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***Via Email and US Mail***

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**Re: 520 Mateo Draft EIR. Env. Case No. ENV-2016-1795-EIR  
(SCH No. 2016111043)**

Honorable Members of the City of Los Angeles Planning Commission:

I am writing on behalf of **Laborers International Union of North America, Local Union No. 300** and its members living in the City of Los Angeles (collectively "LIUNA" or "Commenters") regarding the Draft and Final Environmental Impact Report ("EIR") prepared for the 520 Mateo Project, Env. Case No. ENV-2016-1795-EIR (SCH No. 2016111043), proposed to be located at 520, 524, 528 and 532 S. Mateo Street, and 1310 E. 4<sup>th</sup> Place, Los Angeles, CA 90013 ("Project"). The Project will involve demolition of an existing warehouse building and construction of up to 600 live/work units, 20,000 square feet of office space, 15,000 square feet of restaurant space, 15,000 square feet of retail space and 10,000 square feet of cultural space in a 13-story, 150-foot high building with a total floor area of 584,760 square feet.

After reviewing the Project and the EIR together with our expert consultants, it is evident that the EIR contains numerous errors and omissions that preclude accurate analysis of the Project. As a result of these inadequacies, the EIR fails as an informational document and fails to impose all feasible mitigation measures to reduce the Project's impacts. Commenters request that the City of Los Angeles ("City") address these shortcomings in a revised draft environmental impact report ("RDEIR") and recirculate the RDEIR prior to considering approvals for the Project.

Commenters submit herewith comments of the environmental consulting firm Soil/Water/Air Protection Enterprise ("SWAPE"), including Matthew Hagemann, P.G., C.Hg., QSD, QSP, former Senior Science Policy Advisor, U.S. EPA Region 9 and Hydrogeologist, Superfund, RCRA and Clean Water programs and environmental scientist Hadley Nolan, who conclude that the EIR fails to adequately evaluate and mitigate the Project's air quality and greenhouse gas impacts. First, the Project's construction and operational emissions were improperly analyzed in the EIR because the EIR used incorrect and unsubstantiated input parameters. When SWAPE ran an air quality model that corrected these errors, it demonstrates that the Project will have significant and unmitigated construction and operational nitrogen oxides ("NOx") emissions. Second, the EIR failed to conduct a Health Risk Assessment ("HRA") for the Project, based on reasoning that is inconsistent with the South Coast Air Quality Management District's ("SCAQMD") and the Office of Environmental Health Hazards ("OEHHA") guidance on when HRAs are needed. SWAPE's analysis demonstrates that the Project will create a cancer risk between 42 and 370 per million – between four and 37 times higher than the 10 per million CEQA significance threshold. Third, SWAPE found that the EIR improperly calculated the Project's GHG emissions, and when calculated properly, the emissions will be significant and must be mitigated. Finally, there are additional mitigation measures that are feasible that must be considered to reduce the Project's significant air quality and greenhouse gas emissions.

Commenters also submit comments from civil and traffic engineer Daniel Smith, Jr., who determined that the EIR incorrectly calculates the Project's traffic impacts. Mr. Smith calculates that the Project's traffic impacts will be much more significant than calculated in the EIR. Therefore, additional mitigation is required to reduce the Project's admittedly significant traffic impacts.

Mr. Hagemann and Ms. Nolan's comments and curriculum vitae are attached hereto as Exhibit A and are incorporated herein by reference. Mr. Smith's comments and curriculum vitae are attached hereto as Exhibit B and are incorporated herein by reference. Each of SWAPE's and Mr. Smith's comments requires separate responses from the City. These experts and our own independent review demonstrate that the EIR is woefully 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.

## **I. PROJECT DESCRIPTION**

The Project site is located on the southeast corner of the intersection of Mateo Street and 4th Place, with Mateo Street forming the western boundary and Santa Fe Avenue forming the eastern boundary of the site. 4th Place abuts the site to the north, and existing commercial and industrial buildings border the site to the south. The 97,460-square foot (2.24-acre) Project site is currently developed with an approximately 80,736-square foot two-story warehouse distribution building containing four tenants.

The proposed Project would include the demolition of the existing warehouse building and the construction of a mixed use live/work development containing up to 600 live/work units, 20,000 square feet of office space, 15,000 square feet of restaurant space, 15,000 square feet of retail space, and 10,000 square feet of cultural space. Up to 11% of the base density would be set aside as restricted affordable units (Very Low) via a ministerial Density Bonus. The proposed Project uses would be contained in a 13-story, approximately 150-foot high building and would contain a total floor area of approximately 584,760 square feet. The Project would have a floor-area ratio (FAR) of 6:1. Parking would be provided at and below grade screened from view, including three subterranean garage levels with ingress/egress from/to Santa Fe Avenue.

## **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.

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.

