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**Re: Perris Gateway Commerce Center
Initial Study | Mitigated Negative Declaration 2326**

Dear Mr. Phung:

This letter is submitted on behalf of Laborers International Union of North America, Local Union 1184, and its members living in Riverside County and the City of Perris (collectively, "LIUNA" or "Commenters") concerning the City of Perris' (the "City") Initial Study and Mitigated Negative Declaration ("IS/MND") prepared for the Perris Gateway Commerce Center, also known as the I-215 & Harley Knox Boulevard Warehouse, (the "Project") (Mitigated Negative Declaration 2326).

These comments have been prepared with the assistance of Matt Hagemann, P.G., C.Hg., QSD, QSP, an expert hydrogeologist; and Jessie Jaeger, air quality specialist from the environmental consulting firm, Soil Water Air Protection Enterprise (SWAPE). Their comments and curriculum vitae are attached as Exhibit A hereto ("SWAPE") and are incorporated by reference in their entirety. The City should respond to the SWAPE comments separately.

Commenters request that the City withdraw the IS/MND and instead prepare an environmental impact report ("EIR") for the Project, as there is substantial evidence that the Project will have significant unmitigated impacts on the environment as discussed below. There is a fair argument that the Project may have significant unmitigated impacts, including:

1. Significant and unmitigated air quality impacts associated with the operation of the Project.
2. Significant and unmitigated air quality impacts associated with the construction of the Project.
3. Significant and unmitigated greenhouse gas emissions from the Project.

An EIR is required to analyze these and other impacts and to adopt feasible mitigation measures to reduce the impacts to the extent feasible.

PROJECT DESCRIPTION

The proposed Project includes the demolition of existing uses at the project site and the construction and operation of a 380,000 square-foot high-cube warehouse located east of Interstate 215 and south of Harley Knox Boulevard in the city of Perris, Riverside County, California. The project, for purposes of approval of entitlements, will be constructed on 21.63 acres, 0.27 acres of which will be provided for purposes of street dedication, and the remainder of the site to be developed with 205,000 square feet of landscaping, 225 passenger vehicle parking stalls, 98 trailer parking stalls, and two detention basins. The warehouse building will include 43 docking bays. In addition to the proposed on-site and potential off-site improvements, the project includes a Specific Plan Amendment which will change the zoning in the PVCCSP from Commercial to Light Industrial. The proposed project also includes a Tentative Parcel Map to consolidate parcels and provide right-of-way dedication.

The Initial Study also includes an adjacent parcel that would allow an expansion of the Project to 400,000 square feet. The Initial Study states:

Adjacent to the west boundary of the project site is a 1.5-acre parcel (APN 294-210-042) that has been included in the environmental analysis, including the technical studies, for future, potential development in conjunction with the project site. Potential inclusion of this additional property at an undetermined future date would result in an alternative project site consisting of 23.66 gross acres. The alternative project site is estimated to support a 400,000 square-foot high-cube warehouse with 212,000 square feet of landscaping, 255 passenger vehicle parking stalls, 150 truck trailer parking stalls, and 47 docks (See Exhibit 2b, Alternative Site Plan).

The purpose of including the additional property and expanding the scope of the CEQA analysis beyond that submitted for entitlement approval is to avoid the need for future environmental review, should the additional property be added to the project site at a later date. It should be noted that if the additional 1.5-acre property be added to the project site in the future, entitlements will have to be evaluated by the City and applicable approvals issued before modifications to the

project can occur. It is the intent of the project environmental document to provide environmental clearance pursuant to CEQA for the project site and the alternative project site. All field surveys, technical data, analysis, mitigation measures, and resulting determinations of significance are sufficient in providing environmental clearance for both the proposed project and the potential future project. For the purposes of the Initial Study and throughout the document, the 23.66-acre site that includes the 1.5-acre (APN 294-210-042) parcel will be called "project site".

(IS, p. 6).

