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September 3, 2014

Via Email and Hand Delivery

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Members of the City Council
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Re: **Appeal from Planning Commission Decision on Site Plan Review 14-003 for KCS West Application to Develop a Manufacturing/Assembly Facility (Kinkisharyo)**

Dear Mayor Ledford and Council Members:

We are writing on behalf of **Antelope Valley Residents for Responsible Development** to urge the Palmdale City Council to uphold our appeal of the Planning Commission's decision to deny our appeal of the Hearing Officer's approval of SPR 14-003. The appeal seeks reversal of the decision to approve SPR 14-003, including the Initial Study¹, prepared pursuant to the California Environmental Quality Act ("CEQA")² and its implementing Guidelines,³ and all other actions and approvals⁴ related to the application by KCS West to develop a

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

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

³ 14 Cal.Code Regs. § 15000 et seq.

⁴ KCS West seeks a site plan review, lot line adjustment, grading permits and building permits from the City of Palmdale authorizing the development of one building. The Project also requires authorizations from the Antelope Valley Air Quality Management District ("AVAQMD"), the Los Angeles County Waterworks District, the Sanitation Districts of Los Angeles County, and the State Water Resources Control Board and/or the Lahonton Regional Water Quality Control Board. The 3106-028cv

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manufacturing/assembly use consisting of a 427,507 square feet facility and rail tracks, and all related approvals (collectively “Project”). According to the City, the Project would be located on approximately 35 acres of a 67.75 acre site on the south side of Avenue M, east of Sierra Highway and the Union Pacific Railroad (“Project Site”).

We reviewed the Staff Report to the Mayor and Members of the City Council, including the Modified Initial Study and other attachments, and conclude that State law requires the City to uphold the appeal and to prepare a new or subsequent EIR for the Project. As a general matter, neither the Staff Report nor the Modified Initial Study provides substantial evidence or legal authority to support the City’s findings. In fact, the City fails to respond to most of the issues raised in our appeal. Where the City purports to address an issue, the City misstates the legal standard, includes unsupported or erroneous data and sweeps serious concerns about new and more severe, significant environmental and public health impacts under the rug. As a practical matter, the City blatantly claims that it is not required to analyze new information showing that the Project will result in significant impacts on public health from exposure to diesel exhaust and Valley Fever. The City also claims that it is not required to analyze new information showing that the Project will result in significant impacts from greenhouse gas emissions.

The City conducted no new or subsequent environmental review of the Project. Instead, the City prepared an Initial Study and Modified Initial Study, which conclude that all potentially significant effects from the Project have been adequately analyzed in a 20 year old EIR certified in 1993 for the General Plan (“1993 General Plan EIR”) and an 18 year old EIR certified in 1996 for the Palmdale Business Park Center Specific Plan (“1996 Business Park EIR”). The Modified Initial Study claims that all potentially significant effects have been avoided or mitigated to the extent feasible pursuant to the earlier EIRs, including revisions or mitigation measures that are imposed upon the Project. However, not surprisingly, the Project was not considered in the previous EIRs. Furthermore, substantial changes in the Project and the circumstances under which the Project is being undertaken show that the Project will result in new and more severe significant impacts that were not analyzed in the outdated EIRs.

Project may also require incidental take permits from the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife.

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We prepared these supplemental comments and responses to the recent Staff Report and Modified Initial Study with the assistance of air quality expert Petra Pless, Ph.D whose technical comments are attached hereto and fully incorporated herein.⁵ We incorporate our previous comments in full and provide further information on the few issues addressed by the Modified Initial Study and most recent Staff Report. Because the Project was not considered in the previous EIRs, is substantially changed from the previous planning documents which were analyzed by those EIRs, and will result in new and more severe impacts than previously analyzed, we urge the City Council to uphold the appeal. We urge the City Council to direct the City to prepare a new or subsequent EIR to evaluate, disclose and mitigate the Project's impacts prior to considering approval of the Project.

1. THE PROJECT IS A NEW PROJECT OR A SUBSTANTIALLY CHANGED PROJECT FROM THE PROJECT ANALYZED IN THE 1993 GENERAL PLAN EIR AND THE 1996 BUSINESS PARK EIR.

