic analysis reflects all 33 cumulative projects. Smith Comment, p. 2.

C. THE TRUCK MANEUVERING AREAS ON THE SITE PLAN AFFECT TRIP GENERATION.

According to Mr. Smith, the nominal industry standard apron for the largest tractor-trailer rigs is 150 feet. Smith Comment, p. 3. However the RDEIR Exhibit 2-3 Site Plan shows 132 foot aprons for trucks maneuvering to and from their standard positions at the loading docks, and an additional 53 foot deep paved area for trailer storage on the north and south sides of the proposed building. *Id.* Large rigs can only make the turns to and from the loading docks (as shown in the turning templates in Exhibit 2-3) if the adjacent bay to the left of the moving truck is vacant, or if the tractor unit has been detached from the trailer in the adjacent bay, and moved elsewhere. *Id.*

33

Mr. Smith observes that, in order for similar warehouse facilities nearby to operate with smaller aprons, they “make it a practice to detach the tractors from the trailers as soon as the trailers are brought in to the bay and reattach a tractor only when the trailer is about to be moved off site.” Smith Comment, p. 3. The tractors move off-site to various unknown locations when they are not actively moving trailers. As a result, “for every trailer that is moved on site or off site, there is actually an extra trip – the tractor-unit moving off site after dropping a trailer or moving on-site to pick up a trailer.” It is unclear if these additional trips were taken into account in the trip generation estimates. If these additional trips were not taken into account, the RDEIR must be revised to include all of these additional trips, or provide an explanation of where on-site tractor-units will park to accommodate aprons smaller than the industry standard.

33

D. THE RDEIR’S QUEUEING ANALYSIS IS INADEQUATE.

While the RDEIR considers some queue issues that the original DEIR ignored, the analysis is still flawed. Smith Comment, pp. 3-4. Queues are back-ups of traffic waiting for green lights at an intersection. Smith Comment, p. 3. When queues in turn lanes exceed the lane capacity, they block through lanes. *Id.* Similarly, when queues in through lanes are too long, they block access to turn lanes. *Id.* Both of these situations result in actual levels of service at intersections worse than that predicted by the theoretical level of service/delay computations that traffic impacts are ordinarily based on. *Id.*

34

As Mr. Smith points out, other than the two Caltrans-controlled intersections where the analysis was based on the 95th percentile queues because of Caltrans requirements, at all other intersections analyzed, the analysis only considers the *average* queue. Smith Comment, p. 3. By definition, actual queues will exceed the average queues approximately half of the time, and in some instances may be more than double the average queue. *Id.* at p. 4. As a result, the analysis underestimates queues, and “does not necessarily detect situations where the RDEIR traffic will suffer gridlock due to queue blockages.” *Id.*

The RDEIR’s queue analysis should be revised so that its queue analysis is based on the 95th percentile queues at all intersections, not just Caltrans intersections. *Id.*

E. POOR AND INACCURATE REPRESENTATION OF THE PROJECT ON THE SITE PLAN RENDERS THE RDEIR INADEQUATE AS AN INFORMATION DOCUMENT.

Another deficiency in the Project site plan (Exhibit 2-3) can be seen in the southeast corner, which displays a turning template for a truck turning out of the Project to proceed southbound on Mango Avenue. Smith Comment, p. 4. The site plan shows the truck turning comfortably into the southbound lane. *Id.* However, Mango Avenue is depicted on the site plan as developed to the full width of the City’s standard cross-section for an Industrial Collector street. *Id.* As Mr. Smith point out, however, “the Project proposes to only develop Mango Avenue to the *half-width of an Industrial Collector – only 28 feet of pavement instead of the*

35

standard 56 feet.” Id. As proposed by the Project, instead of turning comfortably into the southbound traffic lane, the truck turn on the site plan would actually be turning full on into the northbound lane that would actually be constructed. *Id.* This is a critical inaccuracy of the site plan presented in the RDEIR that must be addressed. *Id.*