### **III. THE DEIR FAILS TO ADEQUATELY DESCRIBE THE ENVIRONMENTAL SETTING OF THE PROJECT.**

To facilitate its informational goals, an EIR must contain an accurate description of the project's environmental setting. An EIR "must include a description of the physical environmental conditions in the vicinity of the project... 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).) The "environmental setting" is defined as "the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." (CEQA Guidelines, §15360; see §21060.5; *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1192.) As the court stated in *Friends of Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859:

There is good reason for this requirement: "Knowledge of the regional setting is critical to the assessment of environmental impacts. . . . The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context." ([CEQA] Guidelines, § 15125, subd. (c).) We interpret this Guideline broadly in order to "afford the fullest possible protection to the environment." (*Kings County Farm Bureau, supra*, 221 Cal.App.3d 692, 720.) In so doing, we ensure that the EIR's analysis of significant effects, which is generated from this description of the environmental context, is as accurate as possible.

(108 Cal.App.4th at 874.)

#### **A. THE DEIR FAILS TO ANALYZE OR MITIGATE SIGNIFICANT TOXIC HAZARDS AT THE PROJECT SITE.**

The Project site has been used for heavy industrial uses for over 100 years. The Project Site was developed for industrial use and occupied by Los Angeles Iron & Steel Company, California Industrial Rolling Mills, and Grinnell Company from at least 1894 until as late as 1987; and was redeveloped for industrial use and occupied by the current industrial structure from 1988 to the present. Tenants on site have included Los Angeles Iron & Steel Company, California Industrial Rolling Mills, Grinnell Company, and ITT Grinnell Company (1890-1987); and Dondex Universal Corporation, L & S Import Corporation, LA Kid, Weavers Menswear Inc., Brother International Machine/Corporation, MC Apparel Service, INTEP Graffix, Lee Limited Company, Palomares Apparel Inc., Revolt Clothing Co., Closet Inc., and International Off-price (1988-2008).

Industrial use of the Project Site and surrounding area dates back to at least 1894, at which time the site was developed with a portion of Los Angeles Iron & Steel Company's Rolling Mill. Historical occupant Grinnell Company was identified as a manufacturer of pipe fittings, valves, and hangers associated with the fire protection industry, piping systems for utility power plants and industrial humidification, pipe process networks for chemical companies and as a custom pipe bender/shaper. Information indicates

Grinnell Company was acquired in 1969 by ITT, and the fire protection unit was later purchased by Tyco Laboratories in 1976 with remaining operations known as ITT Grinnell Corp. Garage/service operations are noted on the eastern portion of the site on 1950-1970 Sanborn maps. Various hazardous materials such as metals, solvents, and petroleum products were likely used on-site as part of historical industrial operations. (DEIR, p. 4F-5).

In addition, railroad tracks have been present to the east since at least 1894, with sidings historically present to the south as well as extending onto the site. Railroad tracks represent an environmental concern due to the potential for contamination of surficial soils from the historical application of oils containing polychlorinated biphenyls (PCBs), herbicides, and arsenic for pest and weed control, as well as the potential presence of creosote on the rail ties, and the historically common practice of using coal cinders for track fill material. (DEIR p. 4F-6).

A limited Phase II Site Assessment was undertaken by URS Corporation in September 2014. This study involved four soil borings to a depth of 10 feet below ground surface on the Project Site. Soil samples were collected at one, five, and 10 feet below the surface and were analyzed for metals, volatile organic compounds (VOCs), petroleum hydrocarbons, and PCBs. Specific individual soil samples were found to have detectable concentrations of contaminants that will require further assessment and/or management during site clearing and grading. (DEIR p. 4F-9).

**LEAD:** Specifically, the sample collected at one foot below ground surface in Soil Boring 1 exhibited a lead concentration of 1,940 parts per million (ppm), which would render the sample a Federally-regulated hazardous waste and is above the California risk-based screening level of 320 ppm for commercial/industrial exposure. (DEIR p. 4F-10). Lead is a known human carcinogen, and in addition to cancer, it can cause birth defects and learning disabilities.

<https://www.cdc.gov/niosh/topics/lead/health.html>.

**ARSENIC:** Arsenic was found elevated in the sample collected at one foot below ground surface in Soil Boring 1 at a level of 78 ppm (Id.). Arsenic is known to cause cancer and birth defects.

<https://www.niehs.nih.gov/health/topics/agents/arsenic/index.cfm>.

**PCBs:** Polychlorinated Biphenyls (PCBs) were found in soil samples taken from Soil Boring 2 at both one and five feet below ground surface at detectable concentrations (0.93 and 0.42 ppm at one and five feet, respectively) that suggests some historical release, possibly associated with the leakage of past transformers that may have been located on-site. PCB's are a highly toxic family of chemicals known to cause cancer and birth defects at extremely low levels.  
<https://www.atsdr.cdc.gov/csem/csem.asp?csem=30&po=10>

Despite the known presence of these highly toxic chemicals on the Project site, the EIR fails to adequately analyze their presence and fails to adopt adequate mitigation measures to ensure worker safety (and to ensure the safety of future residents of the Project). The DEIR states:

In order to ensure that potential impacts associated with excavation and grading of the Project Site to accommodate the Project are reduced to a less than significant level, Mitigation Measure HAZ-MM-1 below requires a complete Phase II ESA to be performed to fully characterize the soils beneath the site following the demolition of the existing structure on-site and prior to the commencement of soil removal activities, and the implementation of all soil remediation and/or disposal recommendations contained within the complete Phase II report. (DEIR p. 4F-14).