When an EIR has been prepared for a project, no further environmental review is required, unless substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects.⁶ The preliminary question is whether an EIR has been prepared for the Project. If environmental review of the project has occurred, then no further review is required unless substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects.

Here, the Project is a new project that was not contemplated in the 1993 General Plan EIR or the 1996 Business Park EIR. Even if it is not considered "new," the Project involves a substantial change from the project analyzed in the 1993 General Plan Program EIR and the 1996 Business Park EIR, which will require major revisions to the previous EIRs due to the involvement of new or a substantial increase in the severity of previously identified significant impacts. This section addresses the evidence that the Project is a new project or, at the least,

⁵ Attachment C: Letter from Petra Pless to Tanya Gulesserian (September 2, 2014) *Re: Review of Modified Initial Study and Staff Report for Site Plan Review No. 14-003 Issued by City of Palmdale for Presentation to the City Council on September 3, 2014.*

⁶ Pub. Res. Code § 21166; CEQA Guidelines § 15162(a)(1).

a substantially changed project. The following section addresses how the substantial changes in the Project require major revisions to the previous EIRs due to the involvement of new or more severe significant impacts.

According to the 1996 Business Park EIR's description of existing conditions for land use, the 1993 General Plan designated the Project Site as Specific Plan Area 10, Lockheed North, Palmdale Business Park Center Specific Plan, and "the Specific Plan area is currently zoned M-A (aircraft)."⁷ The Staff Report to the Planning Commission contradicted the 1996 Specific Plan EIR by stating that, at the time of the adoption of the General Plan, the project site was zoned "Specific Plan 10 (Palmdale Business Park Center Specific Plan, Business Park/Ind/Commercial)" and those types of uses were analyzed in the 1993 General Plan EIR. The Staff Report to the City Council does not address Staff's incorrect description of the zoning and land use designation at the time the 1993 General Plan EIR was certified. And, importantly, according to the 1993 General Plan EIR, "individual proposed projects are not known and cannot be analyzed at this time."⁸ Therefore, even individual proposed projects within the General Plan's designated land uses were not known, not described and not analyzed in the 1993 General Plan EIR.

Because the 1993 General Plan EIR did not analyze the Project, the City also claims that the Project proposes "the same types of industrial uses" permitted under the Palmdale Light Industrial land use designation in the Business Park Specific Plan, and that the actual locations of the land uses are not finally established in the Specific Plan.⁹ The Staff Report to the City Council merely reiterates this claim without providing any evidence. As we explained in our appeal, the Staff Report to the Planning Commission admits that the manufacturing of transportation equipment, such as railroad equipment, is a permitted use within the M-2 (General Industrial) zone with Site Plan Review approval.¹⁰ As we also explained in our appeal, the historical evidence of the City's establishment of different zoning designations and the plain language of the Specific Plan contradicts the City's claims.

⁷ 1996 Specific Plan EIR, p. 3-47.

⁸ *Id.*, at p. 4-93.

⁹ *Id.*, pp. 28-31.

¹⁰ Staff Report to Planning Commission (August 7, 2014) [sic], p. 19.

The City understood the difference between Light Industrial and General Industrial when it developed the Business Park Specific Plan and designated the industrial uses as Light Industrial. In 1994, the City Council adopted the City's Zoning Ordinance, including Chapter 6 setting forth the allowable uses in M-1 (Light Industrial), M-2 (General Industrial), M-3 (Airport Industrial) and M-4 (Planned Industrial).¹¹ The M-1 (Light Industrial) zone permits manufacturing, where operations are conducted primarily indoors, of transportation equipment, such as motor vehicles, conversion to zero- or low-emissions engines, and motor vehicle parts and service for zero to low-emissions vehicles, within the M-1 (Light Industrial) zone with Site Plan Review approval.¹² The M-2 (General Industrial) zone permits manufacturing of transportation equipment, such as railroad equipment, and outdoor operations and storage within the M-2 (General Industrial) zone with Site Plan Review approval.¹³

The following year, the City developed the Business Park Specific Plan and completed 1996 Business Park EIR.¹⁴ The Business Park Specific Plan created 8 planning areas and 16 subplanning areas. The Business Park Specific Plan zoned acreage on the project site adjacent to Avenue M at the corner of Sierra Highway as Palmdale Community Commercial. The Business Park Specific Plan zoned acreage just to the south as Palmdale Light Industrial.¹⁵

