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*Via email and overnight delivery*

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**Re: WEST VALLEY LOGISTICS CENTER SPECIFIC PLAN PROJECT  
Recirculated Draft Environmental Impact Report  
SCH #2012071058**

Dear Mr. Hernandez and Mr. Troyer:

Thank you for this opportunity to submit the following comments on behalf of Laborers International Union of North America, Local Union No. 783 and its members living in San Bernardino County (collectively "LIUNA Local Union No. 783" or "LIUNA" or "Commenters") regarding the Recirculated Draft Environmental Impact Report ("RDEIR") prepared for the West Valley Logistics Center Specific Plan, State Clearinghouse No. 2012071058 ("Project").

On June 5, 2014, LIUNA submitted comments on the Draft Environmental Impact Report ("DEIR") prepared for the Project, as did many other citizens, and governmental agencies, including the California Department of Fish and Wildlife ("DFW"), the South Coast Air Quality Management District ("SCAQMD"), the City of Jurupa Valley, and others. However, the City of Fontana ("City") as lead agency for the CEQA review of the Project, chose not to respond to any of the comments on the DEIR. Instead, the City issued the RDEIR. As a result, the RDEIR suffers from many of the same deficiencies as the DEIR. Therefore, LIUNA reincorporates our previous comments on the DEIR herein in their entirety by reference, and reincorporates the comments of the DFW, City of Jurupa Valley and all other comments on the DEIR herein by reference in their entirety. LIUNA requests that the City respond to all of the comments made on the DEIR and RDEIR in the Final RDEIR.

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After reviewing the RDEIR and supporting documents, it is clear that the document contains numerous errors and omissions that preclude accurate analysis of

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the Project. As a result of these inadequacies, the RDEIR fails as an informational document and fails to impose feasible mitigation measures to reduce the Project's impacts.<sup>1</sup> In particular, the RDEIR suffers from the following significant errors and omissions, among others:

- **AIR QUALITY:** The RDEIR fails to adequately analyze air quality impacts because the analysis is not supported by substantial evidence, and because it fails to consider CARB recommendations regarding health impacts from diesel particulate matter on nearby communities.
- **GREENHOUSE GAS:** The RDEIR fails to adequately analyze and mitigate greenhouse gas impacts because the DEIR relies on an improper threshold of significance, and because the mitigation measure proposed are not sufficient under CEQA and not supported by substantial evidence.
- **TRAFFIC:** The RDEIR's traffic analysis is inadequate because it relies on outdated traffic data that is several years old. As a result, the baseline for the traffic analysis is inadequate and fails to comply with relevant guidance documents.
- **HAZARDOUS MATERIALS:** The baseline of the physical environmental conditions in the vicinity of the Project is erroneous because the RDEIR does not provide adequate analysis of existing site contamination.
- **BIOLOGICAL IMPACTS:** As noted by the California Department of Fish and Wildlife, the Project will have significant impacts on several special status species, and these impacts have not been adequately mitigated in the RDEIR.
- **CUMULATIVE IMPACTS:** The RDEIR's cumulative impact analysis is little more than a list of conclusions, unsupported by any evidence. Moreover, the scope of the cumulative impacts analysis is too narrow.
- **ALTERNATIVES:** The RDEIR contains a more thorough alternatives analysis than did the DEIR. However, the RDEIR rejects the environmentally superior Alternative 5 without substantial evidence that Alternative 5 would be infeasible. Therefore the alternatives analysis remains legally deficient.
- **MITIGATION:** The City's conclusion that the RDEIR contains all feasible mitigation measures is not supported by substantial evidence. There are

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<sup>1</sup> 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.

numerous other mitigation measures that should be required that are feasible and that would reduce or avoid significant air quality, biological, traffic and greenhouse gas impacts.

This letter is supported by the comments of the following experts:

1. Environmental Scientists, Matthew Hagemann, C. Hg. and Jessie Jaeger, of Soil Water Air Pollution Enterprise (SWAPE).
2. Traffic Engineer, Tom Brohard, P.E.
3. Wildlife Biologist, Dr. Shawn Smallwood, Ph.D.<sup>2</sup>

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These expert comments are attached hereto and must be responded to separately. Commenters request the Planning Commission, the Board of Supervisors, and city staff address these shortcomings in a revised draft environmental impact report (RDEIR) and recirculate the RDEIR prior to considering approvals for the Proposed Project.