CEQA does not allow the agency to analyze the known toxic chemicals after approval of the Project. The DEIR must identify and characterize the baseline presence of toxic chemicals. Instead, the DEIR defers full analysis until after Project approval, which is not allowed under CEQA.

The EIR also improperly defers development of mitigation measures. It states that if toxic chemicals are identified at some later time, then mitigation measures will be developed at some later time. Again, CEQA does not allow deferral of the development of mitigation measures. *Citizens for Responsible Equitable Env'tl. Dev. v. City of Chula Vista ("CREED")* (2005) 197 Cal.App.4th 327, 332-33 (absence of toxics cleanup plan from CEQA document creates per se significant impact).

Feasible mitigation measures for significant environmental effects must be set forth in an EIR for consideration by the lead agency's decision makers and the public before certification of the EIR and approval of a project. The formulation of mitigation measures generally cannot be deferred until after certification of the EIR and approval of a project. Guidelines, section 15126.4(a)(1)(B) states: "Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way."

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

The EIR fails by deferring analysis of toxic chemicals known to be present on the Project site, and also by deferring development of mitigation measures to address those toxic chemicals.

Construction workers such as the members of LIUNA will be at the highest risk from such toxic soil contamination, as will be future residents of the Project and neighboring residents. Construction workers will be directly disturbing and excavating contaminated soil during Project construction. We urge the City to prepare a Revised Draft EIR to address these issues and safeguard construction workers, such as the members of LIUNA.

## **B. THE EIR FAILS TO ACCURATELY DESCRIBE THE TRAFFIC BASELINE CONDITIONS.**

Traffic engineer, Daniel T. Smith explains that the EIR fails to accurately describe existing traffic conditions. The EIR uses baseline conditions from as early as 2008, when the area was in the depths of the worst recession since the 1930s. This time period is not representative of current traffic conditions. Mr. Smith explains:

Because the 6<sup>th</sup> Street viaduct was demolished shortly before traffic analysis on the Project was initiated, substantially displacing and disrupting traffic in the study area, existing traffic conditions near the start of environmental analysis were not measured. Instead, the traffic analysis relies upon a hodge-podge of traffic counts taken between 2008 and 2015 and factored to estimate Year 2016 by an assumed annual growth rate of 1 percent per year. However, traffic counts taken in 2008 and in years closely subsequent thereto were likely significantly depressed by the great Bush recession whereas those taken in years closer to 2016 are reflective of a booming economy. It is merely wishful thinking to presume that inflating counts at a consistent annual rate of 1 percent per year adequately accounts for the changes in conditions that have occurred over the subject period of time. If it were acting responsibly, the Los Angeles Department of Transportation ("LADOT") would have had a thorough set of traffic counts taken in the area just before the demolition of the 6<sup>th</sup> Street viaduct was initiated



so that it would have an adequate baseline for whatever traffic study needs emerged in the area. It is intolerable that that this analysis be performed relative to a completely conjectural baseline.

(Smith, p. 2).

A Revised Draft EIR must be prepared, and its traffic analysis must be based on an actual current traffic baseline, not conditions that existed in 2008.

**IV. THE DEIR FAILS TO ADEQUATELY DISCLOSE, ANALYZE, AND MITIGATE ALL POTENTIALLY SIGNIFICANT IMPACTS.**

**A. THE PROJECT'S AIR POLLUTANT EMISSIONS WERE IMPROPERLY ANALYZED BECAUSE THE DEIR USES INCORRECT AND UNSUBSTANTIATED INPUT PARAMETERS.**

The DEIR relies upon the CalEEMod air emission model (California Emissions Estimator Model Version CalEEMod.2013.2.2), to model the Project's construction and operational emissions. SWAPE has determined that the EIR consultant improperly manipulated the CalEEMod model to inaccurately reduce Project emissions. As a result, the EIR concludes that Project construction and operational emissions will be just slightly below the South Coast Air Quality Management District ("SCAQMD") CEQA significance thresholds. The EIR concludes that the Project's construction nitrogen oxides ("NOx") emissions will be 94 pounds per day ("ppd"), slightly below the SCAQMD CEQA significance threshold of 100 ppd. The EIR calculates that operations NOx emissions will be 51 ppd, just slightly below the SCAQMD CEQA significance threshold of 55 ppd.