The project site is located east of I-215, south and west of Harley Knox Boulevard, and north of Oleander Avenue in the City of Perris, Riverside County, California (See Exhibit 1, Regional Context and Vicinity Map).
APNs: 294-210-008, -034, -035, -037, -038, -042, -044, -046, and -056
PLSS: Section 36, Township 3 South, Range 4 West, San Bernardino Meridian

STANDING

Members of LIUNA Local Union No. 1184 live, work, and recreate in the immediate vicinity of the Project site. These members will suffer the impacts of a poorly executed or inadequately mitigated Project, just as would the members of any nearby homeowners association, community group or environmental group. Hundreds of LIUNA Local Union No. 1184 members live and work in areas that will be affected by air pollution generated by the project. Therefore, LIUNA Local Union No. 1184 and its members have a direct interest in ensuring that the Project is adequately analyzed and that its environmental and public health impacts are mitigated to the fullest extent feasible.

Pursuant to CEQA, LIUNA Local Union No. 1184 submits these comments in response to the City's proposed IS/MND. Under the circumstances presented here, CEQA clearly requires the preparation of an EIR and accordingly, the City should decline to adopt the proposed IS/MND.

LEGAL STANDARD

As the California Supreme Court recently 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 Environment 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.) "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 Environment v. Calif. 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, supra*, 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, supra*, 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." (Pub. Resources Code, § 21080(d); see also *Pocket Protectors, supra*, 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 ["CEQA Guidelines"]), only if there is not even a "fair argument" that the project will have a significant environmental effect. (Pub. Resources Code, §§ 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.)

Where an initial study shows that the project may have a significant effect on the environment, a mitigated negative declaration may be appropriate. However, a mitigated negative declaration is proper *only* if the project revisions would avoid or mitigate the potentially significant effects identified in the initial study "to a point where clearly no significant effect on the environment would occur, and...there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment." (Public Resources Code §§ 21064.5 and 21080(c)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331.) In that context, "may" means a *reasonable possibility* of a significant effect on the environment. (Pub. Resources Code, §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors, supra*, 124 Cal.App.4th at 927; *League for Protection of Oakland's etc. Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904—

905.)

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. (CEQA Guidelines, § 15064(f)(1); *Pocket Protectors*, *supra*, 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*, *supra*, 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 & Zishcke, *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*, *supra*, 124 Cal.App.4th at 928 [emphasis in original].)

As a matter of law, “substantial evidence includes . . . expert opinion.” (Pub. Resources Code, § 21080(e)(1); CEQA Guidelines, § 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. (CEQA Guidelines § 15064(f)(5); Pub. Res. Code § 21080(e)(1); *Pocket Protectors*, *supra*, 124 Cal.App.4th at 935.) “Significant environmental effect” is defined very broadly as “a substantial or potentially substantial adverse change in the environment.” (Pub. Resources Code, § 21068; see also CEQA Guidelines, § 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.) In *Pocket Protectors*, the court explained how expert

opinion is considered. The Court limited agencies and courts to weighing the admissibility of the evidence. (*Pocket Protectors, supra*, 124 Cal.App.4th at 935.) In the context of reviewing a negative declaration, “neither the lead agency nor a court may ‘weigh’ conflicting substantial evidence to determine whether an EIR must be prepared in the first instance.” (*Id.*) Where a disagreement arises regarding the validity of a negative declaration, the courts require an EIR. As the Court explained, “[i]t is the function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project.” (*Id.*)

DISCUSSION

A. AN EIR IS REQUIRED BECAUSE THE PROJECT WILL MAY HAVE SIGNIFICANT UNMITIGATED ENVIRONMENTAL IMPACTS.

An EIR is required whenever substantial evidence in the entire record before the agency supports a fair argument that a project may have a significant effect on the environment. (*CBE v. SCAQMD, supra*, 48 Cal.4th at 319-20; Public Resources Code § 21080(d); *see also, Pocket Protectors, supra*, 124 Cal.App.4th at 927.) As set forth below, there is a fair argument supported by substantial evidence that the Project may result in significant environmental impacts from the operation of the Project. Therefore, the City is required to prepare an EIR to evaluate the Project’s impacts and analyze mitigation measures needed to reduce such impacts to a less than significant level.

