LETTER 2

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Re: Desert Ventures Specific Plan FEIR (SCH 2017051070)

Dear Mr. Ewing, Mr. Porras, Ms. Millan, and Ms. Soriano:

I am writing on behalf of the Laborers International Union of North America, Local Union 1184 and its members living in the County of Riverside and/or City of Desert Hot Springs ("LIUNA"), regarding the Final Environmental Impact Report ("FEIR") for the Desert Ventures Specific Plan (SCH 2017051070), including all actions related or referring to the proposed development of a 123-acre master-planned industrial and technology business park located 0.50 mi west of Varner Rd and Palm Dr. on Parcel Nos. 669-150-001 and 669-150-002 ("Project"). We hereby request that the City of Desert Hot Springs ("City") fully comply with all requirements of the California Environmental Quality Act ("CEQA") in its review of the Project.

After reviewing the proposed project and the FEIR together with our expert consultants at Soil/Water/Air Protection Enterprise ("SWAPE"), including Matthew Hagemann, P.G., C.Hg., QSD, QSP, former Senior Science Policy Advisor, U.S.

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EPA Region 9 and Hydrogeologist, Superfund, RCRA and Clean Water programs, Dr. Shawn Smallwood, wildlife biologist; and traffic engineer Daniel T. Smith, Jr. P.E., it is evident that the document contains numerous errors and omissions that preclude accurate analysis of the Project. Expert comments prepared by SWAPE are attached hereto as Exhibit A. Expert comments prepared by Dr. Smallwood are attached hereto as Exhibit B. Expert comments prepared by Mr. Smith are attached hereto as Exhibit C. As a result of these inadequacies, the FEIR fails as an informational document, fails to assess potential Project impacts, and fails to impose feasible mitigation measures to reduce the Project's impacts.[1] A supplemental draft EIR should be prepared and circulated for full public comment to address these issues. 2-1 con't

LIUNA requests that the City refrain from certifying the EIR at this time but request staff to reconsider the analyses and require additional mitigation measures in order to address the Project's significant air quality impacts, GHG emissions, health risks, biological impacts, and traffic impacts that the Project as proposed will cause.

I. PROJECT DESCRIPTION

The proposed 123.4-acre Desert Land Ventures Specific Plan (DLVSP or proposed Project) project site is located in the City of Desert Hot Springs (City). The proposed project site is in the largely undeveloped southern portion of Desert Hot Springs and lies approximately 5.25 miles south of the City's downtown core. The project site is generally bounded by the I-10 freeway to the south and west; Mission Creek to the west. The portion of the site north of Varner Road is within the Willow Hole Conservation Area of the Coachella Valley Multiple Species Habitat Conservation Plan ("CVMSHCP") and vacant land is to the east. There is also one single family dwelling unit located southeast of the project site. Regional access is provided by the I-10 freeway, with local access provided via Palm Drive and Varner Road. 2-2

Approximately 62.9 acres of the project site would accommodate a mix of industrial and commercial land uses and up to 150 hotel rooms/keys. Industrial uses would include, but are not limited to, marijuana facilities (cultivation, processing, manufacturing, testing and distribution), warehousing and distribution, light manufacturing facilities, and mixed use office/industrial. Commercial uses could include a variety of retail trade and services, including but not limited to accessory retail uses, restaurants, retail stores, bed and breakfast establishments, motels or

[1] We reserve the right to supplement these comments at later hearings and proceedings for this Project. See, *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109.

hotels, medical services and offices, marijuana dispensaries, and research and development facilities. Approximately 38.7 acres of the site would be set aside for Open Space/Conservation within the CVMSHCP Willow Hole Conservation Area, and only ten percent would be developed with water or energy facilities, consistent with the CVMSHCP. In total, the Project would allow up to 1.9 million square feet of commercial and industrial uses. 2-2 con't

II. LEGAL STANDARDS

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

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 Cal. Code Regs. ("CEQA Guidelines") § 15002(a)(1). "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'" *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs*. (2001) 91 Cal. App. 4th 1344, 1354 ("Berkeley Jets"); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810. 2-3

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." *Cmtys. for a Better Env't v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 109. 2-3 con't

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.