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#### I. **BACKGROUND**

The Project site encompasses 291 acres of land in the southeastern portion of the City of Fontana in San Bernardino County. (RDEIR, ES-2.) The Project site borders the unincorporated community of Bloomington in San Bernardino County to the east and the City of Jurupa Valley in Riverside County to the south. (*Id.*) The Project consists of a specific plan, the West Valley Logistics Center Specific Plan, that is being proposed by Hillwood Investment Properties, Inc., the Project Applicant. (*Id.*, ES-2.) The Project site was previously approved for a mixed-use residential community known as the Valley Trails Specific Plan, which was never developed. (*Id.*)

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The Project site is generally bounded on the north by the Southern California Edison utility corridor and Jurupa Avenue, on the west by the Jurupa Hills, on the south by residential properties located in the City of Jurupa Valley, and on the east by residential uses in the San Bernardino County area of Bloomington. (RDEIR, ES-2.) Single-family residential uses are located approximately 150 feet east of the eastern border of the Project site, and 250 feet south of the southern border, and 1,000 feet from the Project's northern border. Additionally, three elementary schools and a middle school are located at 1,700 ft., 1,900 feet, 2,400 feet, and 3,600 feet from the Project's borders.

The Project would include the construction of a warehouse facility comprising seven buildings consisting of a total of approximately 3,473,690 square feet on 212.1

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<sup>2</sup> Dr. Smallwood's comments will be submitted in the near future.

acres. (RDEIR, ES-2.) In addition, 14.9 acres of the Project site would include detention basins, 1.54 acres of existing utility corridor would remain unchanged, 55.2 acres would be retained in natural hillside open space, and 7.5 acres would consist of right-of-way dedications. (RDEIR, ES-2.)

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## II. STANDING

LIUNA Local 783 has thousands of members who live in and around San Bernardino County. These members will suffer the air quality impacts, greenhouse gas, and health impacts of a poorly executed or inadequately mitigated Project, just as would the members of any nearby homeowners association, community group or environmental group. Therefore, Local 783's members have a direct interest in ensuring that the Project is adequately analyzed and that its environmental and public health impacts are mitigated to the fullest extent feasible. See *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1198 (“unions have standing to litigate environmental claims”).

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## III. LEGAL BACKGROUND

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.” (*Communities for a Better Environment 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.)

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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, *Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 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.” (PRC § 21081; CEQA Guidelines § 15092(b)(2)(A) and (B).)

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 University of California*, 47 Cal.3d 376, 391, 409, fn. 12 (1988).) As the court stated in *Berkeley Jets*, 91 Cal. App. 4th at 1355:

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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.)

#### **IV. THE DEIR IMPROPERLY SEGMENTS THE PROJECT BY FAILING TO INCLUDE INFRASTRUCTURE AS PART OF THE PROJECT.**

The “project” is “the whole of an action” directly undertaken, supported, or authorized by a public agency “which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” (PRC § 21065; CEQA Guidelines § 15378(a).) Under CEQA, “the term ‘project’ refers to the underlying activity and not the governmental approval process.” (*California Unions for Reliable Energy v. Mojave Desert Air Quality Mgmt. Dist.*, 178 Cal. App. 4th 1225, 1241 (2009) (quoting *Orinda Ass’n v. Bd. of Supervisors*, 182 Cal. App. 3d 1145, 1171-72 (1986)).)

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The courts have repeatedly held that “an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document].” (*County of Inyo v. City of Los Angeles*, 71 Cal.App.3d 185, 193 (1977).) Thus, CEQA mandates “that environmental considerations do not become submerged by chopping a large project into many little ones -- each with a minimal potential impact on the environment -- which cumulatively may have disastrous consequences.” (*Bozung v. LAFCO*, 13 Cal.3d 263, 283-84 (1975); *City of Santee v. County of San Diego*, 214 Cal.App.3d 1438, 1452 (1989).) Before undertaking a project, the lead agency must

assess the environmental impacts of all reasonably foreseeable phases of a project and a public agency may not segment a large project into two or more smaller projects in order to mask serious environmental consequences. As the Court of Appeal stated:

The CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, **covering the entire project, from start to finish**...the purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind.

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(*Natural Resources Defense Council v. City of Los Angeles*, 103 Cal.App.4th 268 (2002) (emphasis added).)

In *County of Amador v. City of Plymouth*, 149 Cal. App. 4th 1089, 1095 (2007) an Indian tribe intended to build a large gaming development comprised of a hotel, restaurants, and bars, on land located in or adjacent to the city. The Court held that the construction of public works, including a city road to the casino hotel, constituted a project within the scope of CEQA. (*Id.* at 1100.) The Court cited to the CEQA Guideline § 15378(a)(1) which states that the following is included in the term “project”: “public works construction and related activities, clearing or grading of land [and] improvements to existing public structures...” (*Id.* at 1100.)

