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January 3, 2017

Via Email

Richard Ayala, Senior Planner
City of Ontario
303 East "B" Street
Ontario, California 91764

Re: Draft Environmental Impact Report for Colony Commerce Center Specific Plan (PSP15-001) - SCH No. 2015061023

Dear Mr. Ayala:

This letter is submitted on behalf of **Laborers International Union of North America, Local Union No. 783**, and its members living in and near the City of Ontario (collectively "LIUNA" or "Commenters") concerning the City of Ontario's (the "City") Draft Environmental Impact Report ("DEIR") prepared for the Colony Commerce Center Specific Plan (PSP15-001) (SCH No. 2015061023 (the "Project")).

After reviewing the DEIR, together with our team of expert consultants, it is evidence that the document contains numerous errors and omissions that preclude accurate analysis of the Project. As a result of these inadequacies, the DEIR fails as an informational document and fails to impose all feasible mitigation measures to reduce the Project's impacts. Commenters request that the City address these shortcomings in a revised DEIR and recirculate the revised DEIR prior to considering approvals for the Project.

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Commenters have submitted expert comments from air quality experts Soil Water Air Protection Enterprise ("SWAPE"), who concludes that the DEIR fails to adequately evaluate and mitigate the Project's air quality impacts. First, the DEIR fails to disclose the input numbers used for the analysis of the Project's construction-related air quality impacts, thereby failing to give the public an opportunity to verify and comment on the accuracy of the numbers. Second, the DEIR's air quality analysis improperly assumes only unrefrigerated land use, resulting in an underestimate of operational air emissions. Third, the DEIR makes inaccurate truck trip assumptions that are inconsistent with traffic guidelines set forth by the South Coast Air Quality Management District ("SCAQMD"). As a result, the DEIR significantly underestimate emissions from truck traffic generated by the Project. Fourth, the DEIR fails to incorporate all feasible mitigation measures to reduce the Project's significant operational air quality impacts.

SWAPE's comments and curriculum vitae are attached hereto as Exhibit 1 and are incorporated in their entirety.

Commenters also submit comments from expert transportation analyst Daniel Smith, Jr., P.E., a registered civil and traffic engineer, and Dr. Shawn Smallwood, a wildlife biologist. Mr. Smith and Mr. Smallwood point out numerous flaws and inconsistencies in the Traffic Impact Analysis and the Biological Resources Analysis that must be addressed in a revised DEIR. Mr. Smith's comments and CV are attached hereto as Exhibit 2 and are incorporated by reference in their entirety. Mr. Smallwood's comments and CV are attached hereto as Exhibit 3 and are incorporated by reference in their entirety.

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cont.

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

PROJECT DESCRIPTION

The Project is a proposed master planned industrial development to be located on approximately 123.17 acres of land in the City of Ontario. (DEIR, p. ES-2.) The Project consists of two planning areas. Planning Area 1 ("PA-1") includes approximately 57.58 gross acres of industrial development on the north portion of the Project site, allowing for the development of 1,379,501 square feet of industrial development. (*Id.*) Planning Area 2 ("PA-2") will be the initial phase of the Project, and includes approximately 65.60 gross acres of industrial development on the south portion of the Project site, allowing for up to 1,571,645 square feet of industrial development. (*Id.*) The Project will include wholesale and distribution, light manufacturing, and businesses with high-value, time sensitive merchandise that could benefit from proximity to the airport. (*Id.*)

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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.

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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.

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. 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.” 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.” *Communities for a Better Env’t v. Calif. 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 hydrogeologist Matthew Hagemann, P.G., C. Hg., and expert urban planner Terry Watt, Ph.D, the EIR for this Project fails to adequately analyze and mitigate the Project’s impacts.

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ANALYSIS

I. THE DEIR FAILS TO ACCURATELY ANALYZE AND MITIGATE THE PROJECT'S AIR QUALITY IMPACTS.

A. The DEIR Fails to Provide All Supporting Documentation for Air Quality Models.

The attached comments from SWAPE point out that the DEIR and appendices fail to include all air model output files, which are necessary to determine the accuracy of the modeling performed. According to the DEIR, CalEEMod was used to estimate the construction and operational criteria air pollutant emissions from the Project. (DEIR, p. 6-13.) CalEEMod provides recommended default values based on site specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type. SWAPE determined that the CalEEMod output files for Project construction were completely omitted. The Air Quality Analysis contained in Appendix A of the DEIR only included output files for Project operations. Without the output files for the Project's construction emissions, SWAPE was unable to verify that the assumptions used within these models are correct and cannot determine what default values were used or changed, or if Project-specific information was omitted from the model.