The Palmdale Light Industrial (PLI) land use designation is intended to provide development areas for modern, non-nuisance, light industrial and office type uses which are compatible with each other as well as the continued operation of USAF Plant 42. The designation is intended to accommodate light industrial uses such as manufacturing and assembly of products and goods, warehousing, distribution, and similar uses. Commercial uses incidental to and supportive of the primary light industrial uses also are permitted. Facilities within this designation will be sited within areas of enhanced landscaping. Operations will be

¹¹ City of Palmdale, Zoning Ordinance, Chapter 6, Article 60 Industrial Zones (Adopted by City Council 12/14/94).

¹² Zoning Ordinance, Chapter 6, Article 61, sections 61.01 and 61.05(A)(14) (Adopted by City Council 12/14/94).

¹³ Zoning Ordinance, Chapter 6, Article 62, sections 62.01 and 62.05(A)(14) (Adopted by City Council 12/14/94).

¹⁴ City of Palmdale Resolution No. 96-38, Section 5 and 1996 Specific Plan EIR, pp. 3-47 and 2-5, Figure 2-3.

¹⁵ *Id.*, pp. 3-47 and 2-5, Figure 2-3; Specific Plan, pp. III-4.
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confined within buildings and storage will be screened behind enclosure wall or berms. A connection to Southern Pacific Railroad's mainline track may be provided via the existing spur line within USAF Plant 42."¹⁶

Clearly, the City could have designed the Business Park Specific Plan to designate these areas as General Industrial, rather than Light Industrial and Community Commercial, but it did not. Therefore, there is no evidence that the Project's manufacturing of transportation equipment, specifically railroad equipment, which is a permitted use within the M-2 (General Industrial) zone with Site Plan Review approval¹⁷ is "the same types of industrial uses" permitted under the Palmdale Light Industrial land use designation in the Specific Plan.

The Business Park Specific Plan and EIR are simply not applicable to the Project. **The 1996 Business Park EIR analyzed the Specific Plan's designation of 165.61 acres of the 632.2-acre Specific Plan site as Light Industrial.**¹⁸ In 2008, the City submitted an application to the Energy Commission to develop the Palmdale Hybrid Power Plant on 337 acres of the Specific Plan area. The City rezoned the entire 632.2-acre Specific Plan area from Light Industrial and other uses to General Industrial in order to do so. The City relied on an exemption from environmental review, pursuant to CEQA, for early actions relating to a thermal power plant site or facility "if that thermal power plant site and related facility will be the subject of an EIR, Negative Declaration or other document or documents prepared pursuant to a regulatory program certified pursuant to Public Resources Code Section 21080.5."¹⁹ In the Staff Report for the early rezone, the City specifically stated that "the Palmdale Business Park Specific Plan is no longer a useful planning tool for the site."²⁰ The City explained that "[a]ny future development proposed on the remaining portion of the site will be reviewed in the future as required by CEQA."²¹ The 632.2-acre Specific Plan site is now the site of the approved, but not yet constructed, 337-acre Palmdale Hybrid Power Plant. The California Energy Commission analyzed impacts from

¹⁶ Specific Plan, p. IV-6.

¹⁷ Staff Report to Planning Commission (August 7, 2014 [sic], p. 19.

¹⁸ Attachment E (Hard Copy only due to corrupt file).

¹⁹ *Id.*, p. 5.

²⁰ Planning Department Report to City Council, Subject: General Plan Amendment (GPA) 09-01 and Zone Change (ZC) 09-01 generally located on the south side of Avenue M, east of Sierra Highway and the Union Pacific Railroad, west of the alignment of 15th Street East and USAF Plant 42, and north of the alignment of Avenue M-12 and USAF Plant 42 (April 1, 2009), p. 3.

²¹ *Id.*

development of the 337-acre power plant through its certified regulatory program, pursuant to CEQA.²² No agency has yet analyzed impacts from re-zoning the remaining 295.2 acres to General Industrial, and no agency has yet analyzed the Project proposal to develop a rail car manufacturing facility on 35 acres of a 67.75-acre portion of those remaining 295.2 acres. The Project is simply not the same project analyzed in the 1996 Business Park EIR.