35

Mr. Smith also points out that “in order for a normally sighted person to be able to read critical dimensions presented on the site plan, it has to be blown up to 400 percent of the size at which it is depicted in the DEIR. This interferes with the public’s ability to perceive the functional implications of critical dimensions on the site plan. These conditions render the DEIR inadequate as an information document under CEQA.” *Id.*

F. THE TRAFFIC IMPACT ANALYSIS ASSUMES SOME UNREASONABLE TRUCK APPROACH PATHS TO THE PROJECT.

According to Mr. Smith, some of the inbound truck approach paths assumed in the RDEIR are unreasonable. Smith Comment, pp. 4-5. As shown in Exhibit 3.11-5b (and in Figure 1 below), the analysis assumes that the other 20 percent of inbound traffic would enter the site moving northbound on Sierra Avenue, through Driveway 3. The analysis assumes that the remaining 80 percent of inbound trucks will enter the site moving northbound on Mango Avenue. This truck traffic then splits, with 40 percent entering the south side of the site via driveway 6, and the other 40 percent entering the north side of the site via driveway 4. *Id.*

36

The problem with this analysis is that it fails to account for how large trucks are actually operated. Smith Comment, pp. 4-5. As analyzed, drivers that enter via Driveway 6 must make right hand backing turns into the loading docks on the south side of the building. *Id.* at p. 5. Mr. Smith notes that these would be “blind turns that are never made by choice.” *Id.*



36

Mr. Smith explains that all truck terminals are designed for counterclockwise movements around the facility so that all backing turns into the docks will be the more favorable left-hand turns. *Id.* Accordingly, “the only reasonable assumption possible is that 50 percent of the inbound trucks would enter from Sierra Avenue to the southside docks via Driveway 3 and 50 percent would enter via Mango to the northside docks via Driveway 4.” *Id.* The level of service and delay calculations should be re-calculated based on this more logical assumption regarding truck traffic patterns. *Id.*

G. THE ASSUMED MIX OF TRUCK TYPES IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

The RDEIR assumes that only 60.3 percent of all trucks serving the Project are 4+ axle types, and that the remaining 39.7 percent are comprised of smaller truck types. There is no substantial evidence supporting these numbers. Mr. Smith explains in his expert comments that, while this percentage split is typical of the ordinary mix of truck types observed travelling on a roadway, “it does not reflect the mix of truck types that serve a warehouse facility like the proposed Project. At such facilities the proportion of trucks in the 4+ axle category is much higher.” Smith Comment, p. 5. Mr. Smith’s observations at similar facilities near the Project reveal that they are served exclusively or almost exclusively by 4+ axle trucks. *Id.* The RDEIR’s traffic and emissions analyses should redone assuming all trucks are 4+ axle or at the currently observed level at similar nearby warehouses. Smith Comment, p. 6.

37

H. THE RDEIR’S FAIR SHARE CONTRIBUTION ANALYSIS MINIMIZES THE PROJECT’S FAIR SHARE CONTRIBUTIONS TO MITIGATION OF CUMULATIVE IMPACTS.

Mr. Smith opines that the computation of the Project’s fair share contribution towards cumulative transportation mitigation is based on an inflated estimate of non-project cumulative traffic impacts. Smith Comment, p. 6. The fair share analysis is based on local studies performed for individual projects that show higher cumulative traffic volumes compared to regional studies or traffic growth. *Id.* Doing so overstates the cumulative traffic impacts at study locations thereby minimizing the Project’s fair share contributions towards mitigation. *Id.* Mr. Smith recommends the fair share contributions be based on the Project’s traffic contribution relative to the regional traffic forecast, not local studies. *Id.*

38

VII. THE RDEIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE CUMULATIVE IMPACTS.

For each environmental impact, the RDEIR concludes that the Project would not result in cumulatively significant impacts. RDEIR, Chapter 3. Each conclusion is based on improper reasoning, and an analysis that is not in compliance with CEQA.

An EIR must discuss significant cumulative impacts. 14 CCR § 15130(a). “Cumulative impacts” are defined as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” 14 CCR § 15355(a). This requirement flows from CEQA section 21083, which 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.”