After correcting the EIR's improper input assumptions (discussed below), SWAPE concludes that the Project's construction NOx will be 157 ppd (well above the 100 ppd threshold), and operation NOx will be 62 ppd (above the 55 ppd threshold). (SWAPE comment letter, p. 9). SWAPE's calculations are summarized on page 9 of their comment letter as follows:

| <b>Maximum Daily Construction Emissions (lbs/day)</b> |            |
|---|------------|
| <b>Model</b>  | <b>NOx</b> |
| DEIR  | 94         |
| SWAPE   | 157        |
| <b>Percent Increase</b>                               | <b>67%</b> |
| <b>SCAQMD Regional Threshold (lbs/day)</b>            | <b>100</b> |
| <b>Threshold Exceeded?</b>                            | <b>Yes</b> |

| <b>Maximum Daily Operational Emissions (lbs/day)</b> |            |
|--|------------|
| <b>Model</b>   | <b>NOx</b> |
| Existing Emissions                                   | 3          |
| Net DEIR   | 51         |
| Net SWAPE  | 62         |
| <b>Percent Increase</b>                              | <b>22%</b> |
| <b>SCAQMD Regional Threshold (lbs/day)</b>           | <b>55</b>  |
| <b>Threshold Exceeded?</b>                           | <b>Yes</b> |

After reviewing the EIR's CalEEMod output files, SWAPE found the following issues:

1. **EIR Incorrectly Assumes that Construction Vehicles will be Stationary:**

Most obviously, the EIR's CalEEMod model was altered to assume that construction equipment will not move at all. This makes no sense since bull-dozers, excavators, fork lifts, dump trucks, and other construction equipment will clearly move around the Project site during construction.

The CalEEMod default speed for construction vehicles on unpaved roads during Project construction was changed from 40 to 0 miles per hour (mph) (Appendix G, pp. 10, pp. 45). This is incorrect for several reasons. First, inputting a speed of 0 mph means that the vehicle is stationary, therefore, the CalEEMod model is estimating Project construction emissions assuming that there will be no vehicles driving on unpaved roads on the Project site. However, as a result of the 80,736 square feet of debris resulting from demolition of an existing warehouse on the Project site, it can reasonably be assumed that vehicles will be traversing back and forth across the Project site in order to remove all of the debris (FEIR, pp. 1). Therefore, it is incorrect to model Project emissions assuming there will be no vehicles driving throughout the Project site. This results in a significant underestimation of Project construction emissions. (SWAPE, p.3).

Second, according to mitigation measure AIR-RCM-7 “Traffic speeds on all unpaved roads shall be reduced to 15 mph or less” (p. 1-15). Therefore, in order to be consistent with the proposed mitigation, the Project Applicant should have inputted a speed of 15 mph instead of 0. For these reasons, the Project’s air quality model is incorrect and should not be relied upon to determine Project significance. (SWAPE, p.3).

## **2. Unsubstantiated Reduction in Hauling Trips For One-Way Travel:**

The EIR acknowledges that the Project will require significant soil excavation and export of a total of 105,000 cubic yards of material (DEIR, p. 2-17). Using hauling trucks equipped to export 14 cubic yards of material per load, the Project Applicant estimates that the Project would require 7,500 hauling trips (Appendix G, pp. 10, pp. 42). This estimation, however, is incorrect. The EIR makes the fatal error of assuming all of the haul trucks will take one-way trips only. In fact, the trucks will make round-trips, which doubles the number of truck trips. (SWAPE, p.4).

According to the CalEEMod User’s Guide, CalEEMod calculates the number of hauling truck trips assuming that one hauling truck will have 2 one-way trips (e.g. a hauling truck importing material will have a loaded arrival trip and an empty return trip, while a hauling truck exporting material will have an empty arrival trip but a loaded departure trip). Using this logic, the DEIR should have modeled the Project’s emissions assuming that there would be a total of approximately 15,000 trips expected to occur during the grading phase of Project construction. Review of the DEIR’s CalEEMod output files, however, demonstrates that this is not the case (Appendix G, p. 15, p. 46).

The EIR improperly reduced the number of hauling trips required for the Project without justification, improperly reducing Project construction emissions and traffic impacts. The CalEEMod output files demonstrate that the grading and demolition hauling trips were reduced from their default values. Review of the “User Entered Comments & Non-Default Data” table shows that the DEIR failed to provide any justification for reducing the total number of hauling trips. According to the CalEEMod User Guide, default values should be used unless proper justification can be provided for Project-specific inputs. By failing to provide proper justification, we are unable to verify if these altered values are correct, therefore the DEIR’s model is incorrect and should not be used to determine significance.

## **3. EIR Double-Counts Pass-by Trips:**

The Project’s CalEEMod model double counts the number of pass-by trips expected to occur throughout Project operation. CalEEMod separates the operational trip purposes into three categories: primary, diverted, and pass-by trips. According to Appendix A of the CalEEMod User’s Guide, the primary trips utilize the complete trip

lengths associated with each trip type category. Diverted trips are assumed to take a slightly different pass than a primary trip and are assumed to be 25% of the primary trip lengths. Pass-by trips are assumed to be 0.1 miles in length and are a result of no diversion from the primary route.

Review of the Project's CalEEMod output files demonstrates that the trip purpose percentage was divided amongst primary, diverted, and pass-by trip types for the Project's retail and office land uses (Appendix G, pp. 30, pp. 60). However, as demonstrated in the DEIR's TIA, pass-by trips for these land uses were already accounted for in the TIA's Project Trip Generation calculations (Table 8, Appendix L-1, pp. 62). Therefore, the CalEEMod model should have divided the trip purpose between primary and diverted trips. Because the proposed Project's CalEEMod model incorrectly allocates the Project's operational trips to the various categories of trip purposes, the emissions associated with these trips are underestimated.