III. LEGAL ANALYSIS

A. THE PROJECT WILL HAVE SIGNIFICANT AIR QUALITY, GREENHOUSE GAS, AND HEALTH RISK IMPACTS THAT HAVE NOT BEEN ANALYZED AND MITIGATED.

SWAPE concludes that the Project will have very significant air quality impacts, far above applicable CEQA significance thresholds set by the South Coast Air Quality Management District ("SCAQMD"). The FEIR fails to analyze the correct pollutant emissions from the Project. The Project fails to include all feasible mitigation measures for the Project's air quality impacts. The Project will create cancer risks above the SCAQMD's CEQA significance thresholds. As such, a revised EIR is required to analyze these impacts, and to propose feasible mitigation measures and alternatives to reduce or eliminate the impacts. 2-4

1. The FEIR Relies on Incorrect Input Parameters to Estimate the Project's Emissions.

The EIR calculates emissions for the Project based on the California Emissions Estimator Model Version CalEEMod.2016.3.2 ("CalEEMod"). In reviewing the Project's CalEEMod output files, SWAPE found that several of the values input into the model did not correlate with information that was disclosed in the DEIR. This results in an underestimated analysis of the Project's construction and operational emissions, causing the EIR to fail as an informational document. Accordingly, the City must prepare a revised EIR with a corrected air quality analysis to adequately evaluate these emissions.

a. The Air Quality Analysis Fails to Include All Land Uses.

Land uses in the EIR include industrial uses, commercial uses, and a hotel. Thus, the analysis of the Project's air quality impacts should consider all of these uses. However, SWAPE notes that the analysis failed to include the Project's proposed hotel land use, and "[b]y failing to do so, the Project's emissions are greatly underestimated." SWAPE, p. 3. Indeed, Appendix D of the CalEEMod User's Guide demonstrates that a hotel land use consumes more energy than a retail land use. 2-5

b. The Air Quality Analysis Fails to Account for Total Lot Acreage.

SWAPE points out the inconsistencies in the Project's CalEEMod output files with respect to the total building acreage relied upon by the input parameters. Rather than relying on the 62.9 acres proposed in Planning Area 1, the EIR uses a value of 43.56 acres. "[B]y underestimating the actual 'Lot Acreage', the emissions estimated by the CalEEMod model are underestimated and should not be relied upon to determine Project significance." *Id*., p. 4.

2. A Revised Air Quality Analysis Results in Significant Pollutant Emissions From the Project.

To present a more accurate determination of the Project's air quality impacts, SWAPE prepared an updated CalEEMod model that includes more site-specific information and corrected input parameters. SWAPE found that "the Project's construction-related ROG emissions increase significantly when compared to the DEIR's model and exceed the 75 pounds per day (lbs/day) threshold set forth by the South Coast Air Quality Management District (SCAQMD)." *Id*., p. 5. The following table demonstrates SWAPE's findings: 2-6

Mitigated Maximum Daily Construction Emissions (lbs/day)	
Model	**ROG**
DEIR	60.9
SWAPE	324.5
Percent Increase	**433%**
SCAQMD Regional Threshold (lbs/day)	**75**
Threshold Exceeded?	***Yes***

2-6 con't

Id. This shows an enormous increase in ROG emissions compared to the DEIR. Accordingly, the City must prepare a revised EIR that sufficiently estimates the Project's emissions and also include mitigation measures to reduce those emissions to less than significant levels.

3. The EIR Fails to Implement All Feasible Mitigation Measures for ROG Emissions from Project Construction and Operation.

The EIR finds that the Project's construction related NOx emissions and operational NOx and ROG emissions would exceed SCAQMD's significance thresholds. Despite proposing several mitigation measures to reduce these emissions, the EIR concludes that these air quality impacts would be significant and unavoidable. SWAPE takes issue with this conclusion. CEQA requires that all feasible mitigation measures be considered before making such a finding.

2-7

Contrary to the DEIR's assertion, SWAPE finds that not all feasible mitigation measures have been implemented. To mitigate both construction-related and operation-related ROG emissions, SWAPE recommends the following measures:

- Use of zero-VOC emissions paint
- Use of materials that do not require paint
- Use of spray equipment with greater transfer efficiencies

SWAPE, pp. 6-7.