Staff incorrectly claims that the actual locations of the land uses are not finally established in the Specific Plan. According to the Specific Plan itself, the actual locations of the land uses are established in the Specific Plan and cannot be changed without a Specific Plan amendment. According to the Specific Plan, for a future Concept Plan to be approved, substantial evidence must show that “the proposed distribution, *location* and extent of land uses, including open spaces, is consistent with the approved Specific Plan.”²³ Changing the location of uses (other than adjusting a planning area boundary by less than 250 feet) is not a minor modification to the Specific Plan.²⁴ Instead, any change to the location of uses would require a Specific Plan Amendment.²⁵ Here, not only is the entire site’s zoning changed to General Industrial, but the Project is also proposed in an area previously designated for Community Commercial and Light Industrial.

Staff’s characterization of the Project as merely moving the activities and permits at Plant 42 over to the new building has *no relevance* to the determination of whether the Project is new as compared to, or substantially changed from, the projects analyzed in the 1993 General Plan EIR or the 1996 Business Park EIR. Staff’s characterization is also contradicted by substantial evidence.

Substantial evidence shows that the Project is not merely moving activities and permits from Plant 42 over to the new building. According to the lease between the City of Los Angeles, Department of Airports and Kinkisharyo, the design and manufacture of 78 LRVs will take place in Japan and only the final assembly will take place at Hangar 704 and Building 702 located at U.S. Air Force Plant 42’s Site 9.²⁶ This assembly was permitted pursuant to an exemption from environmental

²² Attachment F.

²³ Specific Plan, p. VI-6.

²⁴ Specific Plan, p. VI-9 – VI-11.

²⁵ *Id.*

²⁶ Lease Between City of Los Angeles, Department of Airports and Kinkisharyo International, LLC, at Site 9, Palmdale, California, Located at Palmdale Airport Land Holdings, which is incorporated herein http://clkrep.lacity.org/onlinedocs/2014/14-0707_misc_a_5-28-14.pdf.

review for issuance of leases of existing facilities at municipal airports involving negligible or no expansion of use and/or alteration or modification of the facilities or its operations beyond that previously existing or permitted. The assembly also has an authority to construct (“ATC”) permit for one spray booth (adhesive application) from the AVAQMD.²⁷

Unlike the activities at Plant 42, the Applicant hails the proposed Project as involving manufacturing.²⁸ The Project also has twice the number of employees, four paint booths and several other emission sources. The Project proposes to transport LRV parts from Japan to the United States and on to the City of Palmdale where both manufacturing and assembly will take place. The manufacturing and assembly facility will allow development of up to 235 LRVs and outdoor operations and storage east of Sierra Highway and south of Avenue M in an area zoned general industrial (M-2). The LRVs will then be delivered to the City of Los Angeles. Therefore, the Project is different and significantly larger than the activity currently authorized at Plant 42.

In sum, the Project is a new project and, even if it is not new, it involves a substantial change from the projects previously analyzed in the 1993 General Plan Program EIR and the 1996 Business Park EIR.

2. THE SUBSTANTIAL CHANGES PROPOSED IN THE PROJECT REQUIRE MAJOR REVISIONS OF THE PREVIOUS EIRS DUE TO THE INVOLVEMENT OF NEW SIGNIFICANT IMPACTS OR A SUBSTANTIAL INCREASE IN THE SEVERITY OF PREVIOUSLY IDENTIFIED SIGNIFICANT IMPACTS.

Even if the Project is not considered “new,” substantial changes are proposed in the Project compared to the projects analyzed in the 1993 General Plan EIR and 1996 Business Park EIR, which require major revisions to the previous EIRs due to new significant impacts or a substantial increase in the severity of previously identified significant impacts. Therefore, the City is required to prepare a

²⁷ AVAQMD, Authority to Construct, Owner or Operator Co. #2123, Equipment Location Fac. #3475, Kinkisharyo International, LLC, 2825 East Avenue P, Palmdale, CA 93550, June 5, 2014.