1. Substantial Evidence Supports a Fair Argument that the Project Will Result in Significant Unmitigated Impacts to Air Quality By Failing to Input Correct Parameters into the IS/MND’s Emissions Calculations.

The IS/MND used the California Emissions Estimator Model Version CalEEMod.2013.2.2 (“CalEEMod”) to calculate emissions from the Project. However, SWAPE concludes that several of the assumptions used and values input into CalEEMod were inconsistent with both information disclosed in the IS/MND as well as recommended procedures and values set forth by the South Coast Air Quality Management District (“SCAQMD”) for a high-cube warehouse (the type of Project at issue). Had the Project’s emissions been calculated using the correct parameters, the Project would have a potentially significant impact on air quality. As such, the Project’s air quality impacts have not been properly analyzed and mitigated. Accordingly, the following points constitute substantial evidence that support a fair argument that the IS/MND failed to properly calculate the Project’s emissions and that the Project will thus have significant unmitigated impacts.

a. The IS/MND Improperly Assumes the Use of Zero VOC Paints.

The IS/MND improperly assumes that paints used for the Project will have zero emissions of volatile organic compounds ("VOCs"). However, zero VOC paints do not exist. Therefore, this assumption is incorrect and results in a massive underestimation of Project VOC emissions.

The IS/MND concludes that prior to mitigation, the "maximum daily emissions from the construction of the project will result in excessive emissions to volatile organic chemicals (identified as reactive organic gases) associated with interior and exterior coating activities" (p. 42). To compensate for these excessive VOC emissions from coating activities during construction, "the model includes use of zero g/l for interior and exterior coatings (Mitigation Measure AQ-1). Use of low-VOC coatings during construction activities will reduce VOC emissions to less than the threshold established by SCAQMD" (IS p. 42). However, as SWAPE points out, there is no such thing as a zero-VOC coating.

SWAPE states:

The use of a zero gram per liter (g/L) emission rate within the model, however, is entirely incorrect, as low-VOC coatings still emit some amount of VOCs. Unless the Project is proposing to forgo the use of any architectural coating materials (leave structures unpainted), assuming that paints with a VOC content of zero grams per liter will be used during construction is unrealistic, as all paints, even super-compliant products, still emit VOCs at low levels. Even if we were to assume that the Project is committed to the use of zero-VOC paints, entering a value of zero within the model is still incorrect, as such products do not exist. Until this change is updated to reflect a realistic VOC content and is justified by supporting documentation or substantial evidence, the emissions estimated within this CalEEMod model are incorrect, and should not be relied upon to determine Project significance.

According to the South Coast Air Quality Management District (SCAQMD), "low-VOC" refers to paints that meet the regulatory limit of the South Coast Rule (Rule 1113), which is 50 g/L as of January 1, 2014. Committing to the use of "low-VOC" coatings does not necessarily mean that the products will have a VOC content of 0 g/L.

Even if we were to assume that low VOC paints were utilized during construction, use of a zero g/L VOC emission factor is incorrect as "low-VOC" coatings still emit low levels of VOCs when applied due to chemical changes that occur as the liquid coating dries or hardens after application. Even "Super-Compliant" paints, which are products that greatly exceed the Rule 1113 limit, are only required to

meet the SCAQMD's "Super-Compliant" VOC standard of <10 g/L. For example, Curranseal PMC3300 is listed as a super-compliant paint, but still has a VOC content of 1 g/L when tested. "Zero-VOC" paints may also contain trace amounts of VOCs, as the term refers to products with a material VOC content of <5 g/L. For example, EVEREST Flat paint, which is labeled as a "zero-VOC" product, still has a VOC content of 2 g/L. Using a VOC emission factor of zero g/L is entirely unrealistic, as products that adhere to the lowest VOC content limit of < 5 g/L still contain trace amounts of VOCs when applied.

By applying an incorrect VOC emission rate of 0 g/L to the CalEEMod model, the Project's construction emissions are greatly underestimated. A DEIR should be prepared to adequately evaluate the Project's construction emissions using a correct VOC content value for architectural coating activities.

B1

b. The IS/MND Improperly Assumes That the Project Will Not Involve Refrigeration.