SWAPE corrected for the above errors and omissions and recalculated Project emissions. SWAPE found that Project emissions will be significantly higher than calculated in the EIR. The EIR is deficient because it fails to properly describe the Project's adverse impacts and fails to accurately inform the public and decision makers as to how adverse the Project's impacts will be. SWAPE calculates Project impacts as follows:

| <b>Maximum Daily Construction Emissions (lbs/day)</b> |            |
|---|------------|
| <b>Model</b>  | <b>NOx</b> |
| DEIR  | 94         |
| SWAPE   | 157        |
| <b>Percent Increase</b>                               | <b>67%</b> |
| <b>SCAQMD Regional Threshold (lbs/day)</b>            | <b>100</b> |
| <b>Threshold Exceeded?</b>                            | <b>Yes</b> |
| <b>Maximum Daily Operational Emissions (lbs/day)</b>  |            |
| <b>Model</b>  | <b>NOx</b> |
| Existing Emissions                                    | 3          |
| Net DEIR  | 51         |
| Net SWAPE   | 62         |
| <b>Percent Increase</b>                               | <b>22%</b> |
| <b>SCAQMD Regional Threshold (lbs/day)</b>            | <b>55</b>  |
| <b>Threshold Exceeded?</b>                            | <b>Yes</b> |

(SWAPE, p.9).

As shown above, the Project will have nitrogen oxides (NO<sub>x</sub>) emissions above the CEQA significance threshold of 55 pounds per day (ppd) for operations and 100 ppd for construction. As such, the Project's NO<sub>x</sub> impacts will be significant and must be disclosed and mitigated in an EIR. Exceedance of a duly adopted air district CEQA significance threshold is evidence of a significant impact that must be disclosed and analyzed in an EIR. Indeed, in many instances, such air quality thresholds are the only criteria reviewed and treated as dispositive in evaluating the significance of a project's air quality impacts. See, e.g. *Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 960 (County applies BAAQMD's "published CEQA quantitative criteria" and "threshold level of cumulative significance"). See also *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110-111 ("A 'threshold of significance' for a given environmental effect is simply that level at which the lead agency finds the effects of the project to be significant"). The California Supreme Court recently made clear the substantial importance that a BAAQMD significance threshold plays in providing substantial evidence of a significant adverse impact. *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327 ("As the [South Coast Air Quality Management] District's established significance threshold for NO<sub>x</sub> is 55 pounds per day, these estimates [of NO<sub>x</sub> emissions of 201 to 456 pounds per day] constitute substantial evidence supporting a fair argument for a significant adverse impact").

NO<sub>x</sub> is a serious "criteria" air pollutant. NO<sub>x</sub> reacts with other chemicals in the air to form both PM and ground level ozone. The Los Angeles air basin suffers from the worst ozone pollution in the nation. The Project's NO<sub>x</sub> emissions will therefore be exacerbating an already unacceptable level of air pollution. According to the U.S. Environmental Protection Agency (US EPA), even short-term exposure to ozone can have significant irreparable health impacts. US EPA states:

Ozone can cause the muscles in the airways to constrict, trapping air in the alveoli. This leads to wheezing and shortness of breath.

Ozone can:

- Make it more difficult to breathe deeply and vigorously.
- Cause shortness of breath, and pain when taking a deep breath.
- Cause coughing and sore or scratchy throat.
- Inflammation and damage the airways.
- Aggravate lung diseases such as asthma, emphysema, and chronic bronchitis.
- Increase the frequency of asthma attacks.
- Make the lungs more susceptible to infection.
- Continue to damage the lungs even when the symptoms have disappeared.
- Cause chronic obstructive pulmonary disease (COPD).

These effects have been found even in healthy people, but can be more serious in people with lung diseases such as asthma. They may lead to increased school absences, medication use, visits to doctors and emergency rooms, and hospital admissions.

Long-term exposure to ozone is linked to aggravation of asthma, and is likely to be one of many causes of asthma development. Long-term exposures to higher concentrations of ozone may also be linked to permanent lung damage, such as abnormal lung development in children.

Recent studies consistently report associations between short-term ozone exposures and total non-accidental mortality, which includes deaths from respiratory causes. Studies suggest that long-term exposure to ozone also may increase the risk of death from respiratory causes, but the evidence is not as strong as the evidence for short-term exposure.<sup>1</sup>

People with asthma, children, older adults, and people who are active outdoors, especially **outdoor workers** are most susceptible to health effects caused by ground level ozone.<sup>2</sup> EPA has found “strong and convincing evidence that exposure to ozone is associated with exacerbation of asthma-related symptoms.” 66 Fed. Reg. 5002, 5012 (Jan. 18, 2001).)

SWAPE proposes a long list of feasible mitigation measures that were not analyzed in the EIR since the EIR erroneously concluded that the Project would have less than significant air quality impacts. Feasible mitigation would include solar panels, passive solar, electric car stations, LEED Platinum certification, and many other measures that have been implemented on other projects. The EIR expressly does not require solar panels, despite the fact that there are in wide use and are clearly feasible. (DEIR, p.4.H-23). A Revised Draft EIR is required to consider these and other feasible mitigation measures.