As the California Supreme Court stated in *Laurel Heights Improvement Assn. v. Regents of University of California* (2988) 47 Cal. 3d 376, 405:

"The Regents miss the critical point that the public must be equally informed.... If the Regents considered various alternatives and found them to be infeasible, we assume, absent evidence to the contrary, that they had good reasons for doing so. Those alternatives and the reasons they were rejected, however, must be discussed in the EIR in sufficient detail to enable meaningful participation and criticism by the public."

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Similarly, the court stated in *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 831:

"The county has attempted to remedy the inadequacies of the EIR by presenting evidence to the trial court to show that there are sufficient water resources available for the project. Indeed, the trial court made findings of fact to such effect. This, however, is beside the point. It is the adequacy of the EIR with which we are concerned, not the propriety of the board of supervisors' decision to approve the project. '[W]hatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.'"

Also, the EIR and all supporting documentation must be available for public review during the entire CEQA comment period. CEQA section 21092(b)(1) requires that the CEQA notice for an EIR must include "the address where copies of the proposed EIR and all documents referenced therein are available for review and readily accessible during the agency's normal working hours." (Emphasis added) As noted by a leading CEQA treatise:

The above-referenced section [21092(b)(1)] requires the agency to notify the public of the address at which “all documents referenced in a draft EIR” can be found (and presumably read). . . . seems to require agencies to make available for public review all documents on which agency staff or consultants expressly rely in preparing a draft EIR. In light of case law emphasizing the importance of ensuring that the public can obtain and review documents on which agencies rely for the environmental conclusions (see, e.g., *Emmington v. Solano County Redevel. Agency*, 195 Cal.App.3d 491, 502-503 (1987)), agencies should ensure that they comply literally with this requirement.

Remy, Thomas, Moose & Manley, Guide to the California Environmental Quality Act, p. 300 (Solano Press, 11th Ed. 2007). The courts have held that the failure to provide even a few pages of a CEQA documents for a portion of the CEQA review period invalidates the entire CEQA process. *Ultramar v. South Coast Air Quality Man. Dist.*, 17 Cal.App.4th 689 (1993).

CEQA requires that information or data cited by an EIR “as the source of conclusions stated therein . . . shall be reasonably available for inspection at a public place or building.” Pub. Resources Code § 21061. Thus, while an EIR may properly rely on third-party studies, it may do so only if it either appends the study in question or notifies the public of its location at the time it makes the EIR available for public review. *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1987) 193 Cal.App.3d 1544, 1549; *San Francisco Ecology Center v. City and County of San Francisco* (1975) 48 Cal.App.3d 584, 595; Pub. Resources Code § 21092(b) (1) (notice of preparation shall specify address where copies of all referenced documents are available for review); see also CEQA Guidelines § 15087(c)(5).

Since the EIR omits critical information necessary for accurate review of the document, the EIR is inadequate as a public information document. The City must make the CalEEMod date available and reopen the DEIR public review period once the information is made available to the public.

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B. The DEIR Fails to Account for Emissions from Refrigerated Storage and Trucks.

The DEIR significantly underestimates 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 Project will not include any refrigerated land use. This is inconsistent with the DEIR’s statement that the Project will “permit multiple types of uses that could conceivably require deliveries via refrigerated trucks and/or employ on-site refrigeration.” (DEIR, p. 4.3-29.) The DEIR also states that the operational phase of the Project would consume energy for multiple purposes, including refrigeration. (DEIR, p. 4.7-22.)

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Failing to account for the Project’s potential partial use as refrigerated warehouse is a significant omission. By not including any refrigerated warehouse land uses in the Air Quality Analysis, the emissions from this potential land use are grossly underestimated. Refrigerated trucks tend to idle much longer than typical hauling trucks, even up to an hour. Energy usage from warehouses equipped with industrial size refrigerators and freezers is also much greater when compared to unrefrigerated warehouses. 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 (SWAPE, p. 5.)

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cont.

A revised DEIR must be prepared that includes 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.