Because these feasible mitigation measures exist, the FEIR's conclusion that impacts are significant and unavoidable is unsubstantiated. A revised EIR must be prepared to include additional mitigation measures.

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4. The EIR Fails to Adequately Evaluate Diesel Particulate Health Risk Emissions.

The EIR concludes that "with incorporation of mitigation, the proposed project would not expose sensitive receptors to significant levels of toxic air contaminants." DEIR, p. 4.3-33. It also claims that sensitive receptors would not be exposed to diesel particulate matter ("DPM") emissions, a known carcinogen. However, the DEIR fails to include a health risk assessment ("HRA") or include any meaningful analysis to support this determination. SWAPE shows that the EIR's proffered support for these claims fails for several reasons.

First, the EIR claims that the Project's construction-related DPM emissions would be "short-term in nature" and that construction activities would occur over a "shortened time frame." SWAPE notes that this is incorrect and that that the EIR includes no evidence to support its assertion that "exposure to DPM is anticipated to be less than significant." SWAPE points out that SCAQMD recommends that health risk impacts from short-term projects be assessed. SWAPE, p.8. The EIR failed to provide an analysis resulting in a comparison to SCAQMD's numerical threshold to determine a Project's health risk impact. "By failing to prepare a HRA, the DEIR fails to provide a comprehensive analysis of the sensitive receptor impacts that may occur as a result of exposure to substantial air pollutants." *Id*. 2-8

Next, SWAPE refutes the EIR's assertion that "because the project is a Specific Plan" and "the exact location and types of industrial uses are not currently determined" the Project does not need to conduct an operational HRA. SWAPE notes that "because there is no language within the DEIR to prevent the Project Applicant from constructing a warehouse or distribution center in these areas [located closest to sensitive receptors] of the Project site, the DEIR should have conducted a quantified operational HRA in order to assess the health-risk impact posed to residents near the Project site.

Third, SWAPE notes that the omission of an HRA is inconsistent with guidance from Office of Environmental Health Hazard Assessment ("OEHHA"), the California agency tasked with providing guidance on how to conduct HRAs. SWAPE demonstrates how the OEHHA guidelines would require that the DEIR analyze health risks from the Project's operation. *Id*., p. 9. For example, OEHHA recommend that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors.

Thus, the City should prepare a revised DEIR that includes an HRA to assess health risks to nearby sensitive receptors from the Project's operation.

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5. A Screening-Level Health Risk Assessment Demonstrates That the Project Would Result in Significant Health Impacts.

SWAPE prepared a simple screening-level HRA in order to evaluate potential risks from the construction and operation of the proposed Project. The results demonstrate that the Project may result in a potentially significant health risk impact.

SWAPE used AERSCREEN as an air dispersion model, which is recommended by both OEJJA and the California Air Pollution Control Officers Associated ("CAPCOA") guidance as the appropriate model for a Level 2 health risk screening assessment ("HRSA"). They prepared the HRSA based on the annual PM_{10} exhaust estimates from SWAPE's CalEEMod model. SWAPE's comment letter details the parameters input and the relevant calculations used for the AERSCREEN model. *Id.*, pp. 9-12. The following table summarizes SWAPE's results: 2-9

The Maximum Exposed Individual at an Existing Residential Receptor (MEIR)					
Activity	**Duration (years)**	**Concentration ($\mu g/m^3$)**	**Breathing Rate (L/kg-day)**	**ASF**	**Cancer Risk**
Construction	1.95	0.05398	1090	10	1.7E-05
Operation	0.05	0.8021	1090	10	6.6E-06
Infant Exposure Duration	**2.00**			***Infant Exposure***	**2.4E-05**
Operation	14.00	0.8021	572	3	2.9E-04
Child Exposure Duration	**14.00**			***Child Exposure***	***2.9E-04***
Operation	14.00	0.8021	261	1	4.4E-05
Adult Exposure Duration	**14.00**			***Adult Exposure***	***4.4E-05***
Lifetime Exposure Duration	**30.00**			**Lifetime Exposure**	**3.58E-04**

