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Via E-Mail and Overnight Mail

Brian Norton, Senior Planner
City of Riverside
Community Development Department
3900 Main Street, 3rd Floor
Riverside, California 92522
951-826-2308
bnorton@riversideca.gov

Re: Center Street Commerce Building Initial Study and Draft Mitigated Negative Declaration

Dear Mr. Norton:

I am writing on behalf of Laborers International Union of North America, Local Union No. 1184 and its members living in Riverside County and the City of Riverside (collectively "LIUNA" or "Commenters") regarding the Draft Mitigated Negative Declaration and Initial Study (collectively, "MND") prepared for the Center Street Commerce Building ("Project").

After reviewing the MND together with environmental consulting firm, Soil Water Air Protection Enterprise (SWAPE) (attached hereto as Exhibit A), it is evident that the document contains numerous errors and omissions that preclude accurate analysis of the Project. As a result of these inadequacies, the MND fails as an informational document.

Commenters ask the City of Riverside ("City") to prepare an environmental impact report ("EIR") for the Project because there is a fair argument that the Project may have significant unmitigated impacts, including impacts on air quality, traffic, and biological resources. An EIR is required to analyze these and other impacts and to propose mitigation measures to reduce the impacts to the extent feasible.

PROJECT DESCRIPTION

The project includes construction of a 308,000-square foot building on 15.88 gross acres (15.63 net acres) located south side of Center Street and north of Placentia Lane (APNs 246-070-017, 246-040-002, -026, and -027). The building could be used for any number of commercial or light industrial uses as permitted in the BMP zone; however, end users have not been identified at this time, as such, specific details about the future operation of the facility are not currently available. The proposed design will be a concrete tilt-up building. The project includes 110,591 square feet of landscaping, the potential for up to 282 parking stalls, and 47 loading docks. The project applications include Design Review and Lot Consolidation, from 4 lots to 1 lot.

The project site is primarily vacant with a vacant single family residence and five ancillary structures located on the southeastern portion of the site. The project will have access to Center Street via two 40-foot wide driveways located along the frontage. No access to Placentia Lane to the south will be provided. Interior drive aisles along the western, eastern, and southern sides of the building will have a minimum width of 40 feet to provide adequate vehicle and emergency access as required by the Fire Department. The interior drive aisle along the northern side of the building will be 24 feet wide and provide access for passenger vehicles. Center Street and Placentia Lane are not fully improved streets. The proposed project will include the construction of new curbs and gutters, public sidewalk, and landscaping.

LEGAL STANDARD

As the California Supreme Court held, "[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR." *Communities for a Better Env't v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320 ["*CBE v. SCAQMD*"], citing, *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504–505. "Significant environmental effect" is defined very broadly as "a substantial or potentially substantial adverse change in the environment." Pub. Res. Code ["PRC"] § 21068; see also 14 CCR § 15382. An effect on the environment need not be "momentous" to meet the CEQA test for significance; it is enough that the impacts are "not trivial." *No Oil, Inc., supra,* 13 Cal.3d at 83. "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." *Communities*

for a Better Env't v. Cal. Resources Agency (2002) 103 Cal.App.4th 98, 109 ["*CBE v. CRA*"].

The EIR is the very heart of CEQA. *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927. The EIR is an "environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return." *Bakersfield Citizens*, 124 Cal.App.4th at 1220. The EIR also functions as a "document of accountability," intended to "demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." *Laurel Heights Improvements Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392. The EIR process "protects not only the environment but also informed self-government." *Pocket Protectors*, 124 Cal.App.4th at 927.

An EIR is required if "there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment." PRC § 21080(d); see also *Pocket Protectors*, 124 Cal.App.4th at 927. In very limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact thus requiring no EIR (14 Cal. Code Regs.§ 15371), only if there is not even a "fair argument" that the project will have a significant environmental effect. PRC, §§ 21100, 21064. Since "[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process," by allowing the agency "to dispense with the duty [to prepare an EIR]," negative declarations are allowed only in cases where "the proposed project will not affect the environment at all." *Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440.

Under the "fair argument" standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency's decision. 14 CCR § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-15; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602. The "fair argument" standard creates a "low threshold" favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. *Pocket Protectors*, 124 Cal.App.4th at 928.

The "fair argument" standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

> This 'fair argument' standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public

> agencies weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. The lead agency's decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.