C. The DEIR Uses an Incorrect Truck Fleet Mix.

The DEIR also significantly underestimated the Project's operational mobile-source emissions by relying on an improper fleet mix percentage. Specifically, the DEIR's Final Traffic Impact Analysis (Appendix L) improperly relies on the August 2003 City of Fontana *Truck Trip Generation Study* ("Fontana Study") to determine the truck fleet mix of approximately 20 percent, compared to 80 percent passenger cars. (SWAPE, p. 6.) As SWAPE's letter details, SCAQMD has found numerous problems with the Fontana Study and has thus recommended specific figures to use for the truck fleet mix for a high-cube warehouse distribution center.

As SWAPE notes, the Fontana truck fleet mix "is not consistent with recommendations set forth by SCAQMD for High-Cube Warehouses, 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 DEIR, and is a conservative value especially given that the future tenants of the Project are unknown. Reliance on a 20 percent truck fleet mix does not adequately assess and mitigate the Project's air quality and GHG impacts.

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D. The DEIR Uses an Incorrect Truck Trip Length.

SWAPE concludes that the DEIR uses an improper truck trip length, disregarding guidance from the SCAQMD. This further underestimates air quality and greenhouse gas emissions from the Project. The DEIR relied on CalEEMod's default value of an average truck trip length of 16.6 miles. However, there is no substantial evidence to support use of this number. For High-Cube warehouse projects such as this one, SCAQMD recommends a much longer truck trip length of 40 miles. To conservatively evaluate the Project's air quality and GHG emissions, the DEIR should use the SCAQMD-recommended 40 mile truck trip length, or provide substantial evidence to support a shorter trip length.

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E. The DEIR Fails to Account for Total Lot Acreage.

The CalEEMod analysis for the Project relies on a building acreage of 123.17 acres. (DEIR App. A, pp. 145, 161, 172.) This is inconsistent with the DEIR which states that "the project also includes off-site infrastructure improvements that, when added to the 123.17-acre project site totals approximately 139.14 acres." (DEIR, p. ES-2.) Because the total area of the

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¹ <http://www.aqmd.gov/docs/default-source/ceqa/handbook/high-cube-warehouse-trip-rate-study-for-air-quality-analysis/finaltrucktripstudymc072514.pdf?sfvrsn=2>, p.7

Project is 139.14 acres, that value should have been used as the total lot acreage for the CalEEMod analysis. By underestimating the lot acreage, the CalEEMod model underestimated the Project's air quality and GHG emissions. (SWAPE, p. 10.)

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F. A Corrected Emissions Calculation Results in Emissions Much Higher than Disclosed in the DEIR.

SWAPE corrected all of the above-mentioned errors and miscalculations. They included 16-acres of off-site improvements in the lot acreage, assumed 15% of buildings would be made up of refrigerated warehouses, assumed a 40% truck fleet mix, and used a truck trip length of 40 miles. (SWAPE, p. 10-11.)

Model	Operational Emissions (lbs/day)				
	ROG	NOx	CO	PM10	PM2.5
DEIR	37.0	92.0	289.0	64.0	19.0
SWAPE	207.0	1,112.4	1,329.0	163.0	58.3
Percent Increase	560%	1,110%	360%	155%	207%
SCAQMD Threshold	55	55	550	150	55
Exceeded?	Yes	Yes	Yes	Yes	Yes

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(SWAPE, p. 11.)

As this table demonstrates, when the correct input parameters are used to model emissions from the Project, the Project's operational ROG, NOx, CO, PM10, and PM2.5 emissions all exceed the SCAQMD's significance thresholds (see table below). The exceedances of the threshold for ROG, CO, PM10, and PM 2.5 are not recognized by the DEIR. A revised DEIR must be prepared that includes an updated model that accurately estimates the Project's operational emissions, and additional mitigation measures must be proposed to mitigate these additional significant impacts.

G. The DEIR Fails to Propose All Feasible Mitigation Measures.

SWAPE concludes that the DEIR fails to propose all feasible mitigation measures. The City may not issue a statement of overriding considerations until all feasible mitigation measures are implemented. SWAPE identifies numerous feasible mitigation measures that should be required to reduce Project air quality impacts. Many of these measures have been implemented for other projects or are recommended by the SCAQMD or other public agencies.

Additional mitigation measures that could be implemented include, but are not limited to, the following:

- Maximize use of solar energy including solar panels; installing the maximum possible number of solar energy arrays on the building roofs and/or the Project side to generate solar energy for the facility.
- Limit the use of outdoor lighting to only that needed for safety and security purposes.
- Install solar lights or light-emitting diodes (LEDs) for outdoor lighting.