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Instead of including the water, sewer lines, and other required infrastructure described in the RDEIR as part of the Project, the RDEIR treats these infrastructure improvements as a separate project. The RDEIR does not analyze the environmental impacts of any of the public facilities and service improvements that are part of the Project. (See RDEIR, 3-8.)

In addition to water facilities, the Project also includes on- and off-site sewer facility upgrades. (*Id.*) The Project includes a new gravity main connection at Locust Avenue and 7th St. to connect with an existing gravity main in Santa Ana Ave, and off-site improvements on Linden Ave. and on 11th Street would be constructed, along with a new lift station at Linden Ave. (RDEIR, 3-8.)

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The City is improperly chopping the Project into different segments, which is prohibited by CEQA because proper analysis of the whole Project is thwarted. Like the casino road in *County of Amador v. City of Plymouth*, the roads, water, and sewer lines that will serve the Project must be included as part of the Project and properly analyzed as part of the whole Project. The RDEIR’s failure to address these portions of the Project violates CEQA’s mandate that “[a]ll phases [and components] of a project must be considered when evaluating its impact on the environment.” (CEQA Guidelines § 15126.) The RDEIR must be revised to include these Project features in the environmental analysis. This deficiency is particularly concerning since Commenters raised this issue in their comments on the DEIR.

**V. THE DEIR FAILS TO ANALYZE AND MITIGATE ALL POTENTIAL SIGNIFICANT IMPACTS.**

An EIR must disclose all potentially significant adverse environmental impacts of a project. (Pub. Res. Code § 21100(b)(1); 14 Cal.Code Regs. § 15126(a); *Berkeley Jets*, 91 Cal. App. 4th 1344, 1354.) CEQA requires that an 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.)

CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring mitigation measures. (CEQA Guidelines § 15002(a)(2) and (3); See also, *Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564). The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.” (Guidelines §15002(a)(2)). If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.” (Pub.Res.Code § 21081; 14 Cal.Code Regs. § 15092(b)(2)(A) & (B)).

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In general, mitigation measures must be designed to minimize, reduce, or avoid an identified environmental impact or to rectify or compensate for that impact. (CEQA Guidelines § 15370). Where several mitigation measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. (*Id.* at § 15126.4(a)(1)(B)). A lead agency may not make the required CEQA findings unless the administrative record clearly shows that all uncertainties regarding the mitigation of significant environmental impacts have been resolved.

**A. The RDEIR Fails to Adequately Analyze Air Quality Impacts**

**1. The RDEIR Improperly Relies on Air Emissions Tables for Project UNDER Five Acres in Size. Since the Project is over 291 Acres, Reliance on these Tables is Improper.**

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The RDEIR relies on South Coast Air Quality Management District (“SCAQMD”) tables intended for Projects of less than five acres in size to conclude that no air dispersion modelling is required. (RDEIR 4.2.2-18). Since the proposed Project is over 290 acres in size, this approach is patently absurd.

Environmental Scientists, Matthew Hagemann, C. Hg. and Jessie Jaeger of SWAPE, point out that the RDEIR's air quality analysis is fundamentally flawed because the EIR consultant relied on SCAQMD air quality emission "look-up" tables intended for projects of less than 5 acres in size. (SWAPE Comment letter, p.2, citing RDEIR p. 4.2.2-18). The proposed Project here at issue is over 291 acres in size. Therefore the air quality analysis is patently inadequate and legally insufficient.

The RDEIR contends that the SCAQMD 5- acre look-up tables can be used for "larger projects." (RDEIR p.4.2.2.-18). However, this conclusion directly contradicts the SCAQMD tables themselves. The SCAQMD's *Final Localized Significance Threshold Methodology*<sup>3</sup> states, "The staff proposal recommends using the LST mass rate look-up tables only for projects that are less than or equal to five acres," and continues on to recommend "that lead agencies perform project-specific air quality modeling for larger projects."<sup>4</sup> SCAQMD states that "large industrial projects...are beyond the scope of these LST lookup tables,"<sup>5</sup> and that proposed projects that do not fit the specified criteria (i.e. less than or equal to 5 acres) "should complete a site specific localized significance analysis."<sup>6</sup> Due to these limitations, the DEIR cannot determine significance of Project emissions on nearby sensitive receptors by solely utilizing LST lookup tables. A revised DEIR should be prepared to include a site-specific localized significance analysis.