## **B. THE PROJECT WILL CREATE SIGNIFICANT RISKS TO HUMAN HEALTH WHICH ARE NOT ANALYZED OR MITIGATED IN THE EIR.**

The DEIR concludes that the proposed Project would have a less than significant health risk impact without conducting a construction or operational health risk assessment (HRA) (DEIR, p. 4.C-14, p. 4.C-17). The DEIR attempts to justify this omission by stating,

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<sup>1</sup> U.S. EPA, “Health Effects of Ozone Pollution,” <https://www.epa.gov/ozone-pollution/health-effects-ozone-pollution>; 66 Fed. Reg. 5002, 5012 (Jan. 18, 2001).

<sup>2</sup> *Id.*

"Because there is such a short-term exposure period (about 24 out of 840 months), Project-related construction TAC emissions would not produce chronic exposure to TACs. This impact is considered less than significant" (DEIR, p. 4.C-14).

The DEIR goes on to state,

"The Project could generate TACs from heavy-duty trucks and other vehicles that combust diesel fuel. The SCAQMD recommends that health risk assessments be conducted for substantial sources for diesel particulate emissions (e.g., truck stops and warehouse distribution facilities) and has provided guidance for analyzing mobile source diesel emissions. However, the Project is not anticipated to generate significant heavy-duty truck trips. In addition, typical sources of acutely and chronically hazardous TACs included industrial manufacturing processes and automotive repair facilities, neither of which would be included as part of the Project. Based on the limited activity of TAC sources, the Project would not warrant the need for a health risk assessment associated with on-site activities, and potential TAC impacts are expected to be less than significant" (DEIR, p. 4.C-16 - 4.C-17).

This justification for failing to conduct a quantified construction and operational HRA, however, is incorrect and is inconsistent with the most recent guidance published by Office of Environmental Health Hazard Assessment (OEHHA). Thus, in accordance with OEHHA guidance, an assessment of the health risk posed to nearby sensitive receptors from construction and operation should have been conducted.

The omission of an HRA is inconsistent with the most recent guidance published by the 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 at least two months be evaluated for cancer risks to nearby sensitive receptors.<sup>3</sup> Since Project construction is expected to take place over a 30-month period, (DEIR, p. 2-17) an HRA is required.

SWAPE has prepared a Health Risk Assessment in accordance with OEHHA Guidance, using the required AERSCREEN model. SWAPE's analysis concludes that the Project will create very significant cancer risks over sixty times above the 10 per million CEQA significance threshold. SWAPE calculates that the Project will create the following cancer risks, largely from diesel particulate matter ("DPM"):

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<sup>3</sup> "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](http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf), p. 8-18

|                      |                 |
|----------------------|-----------------|
| Adult Cancer Risk    | 42 per million  |
| Child Cancer Risk    | 370 per million |
| Infant Cancer Risk   | 200 per million |
| Lifetime Cancer Risk | 620 per million |

Thus, the Project will create cancer risks ranging from 42 to 620 per million, which is between four and 62 times above the SCAQMD CEQA threshold of 10 per million. Since the Project will create a cancer risk in excess of the South Coast Air Quality Management District's (SCAQMD's) CEQA significance threshold of ten per million, the Project's cancer risk will be significant and must be analyzed and mitigated in an EIR. SWAPE proposes a long list of mitigation measures that would reduce the Project's cancer risks, such as requiring ultra-low emission construction equipment, electrified equipment, and many other measures. Since the EIR did not even include a health risk assessment, it failed to analyze this impact entirely and failed to analyze any mitigation measures.

### **C. EIR FAILS TO PROPERLY ANALYZE THE PROJECT'S SIGNIFICANT GREENHOUSE GAS IMPACTS.**

In an effort to comply with CEQA and the California Global Warming Solution Act, Assembly Bill (AB) 32, the DEIR compares the Project's construction and operational greenhouse gas (GHG) emissions to the emissions that would be generated by the Project in the absence of any GHG reduction measures, also known as a No Action Taken (NAT) or Business as Usual (BAU) scenario. Using this method, the DEIR concludes that because the Project would achieve a 35 percent reduction in GHGs between the NAT and As Proposed scenarios – which is greater than the AB 32 Scoping Plan's 2020 reduction goal of 15.3 percent – that the Project would have a less than significant GHG impact (DEIR, Table 4.E-4, p. 4.E-19).

While the 2014 Revised AB 32 Scoping Plan does call for a GHG reduction target of 15.3 percent below 1990 levels by 2020, the comparison of Project-specific reductions to statewide reduction goals is not supported, as demonstrated by the California Supreme Court Case, *Center for Biological Diversity et al. v. California Department of Fish and Wildlife* (2015) 62 Cal.4th 204 (“*Newhall*”). In order to demonstrate that the Project's project-level reduction in GHGs compared to the NAT scenario will meet the statewide GHG reduction goals, the DEIR evaluates the Project's compliance with CARB's Climate Change Scoping Plan, SCAG's 2012-2035 RTP/SCS, SCAG's 2016-2040 RTP/SCS, the City of Los Angeles Mobility Plan 2035, and the City's ClimateLA Plan (DEIR, p. 4.E-23 - 4.E-37). As a result, the DEIR determines that the Project would have a less than significant GHG because it complies with these policies and regulations.