Kostka & Zischke, *Practice Under CEQA*, §6.29, pp. 273-274. The Courts have explained that "it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination. Review is de novo, with a preference for resolving doubts in favor of environmental review." *Pocket Protectors*, 124 Cal.App.4th at 928 [emphasis in original].

As a matter of law, "substantial evidence includes . . . expert opinion." PRC § 21080(e)(1); 14 CCR § 15064(f)(5). CEQA Guidelines demand that where experts have presented conflicting evidence on the extent of the environmental effects of a project, the agency must consider the environmental effects to be significant and prepare an EIR. 14 CCR § 15064(f)(5); PRC § 21080(e)(1); *Pocket Protectors*, 124 Cal.App.4th at 935.

DISCUSSION

A. There is a Fair Argument that the Project May have Significant Environmental Impacts Requiring an EIR.

1. There is a Fair Argument that the Project May Have Significant Air Quality Impacts.

The Initial Study (IS) admits that the future use of the Project is unknown. Therefore, the IS states that is selects manufacturing as a "worst-case, conservative approach to assess operational impacts." However, the consulting firm, Soil Water Air Protection Enterprise ("SWAPE") concludes that warehouse uses would have significantly greater impacts than manufacturing. Such uses are clearly reasonably foreseeable since there are a large number of similar-sized warehouses being located in the Riverside County area, including World Logistics Center in Moreno Valley, Moreno Valley Logistics Center, any many others. According to Appendix A of the IS/MND:

> "There is no tenant for the proposed building, thus, the operational components of the project are speculative at this time. The City of Riverside recommended consideration of a 'manufacturing' use as a worst-case, conservative approach to assessing operational impacts. The building has been treated as such herein, consistent with the project traffic impact analysis and health risk assessment" (Appendix A, p. 27, pp. 143).
>
> SWAPE states:
>
> Assuming that the proposed industrial building will be used for manufacturing purposes, however, would not provide a worst-case, conservative scenario, as is suggested by the IS/MND. Rather, assuming that the proposed building will be used for high-cube warehousing would provide for the worst-case, conservative scenario, as it accounts for the possibility of cold-storage requirements, a higher volume of heavy-duty truck trips, and longer truck trip lengths. By failing to account for the possibility of warehouse land uses, the Project's potential operational impacts are greatly underestimated. A DEIR should be prepared to adequately assess the potential impacts that operation of the Project may have on regional and local air quality.

(SWAPE p. 1-2).

> SWAPE states:
>
> As discussed by the South Coast Air Quality Management District (SCAQMD), "CEQA requires the use of 'conservative analysis' to afford 'fullest possible protection of the environment.'"[1] As a result, the most conservative analysis should be conducted. With this in mind, the proposed Project should be modeled as *refrigerated warehouse without rail spurs*, or at the very least, a portion of the building should be modeled as a *refrigerated warehouse without rail spurs*, and the remaining portion of the building should be modeled as an *unrefrigerated warehouse without rail spurs*, so as to take into consideration the possibility that future tenants may require both cold storage and non-cold storage.
>
> Refrigerated warehouses release more air pollutants and greenhouse gas (GHG) emissions when compared to unrefrigerated warehouses or other industrial buildings, such as manufacturing land uses. First, warehouses equipped with

[1] "Warehouse Truck Trip Study Data Results and Usage" Presentation. SCAQMD Inland Empire Logistics Council, June 2014, *available at*: http://www.aqmd.gov/docs/default-source/ceqa/handbook/high-cube-warehouse-trip-rate-study-for-air-quality-analysis/final-ielc_6-19-2014.pdf?sfvrsn=2

cold storage (refrigerators and freezers, for example) are known to consume more energy when compared to warehouses or other industrial buildings without cold storage.[2] Second, warehouses equipped with cold storage typically require refrigerated trucks, which are known to idle for much longer, even up to an hour, when compared to unrefrigerated hauling trucks, such as those used for manufacturing purposes.[3] Lastly, according to a July 2014 *Warehouse Truck Trip Study Data Results and Usage* presentation prepared by the SCAQMD, it was found that hauling trucks that require refrigeration result in greater truck trip rates when compared to non-refrigerated hauling trucks, such as those used for manufacturing purposes.[4]

By not including refrigerated warehouses as a potential land use in the air quality model, the Project's operational emissions may be grossly underestimated, as the future tenants are currently unknown. Unless the Project Applicant can demonstrate that the future tenants of these proposed buildings will be limited to unrefrigerated industrial uses, exclusively, it should be assumed that a mix of cold and non-cold storage will be provided on-site. A DEIR should be prepared to account for the possibility of refrigerated warehouse needs by future tenants.