Id., p. 12

This table shows that the excess cancer risk to adults, children, and infants at a sensitive receptor located approximately 50 meters away, over the course of Project construction and operation, are approximately 44, 290, and 24 in one million, respectively. The excess cancer risk over the course of a residential lifetime (30 years) is approximately 358 in one million. Thus, the infantile, child, and lifetime cancer risks all *significantly* exceed the SCAQMD's threshold of 10 in one million. The FEIR entirely fails to analyze these potentially significant health risk impacts from construction and operation of the Project, and thus fails as an informational document. SWAPE notes that

> A revised EIR must be prepared to adequately evaluate the Project's health risk impact and should include additional mitigation measures to reduce these impacts to a less-than-significant level. Without a refined HRA and mitigation addressing the findings of such an assessment, substantial evidence supports a fair argument that the Project may lead to significant public health impacts due to DPM emissions.

2-9 con't

Id.

6. The FEIR Fails to Implement All Available Feasible Mitigation to Reduce Construction-Related Emissions

Since SWAPE found that construction-related DPM emissions from the Project would result in a significant health risk impact, it observed that the FEIR failed to consider a number of measures that would reduce construction emissions. These include measures found in CAPCOA's *Quantifying Greenhouse Gas Mitigation Measures*. These measures include the following:

- Limiting construction equipment idling beyond the California Air Resources Board regulation limiting idling of diesel-fueled commercial motor vehicles to five minutes
- Using electric and hybrid construction equipment
- Implementing construction vehicle inventory tracking systems in all construction vehicles

2-10

Id., pp. 13-14. These measures are both feasible and should reduce the levels of DPM released during Project construction. An updated EIR must be prepared to include these additional mitigation measures.

7. The FEIR Fails to Implement All Available Feasible Mitigation to Reduce Greenhouse Gas Emissions

Despite that the FEIR proposes some mitigation measures to reduce the Project's GHG emissions, the FEIR concludes that the Project's GHG emissions would be significant and unavoidable. However, SWAPE concludes that this conclusion is unsubstantiated as there a number of additional feasible mitigation measures that should be incorporated in order to further reduce the Project's air quality impacts. *Id*., p. 15. Regarding measures to reduce the Project's operational GHG emissions, SWAPE proposes a number of measures, including but not limited to the following:

2-11

- Various strategies for passive solar design
- Development of a "green streets guide"

- Use of minimal amounts of concrete and asphalt
- Installation of permeable pavement to allow for storm water infiltration; and
- Use of groundcovers rather than pavement to reduce heat reflection
- Several additional Project design features
- Provide education on energy efficiency to residents, customers, and/or tenants. Provide information on energy management services for large energy users.
- Meet "reach" goals for building energy efficiency and renewable energy use.
- Require use of electric or alternatively fueled sweepers with HEPA filters.
- Include energy storage where appropriate to optimize renewable energy generation systems and avoid peak energy use.
- Use CARB-certified or electric landscaping equipment in project and tenant operations; and introduce electric lawn, and garden equipment exchange program.
- Implement various measures from the Kimball Business Park Final EIR

Id., pp. 16-17. 2-11 con't

SWAPE also proposes a number of feasible mitigation measures to reduce the Project's mobile-source GHG emissions. These include, but are not limited to, the following:

- Limit Parking Supply with the following strategy:
  - Elimination (or reduction) of minimum parking requirements
  - Creation of maximum parking requirements
  - Provision of shared parking
- Implement Commute Trip Reduction Program- Voluntary or Required
- Implement Subsidized or Discounted Transit Program
- Provide End of Trip Facilities
- Implement Commute Trip Reduction Marketing – a project that can implement marketing strategies to reduce commute trips.
- Implement Car-Sharing Program
- Implement Employee Parking "Cash-Out"

Id., pp. 17-18. SWAPE notes that "[t]hese measures offer a cost-effective, feasible way to incorporate lower-emitting design features into the proposed Project, which subsequently, reduces GHG emissions released during Project operation." *Id*., p. 18. These measures are more stringent and prescriptive than those measures identified in the EIR. 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 EIR 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. 2-11 con't