However, review of the DEIR's list of proposed mitigation demonstrates that many of the measures listed within these regulatory programs are not included as mitigation or as mandatory conditions of approval. Thus, these measures are entirely unenforceable. Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments. 14 CCR § 15126.4(a)(2). See *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal. App. 4th 683, 730 (project proponent's agreement to a mitigation by itself is insufficient; mitigation measure must be an enforceable requirement). By failing to provide substantial evidence to support the use of these reduction measures, the Project's GHG impact is inadequately addressed and the DEIR's significance determination is incorrect.

SWAPE calculates that the Project's GHG emissions would exceed the SCAQMD's screening threshold of 3,000 MTCO<sub>2</sub>e/yr (see table below).

| <b>Estimated Annual Greenhouse Gas Emissions</b> |   |
|--|---|
| <b>Emission Source</b>                           | <b>Proposed Project (MT CO<sub>2</sub>e/yr)</b> |
| Construction (Amortized)                         | 53  |
| Area   | 10  |
| Energy   | 3,371   |
| Mobile   | 7,747   |
| Waste  | 250   |
| Water  | 595   |
| <b>Total</b>                                     | <b>12,026</b>                                   |
| <b>SCAQMD Significance Threshold</b>             | <b>3,000</b>                                    |
| <b>Threshold Exceeded</b>                        | <b>Yes</b>                                      |

(SWAPE, p. 28).

SWAPE's calculations also show that the Project's GHG emissions would exceed significance on a per person basis. Dividing the GHG emissions estimated in the SWAPE modeling of 12,026 MT CO<sub>2</sub>e/yr by a service population value of 1,814 people, we find that the Project would emit 6.6 MT CO<sub>2</sub>e/sp/yr. When we compare the per service population GHG emissions estimated by SWAPE to the SCAQMD 2020 efficiency threshold of 4.8 MT CO<sub>2</sub>e/sp/yr and the 2035 efficiency target of 3.0 MT CO<sub>2</sub>e/sp/yr, we find that the Project would exceed the 4.8 MT CO<sub>2</sub>e/sp/yr efficiency target for 2020 and the 3.0 MT CO<sub>2</sub>e/sp/yr efficiency target for 2035, resulting in a significant GHG impact (see table below).

| Annual Greenhouse Gas Emissions                |            |                                 |
|--|------------|---------------------------------|
| Source   | Emissions  | Unit                            |
| Total Annual Emissions                         | 12,026     | MT CO <sub>2</sub> e/yr         |
| Maximum Service Population                     | 1,814      | Residents                       |
| <b>Per Service Population Annual Emissions</b> | <b>6.6</b> | <b>MT CO<sub>2</sub>e/sp/yr</b> |
| 2020 SCAQMD Project Level Efficiency Threshold | 4.8        | MT CO <sub>2</sub> e/sp/yr      |
| <i>Exceed?</i>                                 | <i>Yes</i> | -                               |
| <b>Per Service Population Annual Emissions</b> | <b>6.6</b> | <b>MT CO<sub>2</sub>e/sp/yr</b> |
| 2035 SCAQMD Project Level Efficiency Threshold | 3.0        | MT CO <sub>2</sub> e/sp/yr      |
| <i>Exceed?</i>                                 | <i>Yes</i> | -                               |

As is shown in the table above, when we compare the per service population emissions estimated in the SWAPE modeling to the SCAQMD's recommended efficiency thresholds of 4.8 MT CO<sub>2</sub>e/sp/yr for 2020 and 3.0 MT CO<sub>2</sub>e/sp/yr for 2035, we find that the Project's emissions would exceed both of these thresholds, thus resulting in a potentially significant impact. The results of this analysis provide substantial evidence that the possible effects of the proposed Project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements. Therefore, an updated FEIR must be prepared to adequately evaluate the Project's GHG impact, and additional mitigation should be implemented where necessary, as is required by CEQA. (SWAPE, p. 29).

SWAPE proposes a long list of feasible mitigation measures, such as solar panels, passive solar, LEED platinum certification, and many other measures. Since the EIR did not disclose the Project's significance GHG impacts, it did not impose all feasible GHG mitigation measures. A Revised Draft EIR is required to analyze all feasible mitigation measures to reduce the Project's significant GHG impacts.

#### **D. THE EIR SIGNIFICANTLY UNDERCOUNTS TRAFFIC.**

Traffic Engineer Daniel T. Smith concludes that the EIR significantly undercounts traffic generated by the Project. For example, Mr. Smith concludes that AM peak trips generated by the on-site restaurant are underestimated by over 1334 % -- 13 times! He also concludes that the EIR drastically underestimates traffic generated by the retail component of the Project. Mr. Smith states that retail traffic is likely to be 1534 daily trips, instead of the 166 trips set forth in the EIR. This results in an undercount of retail traffic of almost ten times. Mr. Smith points out several other egregious examples of

traffic undercounting, which results in an inaccurate and misleading traffic analysis. A revised draft EIR is required to accurately analyze and mitigate the Project's traffic impacts.