²⁸ For the first time, in its most recent Staff Report, Staff characterizes the activities at Plant 42 as involving manufacturing and assembly in an attempt to develop support for its argument that the applicant is merely moving an existing facility; however, Staff’s characterization is rebutted by the lease between the City of Los Angeles, Department of Airports and Kinkisharyo and other evidence submitted in our comment letters to the City.

subsequent EIR. In *Mani Brothers Real Estate Group v. City of Los Angeles*, 153 Cal.App.4th 1385 (2007), the Court held that substantial evidence supported the City's conclusion that the substitution of residential uses in place of some office, retail and cultural center uses did not render a modified project new, because the changes would result in the same or fewer significant impacts compared to the original project.

As explained in the above section, the new General Industrial zoning designation and the proposal to construct a rail car manufacturing and assembly facility and associated outdoor rail uses constitute a substantial change in the project. These changes will require major revisions of the previous EIRs due to the involvement of new or more severe significant effects compared to the original project. For example, the 1993 General Plan Program EIR admittedly did not analyze future stationary source emissions. According to the 1993 General Plan Program EIR, "[e]missions from current and future stationary sources in the City of Palmdale are not quantified in this analysis and represent a potentially substantial increase in local and regional emission levels."²⁹

Similarly, the 1996 Business Park EIR admittedly did not analyze future stationary source emissions. The 1996 Business Park EIR states:

The proposed Palmdale Business Park Center Specific Plan will contain a number of land uses (airport related and light industrial) that are expected to generate stationary source emissions. Due to the broad nature of proposed land uses and the lack of detailed information on the types of industries that would be locating within the Specific Plan area, it is not possible to estimate stationary source emissions at this time.³⁰

Therefore, neither previous EIR analyzed stationary source emissions from any project.

The Project's proposal to manufacture railroad vehicles and conduct outside operations in an M-2 General Industrial zone requires major revisions to the previous EIRs precisely because substantial evidence shows that those uses will cause new or more severe, or previously unanalyzed significant air quality impacts from the inclusion of now known stationary source emissions. According to the

²⁹ General Plan EIR, p. 4-50.

³⁰ 1996 Business Park Specific Plan EIR, p. 3-17.
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City's Modified Initial Study and supporting materials, stationary source emissions from the Project's operational phase will contribute to a substantial increase in the severity of significant impacts due to volatile organic compound ("VOC") emissions compared to the impacts quantified by the 1996 Business Park EIR. Specifically, Dr. Petra Pless³¹ explained that the City's own data summarized in its first Initial Study shows that emissions from the permitted stationary and unpermitted non-stationary on-site sources when added to the area and mobile sources previously analyzed in the 1996 Business Park EIR will exceed the Antelope Valley Air Quality Management District's 137 pound-per-day significance threshold for VOCs.³² While the Modified Initial Study contains a slightly different, lower emission estimate for stationary sources, the combined total operational VOC emissions (324.0 lbs/day)³³ by far exceed the AVAQMD's significance threshold and present a substantial increase in the severity of significant impacts previously identified in the 1996 Business Park EIR. The City's effort to look at VOC emissions only from some of the Project's stationary sources improperly ignores others and the total VOC emissions emitted by the project analyzed in the 1996 Business Park EIR. The City cannot have it both ways. Furthermore, this substantial increase in the severity of impacts will be exacerbated because the City's data fails to include VOC emissions from all of the Project's proposed stationary sources, underestimates operational VOC emissions with preliminary data and unsupported assumptions, and does not include emissions from numerous compounds that would be applied in the proposed facility.³⁴

³¹ The City grasps for straws when it argues that Dr. Petra Pless is not an "air quality expert." Not only are the emissions data showing new and more severe impacts presented by the City's and the Applicant's own documents, but they are also easily calculated by almost any member of the public. Furthermore, Dr. Petra Pless' qualifications have been submitted to the City and her expertise involving quantification and analysis of air pollutant emissions has been relied upon by agencies around the State, including the California Energy Commission, and by federal agencies nationwide. The Court of Appeal for the Fourth District recently found that Dr. Petra Pless is a "duly qualified expert" regarding air pollutants and impacts related to the Mojave air district's road paving rule. (*California Unions for Reliable Energy, et al. v. Mojave Desert Air Quality Management District, et al.*, 178 Cal.App.4th 1225 (2009).

³² Attachment C: Letter from Petra Pless to Tanya Gulesserian (September 2, 2014) *Re: Review of Modified Initial Study and Staff Report for Site Plan Review No. 14-003 Issued by City of Palmdale for Presentation to the City Council on September 3, 2014.*

³³ 257.27 lbs/day from mobile and area sources + 66.7 lbs/day from new stationary sources (instead of 72.71 lbs/day in the first Initial Study) = 323.97 lbs/day of VOCs.