B2

The IS/MND significantly underestimated the Project's operational emissions by assuming that all warehouses at the Project will be unrefrigerated. The CalEEMod calculations were premised entirely on the notion that the proposed industrial building was modeled as an unrefrigerated warehouse. (IS/MND, Appendix A, p. 61.) However, the IS/MND is clear that the future tenant of the industrial building is not currently known. (IS. p. 47).

SCAQMD requires the use of a conservative air quality impact analysis to afford the fullest possible protection of the environment. 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 In this case, a conservative analysis would dictate modeling the proposed warehouse as either entirely or partially refrigerated. SWAPE's letter explains that refrigerated warehouses release more air pollutants and greenhouse gas ("GHG") emissions when compared to unrefrigerated warehouses. Thus, by failing to include refrigerated warehouses a potential land use in the CalEEMod calculations, the Project's operational emissions may be substantially underestimated, and would thus likely result in a significant impact on regional air quality. This constitutes substantial evidence that an EIR should be prepared to evaluate the impacts of the Project's operational emissions and to mitigate those impacts.

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

**c. The IS/MND Incorrectly Relies on the Fontana Truck Trip Study to
for the Truck Trip Rate and for the Fleet Mix.**

B3

The IS/MND also relies upon an artificially low truck trip rate and truck fleet mix percentage to model the Project's operational emissions, and as a result the Project's mobile-source emissions are greatly underestimated. (SWAPE p. 4).

The IS/MND's Traffic Impact Analysis (Appendix H) and AQ/GHG Assessment (Appendix A) rely on the August 2003 City of Fontana *Truck Trip Generation Study* ("Fontana Study"),² and the 2012 Institute of Transportation Engineers 9th Edition *Trip Generation Manual* ("Trip Generation Manual") to determine the number of passenger car and heavy-duty truck trips the Project will generate during operation (Appendix A, p. 37; Appendix H, p. 23). While the Trip Generation Manual is a widely accepted resource, the Fontana Study is not, and according to SCAQMD Staff, has limited applicability. As a result, the Fontana Study should not be relied upon to determine the Project's mobile-source emissions.

As is disclosed in the IS/MND and associated appendices, the proposed industrial building will consist of high-cube distribution warehouses (IS/MND, p. 5). According to SCAQMD staff, the "Fontana Study, by itself, is not characteristic of high cube warehouses."³ Furthermore, SCAQMD staff finds the following additional issues with the Fontana Study:⁴

- The overall trip rate is based on only four warehouses total, which includes two warehouses with zeros. In other words, the results of the Fontana Study were based on only two data points. As is disclosed in the Fontana Study, the daily trip rate was only based on data from a Target warehouse and a TAB warehouse.⁵

² "Truck Trip Generation Study." City of Fontana, County of San Bernardino, State of California, August 2003, *available at*:

<http://www.fontana.org/DocumentCenter/Home/View/622>

³ "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/finaltrucktripstudymisc072514.pdf?sfvrsn=2>, p. 10

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/finaltrucktripstudymisc072514.pdf?sfvrsn=2>, p. 10

⁵ "Truck Trip Generation Study." City of Fontana, County of San Bernardino, State of California, August 2003, *available at*: <http://www.fontana.org/DocumentCenter/Home/View/622>, p. 35

- The Fontana Study does not report any 24-hour daily truck trip rates. According to the Fontana Study, "Trip generation statistics for daily truck trips were not calculated because vehicle classifications counts could not be obtained from the driveway 24-hour counts."⁶
- The trip rates using the Fontana study are calculated based on a 20 percent truck fleet mix, which is inconsistent with SCAQMD's recommendation that agencies use a truck fleet mix of 40%.

Due to these reasons, SCAQMD recommends that Project Applicants either "use ITE default values until Governing Board action" (Option 1) or refer to the flow chart set forth in the SWAPE comments at page 6 (Option 2).⁷

SWAPE used SCAQMD's recommended rate to calculate the Project's number of truck trips and found the number of truck trips associated with the Project increased by approximately 87% from the number contained in the IS/MND's model, with an increase of approximately 119 truck trips per day, and an increase of approximately **43,000 truck trips per year**. Thus, the IS/MND's improper reliance on the Fontana Study misrepresented the actual air quality impacts of the Project.