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## **2. The RDEIR Fails to Disclose that the Project will have Significant Air Quality Impacts Related to Construction Emission.**

Mr. Hagemann and Ms. Jaeger point out that the RDEIR fails to properly calculate construction emissions. First, the RDEIR relies in part on the outdated CalEEMod v. 2011.1.1, rather than the current version v2013.2.1. (SWAPE Comment, p.3). The RDEIR vastly underestimates emissions from "Building Construction" and "Architectural Coating." (Id.). SWAPE also concludes that the RDEIR failed to properly calculate "peak daily emissions." (Id. p.4).

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When these errors are corrected, the Project will have significant impacts for reactive organic gases (ROGs), nitrogen oxides (NOx), and carbon monoxide (CO) during the construction phase.

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<sup>3</sup> <http://www.aqmd.gov/docs/default-source/ceqa/handbook/localized-significance-thresholds/final-lst-methodology-document.pdf?sfvrsn=2>

<sup>4</sup> SCAQMD *Final Localized Significance Threshold Methodology*, p. 1-1.

<sup>5</sup> SCAQMD *Final Localized Significance Threshold Methodology*, p. 3-3.

<sup>6</sup> SCAQMD *Final Localized Significance Threshold Methodology*, p. 3-4.



Mitigated Construction (lbs/day)								
Phase	ROG	NOx	CO	SOx	Fugitive PM10	Exhaust PM10	Fugitive PM2.5	Exhaust PM2.5
Building Construction	38	246	582	0.92	55	6.7	14.8	6.3
Architectural Coating	66	11	71	0.12	9	0.6	2.4	0.6
<b>Peak Daily</b>	<b>104</b>	<b>257</b>	<b>654</b>	<b>1.04</b>	<b>71</b>		<b>24</b>	
<b>Thresholds</b>	<b>75</b>	<b>100</b>	<b>550</b>	<b>150</b>	<b>150</b>		<b>55</b>	
<i>Exceeded?</i>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<i>No</i>	<i>No</i>		<i>No</i>	

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(SWAPE Comment p. 4)

Since the RDEIR fails to disclose these impacts, it also fails to propose feasible mitigation measures to reduce these impacts. SWAPE suggests numerous feasible mitigation measures that are not included in the RDEIR. (SWAPE Comment, p. 5-6).

A new revised DEIR is required to disclose, analyze and mitigate these air quality impacts.

**3. The RDEIR Fails to Disclose that the Project Will have Significant Toxic Air Contaminant Emissions from Diesel Exhaust that will Impact Nearby Residents.**

The RDEIR fails entirely to analyze toxic air contaminant (“TAC”) impacts on nearby residential communities related to diesel engine exhaust. (SWAPE Comment p. 7). The RDEIR concludes without analysis that TACs impacts will be less than 10 per million. (RDEIR p. 5.2-42). However, there is no health risk assessment to support this conclusion. (SWAPE Comment, p.7).

The 2012 guidance from the Office of Environmental Health Hazard Assessment (“OEHHA”), Revised Technical Support Document for Exposure Assessment and Stochastic Analysis, states that all short-term projects lasting more than two months should be evaluated for cancer risks to nearby sensitive receptors. (SWAPE p.8). The proposed Project will results in diesel construction exhaust for 783 days – far longer than 60 days. Furthermore, residences are located only 150 feet from the Project location. (4.2.2-6) Thus, the RDEIR is legally deficient for failing to conduct a TAC analysis for construction diesel emissions.

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Using the methodology set forth in OEHHA guidance, SWAPE calculates that the Project would pose a significant cancer risk above SCAQMD CEQA significance threshold of 10 per million. (SWAPE Comment p.12). In particular, SWAPE calculates a child cancer risk of 15.5 per million and an infant cancer risk of 51.6 per million – more than five times the CEQA significance threshold. (Id.)

The RDEIR is inadequate for failing to disclose this impact and for consequently failing to propose feasible mitigation measures to reduce the impact.

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### **B. The RDEIR is Deficient Because it Fails to Disclose that the Project has Significant Greenhouse Gas Impacts.**

The RDEIR is inadequate because it uses an improper “business as usual” (“BAU”) baseline for greenhouse gas (“GHG”) emissions. In other words, rather than comparing the proposed Project to the existing environment (which is undeveloped ground), the RDEIR compares the proposed Project to a hypothetical “business as usual” baseline that does not exist and which may never exist. The Courts have flatly rejected this approach and require that the proposed Project be compared to the actual conditions on the ground. (*Woodward Park Homeowners v. City of Fresno* (2007) 150 Cal.App.4th 683, 708-711).