(SWAPE pp. 2-3).

SWAPE concludes that the IS further underestimates Project emissions by assuming an improper truck mix (too many small trucks and too few large trucks), and also by underestimating the length of truck trips. (SWAPE pp. 4-8).

Given the large number of warehouse projects being constructed in the region (see cumulative impact section below), there is a "fair argument" that this Project may be used as a warehouse. A new CEQA analysis should be conducted calculating emissions from the Project if used for warehouse purposes, and using a proper truck fleet profile and trip lengths.

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[2] Managing Energy Costs in Warehouses, Business Energy Advisor, *available at:* http://bizenergyadvisor.com/warehouses

[3] "Estimation of Fuel Use by Idling Commercial Trucks," p. 8, *available at:* http://www.transportation.anl.gov/pdfs/TA/373.pdf

[4] "Warehouse Truck Trip Study Data Results and Usage" Presentation. SCAQMD Mobile Source Committee, July 2014, *available at:* http://www.aqmd.gov/docs/default-source/ceqa/handbook/high-cube-warehouse-trip-rate-study-for-air-quality-analysis/finaltrucktripstudymsc072514.pdf?sfvrsn=2, p. 7, 9

2. There is a Fair Argument that the Project will have Significant Cancer Risk Impacts.

Appendix B to the Initial Study is a Health Risk Assessment (HRA). The SCAQMD has established a CEQA significance threshold that any project creating a cancer risk of greater than 10 per million has significant impacts requiring an EIR. (App. B., p. 23). The Project will generate significant diesel emissions from trucks and other vehicular traffic. Diesel engine exhaust matter is identified by the State as a cancer-causing chemical. http://oehha.ca.gov/media/downloads/proposition-65//p65single080516.pdf.

Appendix B calculates that the Project will create a cancer risk of 31.8 per million (3.18 x 10-5). (App. B. p. 26). This exceeds the 10 per million CEQA significance threshold by over 300%. Nevertheless, the Initial Study concludes that there is no significant cancer risk impact. The exceedance of the CEQA significance threshold creates a fair argument that the Project will have significant environmental impacts requiring analysis in an EIR. Indeed, in many instances, such air quality thresholds are the only criteria reviewed and treated as dispositive in evaluating the significance of a project's air quality impacts. See, e.g. *Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 960 (County applies BAAQMD's "published CEQA quantitative criteria" and "threshold level of cumulative significance"). See also *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110-111 ("A 'threshold of significance' for a given environmental effect is simply that level at which the lead agency finds the effects of the project to be significant"). The California Supreme Court recently made clear the substantial importance that a SCAQMD significance threshold plays in providing substantial evidence of a significant adverse impact. *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327 ("As the [South Coast Air Quality Management] District's established significance threshold for NOx is 55 pounds per day, these estimates [of NOx emissions of 201 to 456 pounds per day] constitute substantial evidence supporting a fair argument for a significant adverse impact"). Therefore, an EIR is required to analyze the Project's cancer impacts and to propose all feasible mitigation measures to reduce those impacts.

SWAPE states:

> According to the IS/MND, because "no thresholds for cancer or non-cancer risk will be exceeded by the project," the Project will have a less than significant health risk impact (Appendix B, p. 29). This conclusion, however, is incorrect, as it completely contradicts the health risk calculations conducted for the proposed

Project. As a result, the Project's health risk impact and level of significance are entirely misrepresented. An updated health risk assessment should be prepared in a DEIR that more accurately represents the proposed Project's health risk impacts.

Appendix B of the IS/MND discloses the assumptions, methods, and values used to estimate the Project's health risk impacts. According to Appendix B,

> "Concentrations were modeled using AERMOD and then input into the Hot Spots and Reporting Program (HARP) Health Risk Assessment Standalone Tool (RAST) computer software to calculate cancer risk based on the methods and recommendations found in the HRA Guidelines. The results of the HARP evaluation of cancer risk for residential 9-years, 30 years, and 70 years, and worker 25-years exposure scenarios for grid receptors and discrete receptors are summarized in the following tables and detailed program results are included as Appendix D" (p. 25).