Similarly, the IS/MND relied on the Fontana Study's total truck fleet mix of 20%, which sets forth the operational mix of cars, 2-axle trucks, 3-axle trucks, and 4-axle trucks to input into CalEEMod. As SWAPE notes, this approach is not consistent with recommendations set forth by SCAQMD, and does not accurately represent the percentage of trucks that access a high-cube warehouse on a daily basis. (SWAPE p. 7.) To avoid underestimating the number of trucks visiting warehouse facilities, SCAQMD recommends a truck fleet mix of 40%. ***This number is double that used by the IS/MND***, and is a conservative value especially given that the future tenant of the warehouse is unknown. Based on this recommendation, SWAPE's letter sets forth a fleet mix percentage that the City should have input into CalEEMod that more accurately represents the number of trips that would likely occur during Project operation. As such, the IS/MND uses an inaccurate rate for the fleet mix percentage that does not adequately assess and mitigates the Project's air quality and GHG impacts. As EIR should be prepared that adequately assesses and mitigates these impacts.

⁶ "Truck Trip Generation Study." City of Fontana, County of San Bernardino, State of California, August 2003, *available at*:

<http://www.fontana.org/DocumentCenter/Home/View/622>, p. 6

⁷ "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/finaltrucktripstudymisc072514.pdf?sfvrsn=2>, p. 11

d. The IS/MND Incorrectly Input Fleet Mix Percentage into CalEEMod.

B4

SWAPE's letter explains that the IS/MND input the aforementioned artificially low fleet mix percentage in the CalEEMod model incorrectly. Instead of inputting the fleet mix values into the model as fleet mix percentages, the values were used to adjust the trip type percentages for the Project. This approach is plainly inconsistent with Appendix A of the CalEEMod User's Guide instructions on how to calculate the trip type. The IS/MND incorrectly assumed that commercial-work ("C-W") trip are made exclusively by trucks and commercial-nonwork ("C-NW") trips are made exclusively by passenger cars. In fact, both C-W and C-NW trips include trips made by a mix of vehicle types. Mr. Hagemann notes that "[a]s a result, the Project's operational mobile-source emissions are both greatly underestimated and extremely inaccurate." (SWAPE, p. 8.) An EIR should be prepared that inputs the proper data into the CalEEMod model and accurately analyzes the Project's mobile-source emissions and provides mitigation measures for those impacts.

e. Correct Calculation Methodology Shows that Project Emissions Exceed CEQA Significance Thresholds.

SWAPE runs an air quality analysis using the correct emission factors, fleet mix, trip length and other factors mandated by SCAQMD. This analysis shows that the Project will have air quality emissions far above applicable CEQA significance thresholds. SWAPE's analysis shows that the Project's operational NO_x emissions of 134 pounds per day (lbs/day) exceed the SCAQMD regional significance threshold of 55 pounds per day (see table below).

Summary of Peak Operational Emissions- Winter						
Operational Activities	Emissions (pounds per day)					
	ROG	NO _x	CO	SO _x	PM10	PM2.5
Area	24	0	0	0	0	0
Energy	0	1	1	0	0	0
Off-Road	1	10	9	0	1	1
Mobile (Passenger Cars)	1	1	13	0	5	1
Mobile (Trucks)	7	123	70	0	16	6
SWAPE's Total Maximum Daily Emissions	34	134	93	1	22	8
DEIR's Total Maximum Daily Emissions	29	41	57	0	15	5
SCAQMD Regional Thresholds	55	55	550	150	150	55
Thresholds Exceeded?	No	Yes	No	No	No	No

As demonstrated in the table above, all operational criteria air pollutant emissions increase when correct input parameters are used to model emissions. ROG emissions

increase by approximately 17 percent, NO_x emissions increase by approximately 228 percent, CO emissions increase by approximately 62 percent, SO_x emissions increase by approximately 134 percent, PM₁₀ emissions increase by approximately 48 percent, and PM_{2.5} emissions increase by approximately 66 percent. These updated emission estimates demonstrate that when the Project's emissions are estimated correctly, the Project would result in substantially more severe significant effects than what was identified in the IS/MND. As a result, a DEIR should be prepared that includes an updated model to adequately estimate the Project's operational warehouse emissions, and additional mitigation measures should be incorporated in an effort to reduce the Project's emissions to a less-than-significant level.