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- Require use of electric or alternatively fueled sweepers with HEPA filters.
- Provide electric vehicle charging stations that are accessible for trucks.
- Require the proposed warehouse to be constructed with the appropriate infrastructure to facilitate sufficient electric charging for trucks to plug-in.
- Limit the daily number of trucks allowed at the facility to levels analyzed in the DEIR. If higher daily 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.
- Design the site such that any check-in point for trucks is well inside the facility to ensure that there are no trucks queuing outside of the facility.
- On-site equipment should be alternatively fueled.
- Provide food options, fueling, truck repair and or convenience stores on-site to minimize the need for trucks to travel through residential neighborhoods.
- Should the proposed Project generate significant emissions, the Lead Agency should require mitigation that requires accelerated phase-in for non-diesel powered trucks. For example, natural gas trucks, including Class 8 HHD trucks, are commercially available today. Natural gas trucks can provide a substantial reduction in emissions, and may be more financially feasible today due to reduced fuel costs compared to diesel. In the Final CEQA document, the Lead Agency should require a phase-in schedule for these cleaner operating trucks to reduce project impacts.

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(SWAPE, pp. 11-12.) SWAPE's comments include many other additional mitigation measures that should be analyzed and implemented. (SWAPE, pp. 11-14.) These measures are more stringent and prescriptive than those identified in the DEIR. When combined together, these measures offer a cost-effective, feasible way to incorporate lower-emitting design features into the proposed Project, which subsequently, reduces emissions released during Project operation. An updated DEIR must be prepared to include additional mitigation measures, as well as include an updated air quality and greenhouse gas analysis to ensure that the necessary mitigation measures are implemented to reduce operational emissions to below thresholds. Furthermore, the Project Applicant needs to demonstrate commitment to the implementation of these measures prior to Project approval, to ensure that the Project's operational emissions are reduced to the maximum extent possible.

H. The DEIR Fails to Evaluate the Health Risk from Project Construction-Related Diesel Particulate Matter.

Construction and operation of the Project will result in emissions of diesel particulate matter ("DPM"), which is a recognized Toxic Air Contaminant ("TAC") and known carcinogen. (SWAPE, p. 14.) While the DEIR includes a health risk assessment ("HRA") for Project operations, it does not include an assessment for Project construction. (*Id.*) Instead, the DEIR dismisses the need for one, concluding, without evidence, that "the greatest potential for health impacts would result from DPM emitted during the operations phase of the Project from the use of diesel-fueled trucks accessing the site." (DEIR, p. 4.3-32.) In other words, the health risks associated with DPM exposure resulting from construction activities was never evaluated.

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Not preparing an HRA for construction activities is inconsistent with the most recent

guidance published by Office of Environmental Health Hazard Assessment (OEHHA), the organization responsible for providing recommendations and guidance on how to conduct health risk assessments in California. OEHHA recommends that all short-term projects lasting longer than two months be evaluated for cancer risks to nearby sensitive receptors.² Project construction will produce DPM emissions over a period of 18 months. (DEIR, p. 2-24.) Accordingly, an updated DEIR must be prepared that includes an analysis of the health risk from DPM emissions during Project Construction, and additional mitigation measures should be implemented if necessary. (SWAPE, p. 15.)

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II. THE DEIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE THE PROJECT'S GREENHOUSE GAS IMPACTS.

Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments. 14 CCR § 15126.4(a)(2). The DEIR fails to mitigate the Project's significant GHG impacts because it does not include any of the proposed measures to reduce GHG emissions as enforceable mitigation measures.

The City of Ontario's Climate Action Plan ("CAP") sets a significance threshold for greenhouse gases ("GHGs") of 3,000 MT CO₂e per year. The DEIR concludes that the Project will exceed this threshold. (DEIR, p. 4.7-19.) According to the CAP, if a project exceeds the threshold, it then can turn to a Screening Table that provides specific guidance for reducing GHG emissions. If a project incorporates and implements GHG-emission reducing measures from the Screening Table that amounts to 100 points, its GHG emissions impact will be considered less than significant under the CAP. (DEIR, p. 4.7-21.)

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The DEIR identifies 18 mitigation measures set forth in the CAP, and concludes that implementation of those measures would achieve 103 points. (DEIR, 4.7-21.) Review of the Project's proposed mitigation measures in Table ES-1, however, makes clear that none of these measures are actually included as mitigation measures. As a result, they are unenforceable, and violate CEQA. The DEIR must be revised to include each of the proposed measures as enforceable mitigation measures. Without doing so, the DEIR fails to fully mitigate the Project's GHG emissions.