39

“The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” *Comm. for a Better Env’t v. Cal. Resources Agency* (“*CBE v. CRA*”) (2002) 103 Cal.App.4th 98, 117; 14 CCR § 15355(b). A legally adequate cumulative impacts analysis views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable probable future projects whose impacts might compound or interrelate with those of the project at hand.

A cumulative impact analysis, like the rest of the EIR, must provide specificity, and must be more than a conclusion “devoid of any reasoned analysis.” *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 411. “[I]t is vitally important that an EIR avoid minimizing the

cumulative impacts. Rather, it must reflect a conscientious effort to provide public agencies and the general public with adequate and relevant detailed information about them. (CEQA, § 21061.)” *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 79; *see also Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 723.

The RDEIR’s conclusory cumulative impact analysis is devoid of substantial evidence and errs as a matter of law and commonsense. Lacking any substantial evidence, the RDEIR fails to provide sufficient information for the public to evaluate cumulative impacts that may result from approval of the Project. The amount of information provided for each of the listed projects does not provide the reviewing public or decisionmakers sufficient information about the projects to assess the validity of the cumulative impacts conclusions included in the RDEIR. As one proceeds through each specific cumulative impact section, it becomes clear that the cumulative impacts “analysis” is nothing more than bare conclusions and wishful thinking, unsupported by any evidence.

The hazards and hazardous materials cumulative impact analysis is representative of flaws throughout the RDEIR’s cumulative impact analyses. The RDEIR states that the Project “could potentially result in cumulative impacts associated with hazards and hazardous materials,” but then finds that the Project’s impacts are not cumulatively considerable because the Project’s individual impacts are not significant under CEQA, and because the Project and cumulative projects will comply with applicable regulations and requirements. RDEIR 3.6-15-16. The analysis adds that “other related cumulative projects ... would similarly be required to comply with all such requirements and regulations.” RDEIR 3.6-16.

39

This analysis falls far short of CEQA’s requirements. First, the conclusion that the Project will have no cumulative impact because its individual impact is not significant relies on the exact argument CEQA’s cumulative impact analysis is meant to protect against. As the court stated in *CBE v. CRA*, 103 Cal. App. 4th at 114:

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.

(citations omitted). Moreover, the fact that the Project and other related projects will comply with all relevant regulations and requirements is simply not relevant to the cumulative impacts analysis.

Similarly, the RDEIR concludes that the Project will not have significant cumulative biological impacts because the Project’s mitigation measures will prevent significant cumulative impacts. Dr. Smallwood notes that:

It is important to recognize that nearly all special-status species have been so designated because they have declined due to cumulative impacts. That is, the list of special-status species is evidence that cumulative impacts have already occurred...Every parcel of open space lost to land conversion will qualify as highly significant cumulative impacts, and need to be mitigated appropriately.

Smallwood Comment, p. 10.

Moreover, the Hydrology and Water Quality Cumulative analysis is based entirely on the fact that the Project's impacts will be less than significant and all cumulative projects will be required to comply with applicable standards and laws. RDEIR 3.7-13 to 3.17-14. The same is true of the Land Use and Planning cumulative impact discussion (RDEIR 3.8-32 to 3.8-33), the Population and Housing cumulative impact discussion (RDEIR 3.10-4 to 3.10-5), and the air quality cumulative impact discussion (RDEIR 3.2-354 to 3.2-55). The discussions must address what the Project's impacts are, what the impacts from other cumulative projects are, and whether the Project's impacts are cumulatively considerable.

The question that CEQA requires an EIR to address - and that the RDEIR fails to address - is: Will the Project's impacts be significant when combined with other past, current, and probably future projects. By failing to provide this basic information, the RDEIR's cumulative impact analyses are not supported by substantial evidence.