B. THE FEIR FAILS TO FULLY ANALYZE AND MITIGATE THE PROJECT'S BIOLOGICAL IMPACTS.

1. The FEIR Fails to Analyze Impacts to Certain Special-Status Species.

Dr. Smallwood concludes that the biological analysis conducted as part of the FEIR is incomplete and inadequate. Dr. Smallwood first points out that the survey effort for bird species consisted only of "two biologists visiting the project site for two days at unreported times of day and for unreported duration" which was insufficient and likely falsely concluded that numerous species of birds were absent. Smallwood, p. 2. Similarly, the biological analysis did not consist of any effort to detect small mammal species. 2-12

The analysis with respect to burrowing owls was woefully inadequate. While the EIR downplayed the likelihood of burrowing owl occurrence in the Project area, Dr. Smallwood notes that "[an occurrence record [of burrowing owl] only 0.6 miles from the project site certainly qualifies as an occurrence in the project area" and that "[t]here is no doubt that burrowing owls occur in the project area." *Id.*, p.3. Because burrowing owls are dynamic in their spatial distribution, the nearby occurrence means that burrowing owls will reside at the project site. Smallwood further notes that "[t]he habitat appears suitable and burrowing owls have been recorded throughout the area, so of course they will use the project site." *Id.* He found that the analysis performed by Jericho Systems for burrowing owls contained a largely insufficient survey compared with the methodology prescribed by the California Department of Fish and Wildlife. Thus, the EIR needs a more rigorous analysis of the presence of burrowing owl, and should include mitigation measures for potential impacts to burrowing owls. 2-13

Dr. Smallwood found that at least 40 special-status species of wildlife were not assessed for impacts in the EIR. 37 of these species are not covered under the Coachella Valley HCP, and thus require an assessment for impacts and appropriate mitigation measures. *Id.*, p. 7. For example, the EIR failed to recognize the presence, assess impacts, and propose mitigation measures for desert tortoise, fringe-toed lizard, flat-tailed horned lizard, and desert bighorn. Despite being detected by Jericho Systems, the EIR omitted reference to the loggerhead shrike. 2-14

Dr. Smallwood points out that the EIR erred in its analysis of potential impacts on bird species by decoupling nesting habitat from other important functions, such as foraging habitat. *Id*., p. 11. As a result, "[t]he DEIR's impact threshold of whether nesting habitat would be lost is unrealistic and generally results in under-estimation of project impacts." *Id*. The EIR also erred by failing to analyze species impact without considering the use of the site as crossover habitat or stop-over habitat. Finally, Smallwood notes that the EIR failed to include surveys for bats. 2-15

2. The FEIR Fails to Analyze Traffic Impacts on Wildlife.

Dr. Smallwood found a significant failure of the EIR with respect to traffic impacts:

> A fundamental shortfall of the EIR is its failure to analyze the impacts of the project's added road traffic on 67 special-status species of wildlife. The EIR provided no analysis of impacts on wildlife that will be caused by increased traffic on roadways servicing the project. 2-16

Id., p. 12.

Indeed, there is not a single word in the EIR related to traffic-related impacts to wildlife- an abject failure. The EIR must "assess wildlife mortality that will be caused by increased traffic on existing roadways, and it should provide mitigation measures." *Id*.

3. The FEIR Fails to Analyze Window Collision Impacts on Wildlife.

Dr. Smallwood notes that the FEIR fails to assess window collision impacts on wildlife. The potential windows that will be part of the Project all could potentially contribute to increases rates of bird collisions with windows. Dr. Smallwood recommends a number of mitigation measures to reduce potential impacts. The FEIR must be revised to analyze and mitigate these impacts. 2-17

4. The FEIR Fails to Analyze the Impacts of Wildlife Movement or Cumulative Impacts.

Dr. Smallwood notes that the EIR contains absolutely no analysis of impact on wildlife movement in the region in which the Project is situated. In addition, the EIR contains no cumulative impacts analysis for the 37 special-status species that are likely to occur on or near the project site. The FEIR must be revised to analyze and mitigate both of these impacts. 2-18

C. THE FEIR FAILS AS AN INFORMATIONAL DOCUMENT BECAUSE IT DOES NOT DISCLOSE THE FULL EXTENT OF THE PROJECT'S TRAFFIC IMPACTS.