B5

Since there is a fair argument that Project emissions will exceed SCAQMD CEQA significance thresholds, an EIR is required. 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 NO_x is 55 pounds per day, these estimates [of NO_x emissions of 201 to 456 pounds per day] constitute substantial evidence supporting a fair argument for a significant adverse impact").

f. IS/MND Fails to Impose All Feasible Mitigation Measures.

B6

SWAPE points out that there are dozens of feasible mitigation measures that have been imposed on other similar projects that should be required for the Perris Gateway Project. However, since an MND was prepared rather than an EIR, these mitigation measures were not imposed. An EIR should be prepared to analyze all feasible mitigation measures to reduce the Project's significant 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))

B6

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.)

An EIR should be prepared to analyze all feasible mitigation measures to reduce the Project's significant environmental impacts.

2. Substantial Evidence Supports a Fair Argument that the Project Will Result in Significant Unmitigated Impacts to Human Health from Diesel Particulate Emissions Associated with Project Construction.

B7

The IS/MND conclusion that the health risk posed to nearby sensitive receptors from exposure to diesel particulate matter ("DPM") emissions released during Project construction would be less than significant fails to quantify this risk and compare it to applicable thresholds. The IS/MND fails to include a health risk assessment ("HRA").

SWAPE prepared a health risk assessment which demonstrates that construction related DPM emissions from the Project exceed applicable CEQA significance thresholds. SWAPE concludes:

The excess cancer risk to adults, children, and infants at a sensitive receptor located 25 meters away, over the course of Project construction are **1.35, 9.92, and 63.0 in one million**, respectively. Consistent with OEHHA guidance, exposure was assumed to begin in the infantile stage of life to provide the most conservative estimates of air quality hazards. **The infantile exposure for the sensitive receptors exceeds the SCAQMD threshold of 10 in one million.** 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.

(SWAPE, p. 15).

Mr. Hagemann's analysis clearly provides substantial evidence supporting a fair argument that construction emissions from the Project may have significant impacts on human health and the environment. Accordingly, the City must prepare an EIR to analyze these impacts and evaluate potential mitigation measures to address the impacts.

B. The IS/MND Improperly Defers Development of Mitigation Measures for Biological Impacts.

B8

The IS admits that the Project may have significant impacts on special status species. IS, p. 50. However, the document relies on improper deferred mitigation measures, which is not allowed under CEQA. For example, mitigation measure BIO-1 states:

In the event owls are observed onsite, County of Riverside Environmental Programs Department (EPD) will be contacted to discuss potential mitigation measures, such as passive or active relocation.

(IS. p. 51).

CEQA does not allow a lead agency to defer development of mitigation measures until after project approval and after approval of the CEQA document. Specific mitigation measures must be set forth in the CEQA document so that the public can analyze whether those measures will be sufficient to reduce Project impacts to below significance.

While the Initial Study admits that the Project may impact owls, the proposed mitigation, "County of Riverside Environmental Programs Department (EPD) will be contacted to discuss potential mitigation measures, such as passive or active relocation," is not a mitigation measure at all. First, the use of the passive voice makes unclear who will contact EPD. 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.) A lead agency's adoption of an EIR's proposed mitigation measure for a significant environmental effect that merely states a "generalized goal" to mitigate a significant effect without committing to any specific criteria or standard of performance violates CEQA by improperly deferring the formulation and adoption of enforceable mitigation measures. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670; *Communities, supra*, 184 Cal.App.4th at p. 93 ["EIR merely proposes a generalized goal of no net increase in greenhouse gas emissions and then sets out a handful of cursorily described mitigation measures for future consideration that might serve to mitigate the [project's significant environmental effects.]").

B8

CONCLUSION

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard Drury", with a long horizontal flourish extending to the right.

Richard Drury
Lozeau Drury LLP