Despite these significant traffic undercounts, the EIR concludes that in just four years (by 2020) the Project will degrade traffic from current levels of service (LOS) A or B to LOS E or worse at 11 of 21 intersections analyzed. Mr. Smith states, "This is a tremendous deterioration in traffic conditions over just a 4 year period." (Smith, p.3).

Despite the Project's significant traffic impacts, the EIR fails to impose feasible mitigation measures. The EIR fails to identify feasible physical or operational mitigation for any of the 11 impacted intersections except at the intersection of Santa Fe Avenue and 7th Street where physical improvements were considered but found infeasible.

Instead, the EIR assumes that a Transportation Demand Management ("TDM") program and formation of a Transportation Management Organization ("TMO") for the Arts District will result in a 20 percent reduction in the Project's traffic that would mitigate its traffic impacts on the intersections disclosed as impacted with the exception of Santa Fe Avenue and 7th Street where impacts remain significant and unavoidable. The problem with the assumption that TDM and TMO will mitigate all the other traffic impacts is that there is no hard quantitative relationship between the components of a TDM program or the actions of a TMO and the actual traffic reduction achieved. Mr. Smith concludes, "The presumption of a 20 percent traffic reduction as the result of a TDM plan adoption and a TMO formation is purely speculative." A public agency may not rely on mitigation measures of uncertain efficacy or feasibility. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water was available).) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors. (14 CCR § 15364.) Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments. (14 CCR § 15126.4(a)(2).) There is no substantial evidence to support the EIR's assumption that the TDM and TMO measures will reduce traffic impacts by 20 percent.

The traffic analysis also discloses that the Project would contribute traffic to 40 deficient freeway mainline segments, and would significantly increase queue problems at three freeway off ramps. Yet the only mitigation proposed is that the Applicant will *consult with Caltrans and make fair share payments toward improvements that will increase storage capacity on the affected off ramps so that traffic will not hazardously queue onto the mainline lanes.*

This mitigation is inadequate as a matter of law. Mitigation fees are not adequate mitigation unless the lead agency can show that the fees will fund a specific mitigation

plan that will actually be implemented in its entirety. *Napa Citizens for Honest Gov. v. Bd. Of Supervisors* (2001) 91 Cal.App.4th 342 (no evidence that impacts will be mitigated simply by paying a fee); *Anderson First Coal. v. City of Anderson* (2005) 130 Ca.App.4th 1173 (traffic mitigation fee is inadequate because it does not ensure that mitigation measure will actually be implemented). The EIR does not identify specific mitigation measures, and does not ensure that any mitigation measure will actually be implemented. Therefore the proposed mitigation measure is legally deficient under CEQA.

CEQA requires that the EIR must define feasible mitigation measures. There is no evidence that the EIR consultants have devoted any effort to defining what specific measures to increase off-ramp queue storage capacity might be feasible or if there are any feasible mitigation measures.

#### **V. THE DEIR FAILS TO PROVIDE SUBSTANTIAL EVIDENCE TO SUPPORT A FINDING OF OVERRIDING CONSIDERATIONS.**

Since the Project will have significant, unmitigated environmental impacts, a statement of overriding considerations will be required. 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. 14 CCR § 15043; PRC § 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.

A statement of overriding considerations must be supported by substantial evidence in the record. 14 CCR § 15093(b); *Sierra Club v. Contra Costa County* (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.” 14 CCR § 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. *Topenga 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 to 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.

PRC § 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.” The DEIR fails to provide substantial evidence to support a statement of overriding considerations.

The DEIR makes not effort whatsoever to analyze the fiscal impacts related to jobs to be created by the proposed project or the quality of the new jobs. The DEIR is devoid of any analysis of how the quality of jobs created compares to citywide averages, for example. The DEIR makes no attempt to determine whether new jobs created by the Project, in either the construction phase or the operational phase, will be for “highly trained workers,” and what the likely salary and wage ranges of these jobs will be. Without this information, the City lacks substantial evidence to make any statement of overriding considerations.

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 DEIR is required to provide this information.

## **VI. THE CITY SHOULD PREPARE AND RECIRCULATE A SUPPLEMENTAL DEIR**

A revised draft EIR (“RDEIR”) 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. PRC § 21092.1. The CEQA 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.” 14 CCR § 15088.5. The above significant environmental impacts have not been analyzed in the EIR and must be addressed in a supplemental DEIR that is re-circulated for public review.

## **VII. CONCLUSION**

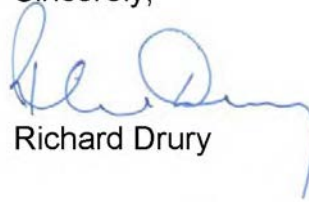
For the foregoing reasons, the EIR is inadequate. LIUNA urges the City to make the above changes, and recirculate a revised DEIR to the public for review. The EIR should analyze all feasible mitigation measures to reduce or avoid the Project’s

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significant adverse environmental impacts. Thank you for your attention to these comments.

Sincerely,

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

Richard Drury