1. The FEIR's Project Description is Incomplete.

The FEIR fails to describe the Project in a manner sufficient to allow for an assessment of the Project's traffic impacts, as well as impacts that are based on the traffic analysis (such as air quality). "An accurate, stable and finite project description is the *sine qua non* of an informative and legally adequate EIR." *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192; 14 CCR 15124. Without an accurate description on which to base the EIR's analysis, CEQA's objective of furthering public disclosure and informed decision making would be stymied. A project description that omits integral components of the project may result in an EIR that fails to disclose all of the impacts of the project. *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829. "[A]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity." *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Ca.App.4th 713, 730. 2-19

Here, the Project description fails to divulge any information about the uses of Mihalyo Road and Thornton Road east of the Project site. As Mr. Smith points out, "it is unclear whether these roads will ever be developed to provide useful access to the Project or whether the site will continue to be accessed solely by a single dead-end road, Varner Road." Smith Letter, p. 1. Without this information, the FEIR fails as an informational document and must be revised.

2. The EIR's Traffic Impact Analysis Makes Unreasonable Assumptions About the Diversion Rate for Retail Commercial Traffic.

As Mr. Smith points out, the EIR's traffic analysis makes assumptions about the Project site as if it were surrounded by developed roadways on which traffic regularly passes. *Id*., p. 2. However, the Project site is located away from other developed infrastructure and the Project would likely not divert a lot of retail trips. Mr. Smith finds that this results in an inaccurate and incomplete trip generation analysis: 2-20

> The trip generation analysis should be redone assuming there would be close to zero percent of the retail trips are diverted trips from nearby roadways. And since everything else flows from the trip generation numbers, the rest of the entire traffic analysis should be recompiled.

Id. The EIR should be revised to include a proper trip generation analysis such that Project impacts may be analyzed and mitigated.

3. The EIR Fails to Include Analysis of Key Locations of Traffic Flow.

Mr. Smith shows that while well over half of the traffic generation from the Project will enter and leave the I-10 freeway via the interchange ramps connecting to Palm Drive/Gene Autry Drive, the EIR entirely fails to include any analysis of traffic impacts on the ramps themselves as well as the freeway mainline segments. *Id*. The EIR must be revised to include an analysis of these traffic impact. To the extent there are impacts, the EIR must include feasible mitigation measures. 2-21

4. The EIR Fails to Address Need for Emergency Service Response.

The Project will only be accessible via a single, improved dead-end road. Parts of this road will only receive minor improvements. Mr. Smith points out that this poses a concern for emergency service response. *Id*., pp. 2-3. The EIR fails to address and mitigate this potential impact. 2-22

D. THE EIR FAILS TO SELECT THE ENVIRONMENTALLY PREFERRED ALERNATIVE.

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

The lead agency is required to select the environmentally preferable alternative unless it is infeasible. As explained by the Supreme Court, an environmentally superior alternative may not be rejected simply because it is more expensive or less profitable: 2-23

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

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

El Dorado v. Dept. of Transp. (2005) 133 Cal.App.4th 1376 (agency must consider small alternative to casino project); *Preservation Action Counsel v. San Jose* (2006) 141 Cal. App. 4th 1336.

2-23 con't

Here, the EIR found that Alternative 3 is the environmentally superior alternative. However, in violation of CEQA, the EIR fails to select this alternative for the Project. In fact, the EIR contains no analysis why Alternative 3 was rejected, never claiming why it would be infeasible. This is a violation of CEQA. The EIR must be revised accordingly to select Alternative 3 for the Project.

E. THE FEIR FAILS TO PROVIDE SUBSTANTIAL EVIDENCE TO SUPPORT A FINDING OF OVERRIDING CONSIDERATIONS.

The FEIR concedes that the Project will have significant, unmitigated environmental impacts, with respect to air quality impacts, cultural and paleontological resources, and greenhouse gas emissions. Under CEQA, when an agency approves a project with significant environmental impacts that will not be fully mitigated, it must adopt a "statement of overriding considerations" finding that, because of the project's overriding benefits, it is approving the project despite its environmental harm. (CEQA Guidelines §15043; Pub. Res. Code §21081(B); *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1222.) A statement of overriding considerations expresses the "larger, more general reasons for approving the project, such as the need to create new jobs, provide housing, generate taxes and the like." (*Concerned Citizens of South Central LA v. Los Angeles Unif. Sch. Dist*. (1994) 24 Cal.App.4th 826, 847.)