The results of the 70-year residential lifetime health risk assessment, which are summarized in Table 7 of Appendix B, indicate that four residential sensitive receptor locations would have a health risk impact that exceeds the 10 in one million significance threshold (see excerpt below) (Appendix B, p. 26).

Table 7 (70 Years (Lifetime) Population-Wide Cancer Burden)

Index	Easting	Northing	Concentration	Cancer Risk
76	467291	3764194	0.03558	3.18E-05
86	467391	3764194	0.02631	2.35E-05
85	467391	3764294	0.02097	1.87E-05
66	467191	3764194	0.01852	1.66E-05

Even though the IS/MND estimates that the Project will create a cancer risk of 31.8 in one million (3.18 x 10-5), which exceeds the 10 in one million significance threshold by over 300%, the IS/MND still concludes that the Project would have a less than significant health risk impact (Appendix B, p. 26). This conclusion, however, is entirely incorrect, as Table 7 clearly demonstrates that the Project would have a significant health risk impact. By failing to adequately apply the results of the health risk assessment to the established significance threshold, the Project's health risk impact is misrepresented. The results of the IS/MND's health risk assessment clearly demonstrate that the Project would have a potentially significant health risk impact, and as such, this significance

determination should have been made, and additional mitigation measures should have been identified and implemented.

(SWAPE pp. 8-9).

3. The Initial Study Fails to Impose All Feasible Mitigation Measures to Reduce Project Impacts.

One of the fundamental purposes of CEQA is to ensure that all feasible mitigation measures are imposed to reduce Project impacts. CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring "environmentally superior" alternatives and mitigation measures. (CEQA Guidelines § 15002(a)(2) and (3); See also, *Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (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." (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 § 21081; 14 Cal.Code Regs. § 15092(b)(2)(A) & (B))

In general, mitigation measures must be designed to minimize, reduce or avoid an identified environmental impact or to rectify or compensate for that impact. (CEQA Guidelines § 15370.) Where several mitigation measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. (*Id.* at § 15126.4(a)(1)(B).) A lead agency may not make the required CEQA findings unless the administrative record clearly shows that all uncertainties regarding the mitigation of significant environmental impacts have been resolved.

CEQA requires the lead agency to adopt feasible mitigation measures that will substantially lessen or avoid the Project's potentially significant environmental impacts (Pub. Res. Code §§ 21002, 21081(a)), and describe those mitigation measures in the CEQA document. (Pub. Res. Code § 21100(b)(3); CEQA Guidelines § 15126.4.) A public agency may not rely on mitigation measures of uncertain efficacy or feasibility. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water was available).) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking

into account economic, environmental, legal, social and technological factors. (CEQA Guidelines § 15364.) Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments. (*Id.* at § 15126.4(a)(2).)

A lead agency may not conclude that an impact is significant and unavoidable without requiring the implementation of all feasible mitigation measures to reduce the impacts of a project to less than significant levels. (CEQA Guidelines §§ 15126.4, 15091.)

SWAPE points out that there are dozens of mitigation measures that have been imposed on similar projects in the region that would significantly reduce air pollution, greenhouse gas and cancer impacts. (SWAPE pp. 9-11). An EIR is required to analyze all of these feasible mitigation measures.

4. The Project Will Have Significant Biological Impacts, But Relies on Improper Deferred Mitigation.

The Initial Study admits that several species of bats may exist at the site, but defers development of mitigation measures until after Project approval in violation of CEQA. The Initial Study states:

> Several species of bats are known to occur in the vicinity of the project site. Several sheds, mobile homes, and trees are located on the project site that could provide suitable roosting habitat for bat species. Thus, Mitigation Measure BIO-3, requiring a pre-construction survey of suitable habitat for roosting bats within 14 days prior vegetation or structure removal be conducted, has been incorporated. Should an occupied maternity or colony roost be detected during the preconstruction survey, ***CDFW shall be contacted about how to proceed.*** With incorporation of Mitigation Measure BIO-3, impacts to roosting bats will be reduced to less-than-significant levels.
>
> Initial Study, p. 38 (emphasis added).