A. THE RDEIR MISREPRESENTS THE SCALE OF THE LISTED CUMULATIVE PROJECTS.

Another shortcoming of the cumulative impact analysis is that the size of some of the listed cumulative projects are understated. There are inconsistencies in the descriptions of the size of some of the cumulative projects as listed in the RDEIR compared to the actual size of the cumulative projects. For example, the Arboretum Specific Plan is listed as 600 Single Family Dwellings in the Project RDEIR (RDEIR 3-5), but the Arboretum Specific Plan actually allows for up to 3,526 residential units, in addition 135 acres of non-residential uses.² Similarly, the RDEIR lists the Citrus Heights North Specific Plan as 499 single family dwelling units (RDEIR 3-5), but the Specific Plan itself allows for up to 1,161 residential units.³ The same is true for:

- Summit at Rosana Specific Plan - RDEIR lists 600 single family dwellings compared to actual 856;
- Walmart Fontana North - RDEIR lists 193,303 sq ft, compared to actual 244,000 sq. ft.⁴

² Compare RDEIR 3-4 to <https://www.fontana.org/index.aspx?NID=1278>.

³ Compare RDEIR 3-4 to <https://www.fontana.org/index.aspx?NID=1282>.

⁴ <http://www.fontana.org/index.aspx?NID=2342>

- Fontana Promenade Specific Plant – RDEIR lists 391 SFDU, 55 MFDU, and 166,000 TSF of retail compared to actual potential 801 dwelling units and 778,500 commercial square feet.⁵
- Lytle Creek Specific Plan – RDEIR lists 6,300 dwelling units, actually 8,407 dwelling units and 849,420 square feet of commercial.⁶

40

These inconsistencies and omissions must be addressed in a revised DEIR. The cumulative impacts analyses in the RDEIR must also be revised, taking into account the full scope of the listed cumulative projects.

VIII. THE CITY MUST ADOPT THE ENVIRONMENTALLY SUPERIOR ALTERNATIVE BECAUSE IT IS FEASIBLE AND WILL RESULT IN FEWER SIGNIFICANT IMPACTS.

Where a project is found to have significant adverse impacts, *CEQA requires the adoption of a feasible alternative that meets most of the project objectives but results in fewer significant impacts*. *Citizens of Goleta Valley v. Bd. of Supervisors* (1988) 197 Cal.App.3d 1167, 1180-81; *see also, Burger v. County of Mendocino* (1975) 45 Cal.App.3d 322) A “feasible” alternative is one that is capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors. (Pub. Res. Code § 21061.1; 14 Cal. Code Regs. § 15364)

The lead agency is required to select the environmentally preferable alternative unless it is infeasible. As explained by the Supreme Court, an environmentally superior alternative may not be rejected simply because it is more expensive or less profitable:

The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.

Citizens of Goleta Valley v. Bd. of Supervisors (1988) 197 Cal.App.3d 1167, 1180-81; *see also, Burger v. County of Mendocino* (1975) 45 Cal.App.3d 322.

The City is required to adopt Alternative 3, rather than the proposed Project. Alternative 3 will result in fewer significant impacts than the Project. RDEIR 6-14. Significantly, unlike the Project, Alternative 3 would not result in significant and unavoidable NOx emissions. RDEIR 6-11. Moreover, the RDEIR admits that Alternative 3 meets every Project-objective. RDEIR 6-18. Since there is no evidence that it is infeasible, CEQA requires adoption of Alternative 3, rather than the Project. *Citizens of Goleta Valley v. Bd. of Supervisors* (1988) 197 Cal.App.3d 1167, 1180-81.

41

⁵ <https://www.fontana.org/DocumentCenter/View/11006> at p. 3-6.

⁶ http://www.rialtoca.gov/documents/downloads/Draft_Specific_Plan.pdf at 3-2.

IX. THE CITY SHOULD PREPARE AND RECIRCULATE A SUPPLEMENTAL DEIR

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

Recirculation is required where “significant new information” has been added to an EIR. *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 447. New information is “significant” where it results in a change to the EIR's analysis or mitigation of a substantial adverse environmental effect to the EIR. *Id.*

Here, the DEIR must be revised to address the many deficiencies identified above.

X. CONCLUSION

For the foregoing reasons, LIUNA believes the Sierra Lakes Commerce Center DEIR is wholly inadequate. LIUNA urges the City to make the above changes, and recirculate a revised DEIR to the public for review. Thank you for your attention to these comments.

Very truly yours,



Rebecca L. Davis