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CEQA prohibits agencies from approving projects with significant environmental impacts when feasible mitigation measures can substantially lessen or avoid such impacts. (Pub. Res. Code § 21002; CEQA Guidelines, 15092(b)(2).) Further, its findings to this effect must be supported with meaningful detail and independent analysis contained in the final EIR or administrative record. (*Preservation Action Council*, *supra,* 46 Cal.Rptr.3d at 917-19.) Put differently, a statement of overriding consideration is not a substitute for the findings required by CEQA section 21081; instead, **a statement of overriding considerations must supplement the City's findings and support its determination to proceed with the Project despite its adverse effects**. (*Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1201.)

A statement of overriding considerations must be supported by substantial evidence in the record. (CEQA Guidelines §15093(b); *Sierra Club v. Contra Costa Co*. (1992) 10 Cal.App.4th 1212, 1223).) The agency must make "a fully informed and publicly disclosed" decision that "specifically identified expected benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the project." (CEQA Guidelines §15043(b).) As with all findings, the

agency must present an explanation to supply the logical steps between the ultimate finding and the facts in the record. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.)

> Key among the findings that the lead agency *must* make is that:
>
> "Specific economic, legal, social, technological, or other considerations, including ***the provision of employment opportunities for highly trained workers*****,** make infeasible the mitigation measures or alternatives identified in the environmental impact report… [and that those] benefits of the project outweigh the significant effects on the environment."

(Pub. Res. Code §21081(a)(3), (b).)

Thus, the City must make specific findings, supported by substantial evidence, concerning both the environmental impacts of the Project, and the economic benefits including "the provision of employment opportunities for highly trained workers." Neither the DEIR nor the FEIR provide substantial evidence to support a statement of overriding considerations. In fact, the City ***has failed to make public*** any proposed statement of overriding considerations whatsoever.

The EIR makes no effort whatsoever to analyze the fiscal impacts related to jobs to be created by the proposed project, or the quality of the new jobs. While the DEIR states that "[d]evelopment within the DLVSP will help generate a new tax base and create jobs for the City" (DEIR, p. 2-1), the EIR is devoid of any analysis of whether the new jobs to be created will be higher or lower wage than the jobs to be displaced in the existing buildings, or how the quality of the jobs to be created will compare to citywide averages. CEQA expressly requires an analysis of: "Specific economic, legal, social, technological, or other considerations, including ***the provision of employment opportunities for highly trained workers.***" (Pub. Res. Code §21081(a)(3), (b).) The EIR contains no fiscal analysis, without which the City lacks substantial evidence to make any statement of overriding considerations. 2-24 con't

In short, the City cannot find that the economic benefits of the Project outweigh the environmental costs if it does not know what the economic benefits will be. A revised FEIR is required to provide this information.

F. THE CITY SHOULD PREPARE AND RECIRCULATE A SUPPLEMENTAL DEIR

A supplemental draft EIR ("SDEIR") should be prepared and circulated for full public review to address the impacts identified above and to propose feasible mitigation measures. CEQA requires re-circulation of an EIR when significant new information is added to the EIR following public review but before certification. (Pub. 2-25

Res. Code § 21092.1.) The Guidelines clarify that new information is significant if "the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project" including, for example, "a disclosure showing that … [a] new significant environmental impact would result from the project." (CEQA Guidelines § 15088.5.) The above demonstrates that potential significant environmental impacts have not been analyzed in the EIR and must be addressed in An SDEIR that is re-circulated for public review.

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IV. CONCLUSION

For the foregoing reasons, and the reasons set forth in prior comments on the Project (including comments filed by other entities), the EIR fails to meet the requirements of CEQA. LIUNA urges the City to refuse to certify the EIR, and require preparation of a Supplemental Revised Draft EIR that addresses the deficiencies identified in this and other comment letters. Thank you for considering our comments and please include this letter in the administrative record for this matter.

Very truly yours,

Rebecca L. Davis