³⁴ Letter from Petra Pless to Tanya Gulesserian, Re: Supplemental Information Regarding July 10, 2014 Review of City of Palmdale's Initial Study for Site Plan Review No. 14-003 (Application by KCS West, Inc. ("KCS West" or "Applicant") to develop a Manufacturing/Assembly Building on Assessor's 3106-028cv

According to the City's first Initial Study and supporting materials, stationary source emissions from the Project's operational phase will cause a new significant impact due to PM10 emissions which was not identified by the 1996 Business Park EIR and is not mitigated. The City's Modified Initial Study contains completely new emissions data without any supporting facts, explanation or analysis.³⁵ Thus, the City's contradictory information shows that the City lacks evidence to support a finding that the Project will not result in a new significant impact.

In the Initial Study, the City also concludes that there are no new or more severe impacts from the industrial development and outdoor operations, because the Project would comply with permit requirements from other agencies, such as a National Pollutant Discharge Elimination System ("NPDES") requirement from the Lahontan Regional Water Quality Control Board. The City fails to provide any evidence to support this conclusion.

CEQA requires the City's conclusions to be supported by substantial evidence.³⁶ Furthermore, the City must provide the reader with the analytic bridge between its ultimate findings and the facts in the record.³⁷

There are numerous potential impacts associated with outdoor operations allowed in General Industrial land use zones. The current Project requires a General Industrial zoning designation, as opposed to the Light Industrial zoning designation that was analyzed in the 1996 Business Park EIR. The two different zoning designations have different allowable uses, which raise different environmental impacts. The Light Industrial zoning designation allows light manufacturing of transportation equipment, but only for motor vehicles and only where operations are conducted primarily indoors.³⁸ The General Industrial zoning

Parcel Nos. 3126-022-911 and -913 plus a Portion of -906, -912 and -915 (August 7, 2014), pp. 25-26 and 33-34, citing Hatch Consulting (June 4, 2014) and enclosures.

³⁵ On August 26, 2014, we requested any records related to the project since the date of our last request. On August 28, 2014, we received the Modified Initial Study and attachments, but no other records. On August 29, 2014, we requested any further information supporting the modified initial study. Other than a one page Health Risk Assessment Calculation spreadsheet, to date, the City has provided no further records supporting its findings. (Attachment D.)

³⁶ CEQA Guidelines §§ 15162 (a), 15164(e), and 15168(c)(4).

³⁷ *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506.

³⁸ City of Palmdale Zoning Ordinance, Chapter 6, Article 61, sections 61.01, 61.02(A) and 61.05(A)(14).

designation, which is part of the Project, allows light to heavy manufacturing of transportation equipment, including for railroad equipment.³⁹ The General Industrial zoning designation allows for a full range of manufacturing associated with heavy industrial land uses, and outdoor operations and storage are permitted.⁴⁰

The Project includes assembly of LRVs, an LRV manufacturing facility, development of a rail spur and an additional building. Following our appeal of the Hearing Officer decision, the City admitted that the Project involves outdoor operations and storage, including outdoor rail facilities required for testing LRVs and other uses. Manufacturing and outdoor operations and storage result in significant impacts associated with increased stormwater runoff from impervious surfaces, increase exposure of soils to wind and water, runoff of constituents that could impact surface water quality and increased hazards and contamination, among other impacts. In fact, the City admits:

A variety of construction materials could be stored on a future project site and some of these could include constituents that could impact surface water quality conditions, such as fuels, lubricants, solvents, coatings, etc. Without proper construction controls, loose sediments and a variety of construction materials could be captured within runoff from the site and potentially threaten on-site water quality or downstream receiving waters. Post construction, impervious surfaces would increase due to site development, including road widening and a new building pad. As a result, there could be an increase in site runoff during storm events, compared to current conditions.⁴¹

The City's reliance on compliance with NPDES permits and other regulation lacks foundation because it fails to disclose and evaluate how compliance with these permits and regulations will result in no new or more severe significant impacts than identified in the 1996 Business Park EIR. Substantial evidence shows that the new zoning designation and Project will result in new or more severe significant impacts requiring preparation of a subsequent EIR.