While the Initial Study admits that the Project may impact bats, the proposed mitigation, "CDFW shall be contacted about how to proceed," is not a mitigation measure at all. First, the use of the passive voice makes unclear who will contact CDFW. Second, CEQA prohibits a lead agency from deferring development of mitigation until after the approval of the project. This is precisely what the IS does in this case. The IS must specify what mitigation measures will be implemented, not simply state that mitigation measures will be developed at a later time by a different agency if necessary. "A study conducted after approval of a project will inevitably have a

diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307.) "[R]eliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decisionmaking; and[,] consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment." (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92.)

B. THE MND'S CUMULATIVE IMPACT ANALYSIS VIOLATES CEQA.

For each environmental impact, the IS concludes that the Project would not result in cumulatively significant impacts. See, e.g., IS 92. Each conclusion is based on improper reasoning, and an analysis that is not in compliance with CEQA.

An initial study and MND must discuss a Project's significant cumulative impacts. 14 CCR § 15130(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."

"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). "[I]ndividual effects may be changes resulting from a single project or a number of separate projects." *Id.* "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.

The MND's conclusory cumulative impact analyses are devoid of substantial evidence and errs as a matter of law and commonsense. Lacking any substantial evidence, the MND fails to provide sufficient information for the public to evaluate cumulative impacts that may result from approval of the Project.

The CEQA Guidelines allow two methods for satisfying the cumulative impacts analysis requirement: the list-of-projects approach, and the summary-of projects approach. Under either method, the MND must summarize the expected environmental effects of the project and related projects, provide a reasonable analysis of the cumulative impacts, and examine reasonable mitigation options. 14 CCR § 15130(b). The MND's cumulative impacts analysis does not comply with either of these requirements.

Indeed, the MND does not mention a single past, present, or future project that it evaluated cumulatively with the instant Project. This is despite the fact that the City of Riverside and the neighboring City of Moreno Valley are currently undertaking environmental review for numerous similar distribution center, warehouse and logistics center projects – all of which will generate similar truck traffic and air pollution impacts, which will be cumulatively significant. These include the massive 40 million square foot World Logistics Center in Moreno Valley (State Clearinghouse No. 2012021045), the 1.7 million square foot Moreno Valley Logistics Center (SCH Number: 2015061040), the 2.2 million square foot ProLogis Eucalypus Industrial Park in Moreno Valley, (SCH NO. 2008021002), and many others. Without any information on what – if any – cumulative projects were considered, and what environmental impacts those cumulative projects have, the public and decision makers lack any information on which to assess the validity of the cumulative impacts conclusions under CEQA.

The entire cumulative impact analysis for the Project consists of nothing more than the following paragraph (same for each impact):

> Air Quality. The context for assessing cumulative air quality impacts to the area is the extent to which project related emissions will contribute to a net increase of any criteria pollutant for which the project region is in non-attainment. The analysis provided in Section 4.3 related to air quality found that impacts would be less than significant with mitigation incorporated to reduce operational NOx emissions. Mitigation Measure AQ-1 requires that prior to issuance of business licenses, the building tenant shall provide evidence to the City Planning Division that emissions from truck fleet trips and other operations will not exceed the South Coast Air Quality Management District's (SCAQMD) daily oxides of nitrogen threshold. Therefore, while the project will contribute to localized or regional cumulative impacts, the project contribution will not be considerable.

IS 92.

This bare conclusion does not constitute an analysis. Without even the most basic information about any of the cumulative projects or their environmental impacts, the MND's general cumulative impact conclusion is not supported by substantial evidence.

In addition to being conclusory, the cumulative "analysis" is also based on flawed logic. The conclusion that the Project will have no cumulative impact because each individual impact has been reduced to a less-than-significant level relies on the exact argument CEQA's cumulative impact analysis is meant to protect against. The entire purpose of the cumulative impact analysis is to prevent the situation where mitigation occurs to address project-specific impacts, without looking at the bigger picture. This argument, applied over and over again, has resulted in major environmental damage, and is a major reason why CEQA was enacted. 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).

A new cumulative impacts analysis is needed for the Project that complies with CEQA's requirement to look at the Project's environmental impact, combined with the impacts of other past, current, and probable future projects. An EIR must be prepared to fully analyze the Project's cumulative impacts.

CONCLUSION

For the foregoing reasons, the MND should be withdrawn, an EIR should be prepared, and a draft EIR should be circulated for public review and comment in accordance with the requirements of CEQA. Thank you for considering our comments.

Sincerely,

Richard Drury
Lozeau Drury LLP