III. THE DEIR FAILS TO PROVIDE A MEANINGFUL BASELINE FOR POTENTIAL HEALTH RISKS FROM EXPOSURE TO HAZARDS AND HAZARDOUS MATERIALS.

The DEIR skirts several potentially significant impacts that may result from the project by failing to look for them and establish a baseline supported by substantial evidence. The CEQA "baseline" is the set of environmental conditions against which to compare a project's anticipated impacts. (*Communities for a Better Environment v. So. Coast Air Qual. Mgmt. Dist.* (2010) 48 Cal.4th 310, 321.) Section 15125(a) of the CEQA Guidelines states in pertinent part that a lead agency's environmental review under CEQA:

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² "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-18.

must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.

CEQA Guidelines § 15125(a.) A reasonable hazardous risk baseline is not determined by failing to look.

In order to evaluate potential impacts associated with hazards and hazardous materials that could occur from construction or operation of future land uses at the Project site, a Phase I ESA was conducted for PA-2. (DEIR, pp. 4.8-8-9.) The Phase I ESA “is intended to identify the likelihood of past, present, or potential future release of hazardous materials at PA-2.” (DEIR, p. 4.8-9.) The DEIR’s entire analysis of hazards and hazardous material impacts is based on this report. (*Id.*) The problem is that no Phase I ESA was prepared for PA-1, which makes up nearly half of the Project site. As a result, there is no baseline, supported by substantial evidence, from which to assess the significance of potential impacts to workers exposed to disturbed soils, soil vapor, or groundwater that is potentially hazardous.

The DEIR contains a mitigation measure that requires a Phase I ESA for PA-1 upon grading (mitigation measure Haz-7), but this is insufficient. CEQA requires that a DEIR disclose a project’s environmental impacts *before* a project is approved and *before* an EIR is certified. A revised DEIR must be prepared that includes a Phase I ESA for PA-1.

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Similarly, while a Phase I ESA was conducted for PA-2, additional sampling must be conducted to fully characterize the hazards at the Project site. Despite noting a potential for agricultural chemicals to be present on site, no soil samples were taken to evaluate whether residual pesticides remain in the soil at the Project site. The Phase I ESA dismissed the need for any further action because “[w]hen the proposed buildings and parking lots are constructed, the entire area of the subject property will either be paved over or covered by improvements that would make direct contact with any potentially remaining concentrations in the soil unlikely.” (Phase I ESA, p. 7.) This unsubstantiated conclusion fails to evaluate and disclose the potential for pesticide residues in the soil to pose a health risk to construction workers and nearby residents during construction. During earthmoving activities, construction workers and the public may be exposed to Project site soils which may contain harmful levels of pesticide residuals associated with agricultural activities on the site. To protect worker safety, Project site soils must be sampled. Sampling results should be compared to health-protective regulatory screening levels such as U.S. EPA Regional Screening Levels³ and California Human Health Screening Levels.⁴

By failing to quantify the presence of persistent chemicals in the soil, the DEIR fails to identify any baseline supported by substantial evidence from which to assess the significance of potential impacts of workers’ exposure to disturbed soils potentially contaminated with pesticides or other agricultural chemicals.

³ <http://www.epa.gov/region9/superfund/prg/>

⁴ <http://www.calepa.ca.gov/brownfields/documents/2005/CHHSIsGuide.pdf>

IV. THE DEIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE THE PROJECT'S TRAFFIC IMPACTS.

As detailed in the comments of Traffic Expert Dan Smith, Jr., P.E. (Exhibit 2), the DEIR fails to adequately analyze and mitigate the Project's traffic impacts. A revised DEIR must be prepared to fully address these inadequacies.

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V. THE DEIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE THE PROJECT'S BIOLOGICAL RESOURCE IMPACTS.

As detailed in the comments of biologist Shawn Smallwood (Exhibit 3), the DEIR fails to adequately analyze and mitigate the Project's impacts on biological resources. A revised DEIR must be prepared to fully address these inadequacies.

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VI. THE CITY SHOULD PREPARE AND RECIRCULATE A REVISED DEIR.

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.*) 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).) Here, the DEIR must be revised and recirculated to address the many deficiencies identified above.

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CONCLUSION

For the foregoing reasons, LIUNA believes the Colony Commerce Specific Plan 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.

Sincerely,



Rebecca L. Davis