³⁹ City of Palmdale Zoning Ordinance, Chapter 6, Article 62, sections 62.01, 62.02 and 62.04

⁴⁰ City of Palmdale Zoning Ordinance, Chapter 6, Article 62, Section 62.01.

⁴¹ IS, pp. 36-37.

3. SUBSTANTIAL CHANGES HAVE OCCURRED WITH RESPECT TO THE CIRCUMSTANCES UNDER WHICH THE PROJECT IS UNDERTAKEN WHICH WILL REQUIRE MAJOR REVISIONS OF THE PREVIOUS EIRS DUE TO THE INVOLVEMENT OF A NEW SIGNIFICANT IMPACT FROM THE LACK OF SUFFICIENT WATER SUPPLIES AVAILABLE TO SERVE THE PROJECT FROM EXISTING ENTITLEMENTS AND RESOURCES AND THE NEED FOR NEW OR EXPANDED ENTITLEMENTS.

Our appeal raised several issues related to the Project's more severe significant impacts on water supplies, including more severe impacts on groundwater, new available mitigation to reduce significant impacts on water supplies, and more severe impacts due to the current extreme drought. However, the appeal also explained that the Project will result in a new significant impact because there are insufficient water supplies available to serve the Project from existing entitlements and the Project will require a new or expanded entitlement to water. The Initial Study and Modified Initial Study fail to address this significant impact and attempt to distract from the issue by arguing that the previous EIRs already recognized a significant impact on groundwater resources and that the City has always known about drought conditions, so the information is not "new." The City's responses and failure to acknowledge a new significant impact are wrong.

The issue discussed herein is not whether there is new information about a more severe significant impact on groundwater,⁴² which the 1996 Business Park EIR found to be significant and unavoidable. The issue is whether substantial changes have occurred in the circumstances under which the project is being undertaken which will require major revisions to the previous EIRs due to there being insufficient water supplies available to serve the project from existing entitlements and resources and from the need for new or expanded entitlements to water.⁴³

Substantial evidence shows that there are substantial changes in the circumstances under which the project is being undertaken which require major revisions to the EIR due to insufficient water supplies being available to serve the project from existing entitlements and the need for a new or expanded entitlement. In 2008, Los Angeles County Waterworks District No. 40 determined that water

⁴² CEQA Guidelines § 15162(a)(3) and Appendix G, Sec. IX (b)

⁴³ CEQA Guidelines § 15162(a)(2) and Appendix G, Sec. XVII (d).

supply limits for existing and committed water demands were effectively reached.⁴⁴ The City admits that the Project will need to secure new water to meet its annual demands through a process established in an Memorandum of Understanding between District 40 and AVEK.⁴⁵ We provided evidence and explained that District No. 40 secured an Memorandum of Understanding (“MOU”) with AVEK in an effort to secure new water entitlements.⁴⁶

A significant percentage of District No. 40’s water supply is imported from the State Water Project (“SWP”) via the Antelope Valley-East Kern Water Agency (“AVEK”), but this allocation is not fully reliable. In 2013, AVEK received only 49,490 of its 141,400 acre-foot allocation from the SWP.⁴⁷

On September 3, 2013, the County of Los Angeles Department of Public Works sought the County Board of Supervisors approval of an MOU between AVEK and District No. 40 for new water supplies.⁴⁸ According to the County, “the District does not have sufficient reliable water supply to serve additional developments within and adjacent to its service boundaries.”⁴⁹ Furthermore, the District “cannot directly hold new water supplies from the State Water Project. That right is reserved by contract to the State Water Project contractors, one of which is AVEK.”⁵⁰ The Department urged the County to approve the MOU because it would “provide the legal basis for contracting with AVEK to purchase, hold, and deliver new water supplies to the District, separate and apart from supplies provided by AVEK’s current entitlement of 141,400 acre-feet per year.”⁵¹

⁴⁴ Initial Study, p. 59.

⁴⁵ *Id.*

⁴⁶ Letter from County of Los Angeles Department of Public Works to Honorable Board of Supervisors, County of Los Angeles (September 3, 2013): Memorandum of Understanding between Antelope Valley-East Kern Water Agency and Los Angeles County Waterworks District No. 40, Antelope Valley, for New Water Supplies (Supervisorial District 5) (3 Votes).

⁴⁷ Water Supply Report prepared for RE Clearwater and RE Yakima Projects, Kern County (August 2013), p. 16.

⁴⁸ Letter from County of Los Angeles Department of Public Works to Honorable Board of Supervisors, County of Los Angeles (September 3, 2013): Memorandum of Understanding between Antelope Valley-East Kern Water Agency and Los Angeles County Waterworks District No. 40, Antelope Valley, for New Water Supplies (Supervisorial District 5) (3 Votes).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

The MOU would purportedly allow District No. 40 to continue issuing Will Serve Letters to developers because it provides a framework for the District and AVEK “to work together to secure the water supplies necessary to meet the District’s present and future water demands.”⁵² Prior to obtaining a Will Serve Letter, development applicants would be required to submit a request to the District, and the District would identify the local water resources available to the address the anticipated water demand for the connections sought by the applicant, which may include recycled water, or such other local resources that the District determines are acceptable.⁵³ Development applicants must also submit a deposit, set at \$10,000 per acre-foot in 2013, to purchase needed water supply and enter into a water supply agreement with the District.⁵⁴ AVEK would use these funds to negotiate and execute a contract for additional Table A water or other permanent water supplies that would be allocated to the District for use in providing water service to the developer’s project and for “AVEK’s cost of completing the environmental assessment under the California Environmental Quality Act and the National Environmental Policy Act (if required)...”⁵⁵ Upon receipt of the deposit, AVEK would confirm its commitment to acquiring the additional requested water supplies and the District may then commit to provide water service to the development applicant.⁵⁶ AVEK will undertake all steps to identify and purchase additional State Water Project Table A amounts or other water supply entitlements in the amounts requested, but “AVEK cannot guarantee success.”⁵⁷ Thus, the MOU process involves obtaining a new entitlement – a significant impact under CEQA. None of this information was disclosed by the City in the Initial Study.

The Modified Initial Study provides no further explanation of the insufficient water available to serve the Project from existing entitlements and the need to obtain a new or expanded entitlement. In October 2008, the City was assigned a one-time allocation of 400 acre-feet of water.⁵⁸ However, correspondence between the County of Los Angeles Department of Public Works and the City of Palmdale make clear that, since 2008, “both the water supply picture and the economic

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Attachment B: Letter from County of Los Angeles, Department of Public Works to Mr. Steve Williams, City Manager, Los Angeles County Waterworks District No. 40, Antelope Valley Water Service Commitments Within the City of Palmdale (October 1, 2008).

conditions in the Antelope Valley have changed.”⁵⁹ The Los Angeles Department of Public Works specifically explained, as recently as March 24, 2014:

This MOU and its counterpart, the District’s application/agreement for new water supply, are now the governing documents for providing water supplies to new projects in the District and its sphere of influence....Now that the MOU has been adopted and there is a process for securing additional water supply, there is no need to continue to borrow water committed to entitled projects to supply projects with unrecorded maps. Any new project approved by the City can secure new water to meet its annual demands and obtain a Conditional Will-Serve Letter by entering into an agreement with the District and paying the water supply deposit.⁶⁰

Therefore, substantial evidence shows that there are substantial changes in the circumstances under which the project is being undertaken which require major revisions to the EIR due to insufficient water supplies being available to serve the project from existing entitlements and the need for a new or expanded entitlement.

In sum, we urge the City Council to uphold the appeal and comply with CEQA by preparing a new or subsequent EIR to disclose, analyze and mitigate new and more severe impacts from the Project due to substantial changes in the Project, substantial changes in the circumstances under which the project is being undertaken and due to new information about significant impacts and available mitigation *before* the City considers approving the Project. Issuing permits for the Project without preparing a new or subsequent EIR would violate CEQA and compromise public health and the environment.

⁵⁹ Attachment A: Letter from Gail Farber, Director of Public Works, to Dave Childs, City Manager, City of Palmdale, Los Angeles County Waterworks District No. 40, Antelope Valley Water Supplies for New Development (March 24, 2014).

⁶⁰ *Id.*

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Thank you for your consideration of this appeal.

Sincerely,



Tanya A. Gulesserian

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Attachments