The proposed Project will generate over 35,000 metric tons of carbon dioxide equivalents (MTCO<sub>2</sub>e) per year. (4.2.6-36). This is far above the SCAQMD CEQA significance threshold of 10,000 MTCO<sub>2</sub>e per year. Therefore, the RDEIR is deficient for failing to disclose this impact for failing to impose all feasible mitigation measures to reduce GHGs.

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When an impact exceeds a duly adopted CEQA significance threshold, as here, the lead agency must acknowledge the impact as significant, and must adopt all feasible mitigation measures and alternatives to reduce the impacts. *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 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”).

The RDEIR erroneously concludes that the Project’s GHG impacts are less than significant (“LTS”) because they are allegedly less than a “business as usual” (“BAU”) baseline. The RDEIR utilizes this reduction percentage as a way to show compliance with GHG regulations (p. 4.2.6-29), and determines that the Project “would be consistent with applicable plans for GHG emissions reductions and impacts related to the conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs” and therefore would have a less than significant

impact (p. 4.2.6-41). This level of significance is, of course, achieved by creating a BAU baseline; the DEIR defines the BAU scenario as the GHG emissions from the proposed Project if the Project were hypothetically built prior to AB-32-related emission restrictions beginning in 2006 (p. 4.2.6-29).

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The RDEIR's analysis has been rejected under CEQA. The law is clear that the environmental "baseline" must be the existing environment. In other words, the Project must be compared to the existing environment – not a hypothetical environment that does not and may not ever exist. The existing environment at the Project site is bare dirt. Therefore the GHG CEQA baseline should be zero. Using this real world baseline, it is clear that the Project will have significant GHG impacts. This must be disclosed in the DEIS and all feasible mitigation measures and alternatives must be implemented.

Every CEQA document must start from a "baseline" assumption. The CEQA "baseline" is the set of environmental conditions against which to compare a project's anticipated impacts. *Communities for a Better Environment v. So Coast Air Qual. Mgmt. Dist.* (2010) 48 Cal. 4th 310, 321. Section 15125(a) of the CEQA Guidelines (14 C.C.R., § 15125(a)) states in pertinent part that a lead agency's environmental review under CEQA:

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

(See, *Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 124-125 ("*Save Our Peninsula*.").) As the court of appeal has explained, "the impacts of the project must be measured against the 'real conditions on the ground,'" and not against hypothetical permitted levels. (*Save Our Peninsula, supra*, 87 Cal.App.4th 99, 121-123.)

The Project will be constructed on a vacant lot. Thus, the "real condition on the ground" is a zero baseline. The EIR misleads the public into thinking the Project's emissions will be much lower by subtracting from the Project's emissions the maximum daily emissions that could be generated from a hypothetical project that does not exist. As the court has explained, using such a skewed baseline "mislead(s) the public" and "draws a red herring across the path of public input." (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 656.) Subtracting emissions from a project that does not even exist anymore "failed to adequately apprise all interested parties of the true scope and magnitude of the Project." (*Id.* at p.657.)

The EIR's error is similar to that in *Woodward Park Homeowners v. City of Fresno* ("*Woodward*") (2007) 150 Cal.App.4th 683, 708-711.) In that case, a developer proposed to build a shopping mall on a vacant lot. The EIR erroneously used as a

baseline an office park that was previously approved for the parcel as the baseline, and subtracted the difference. The court held that the baseline should have been zero since the property was actually vacant. Using the non-zero baseline for the vacant parcel misled the public into thinking the proposed shopping mall's impacts would be much less than they would be when compared to the existing vacant parcel. See also, *Friends of Oroville v. City of Oroville*, 219 Cal. App. 4th 832, 844 (Cal. App. 3d Dist. 2013). The DEIS in this case makes the same error.

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Climate scientist Jessie Jaeger and Matthew Hagemann, C. Hg. of expert consulting firm Soil, Water, Air Protection Enterprise (SWAPE), conclude that the Project's GHG emissions are far above applicable CEQA significance threshold. (SWAPE Comment, p.14).

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A new Revised DEIR is required to disclose this impact, to calculate GHG emissions properly, and to propose all feasible mitigation measures to reduce GHGs.

### **C. The DEIR Fails to Adequately Analyze Hazards and Hazardous Materials and Establishes an Erroneous Baseline.**

As discussed by SWAPE, the RDEIR skirts potentially significant impacts that may result from the Project by failing to look for them and failing establish a baseline supported by substantial evidence. (SWAPE Comment, p. 16-17). Specifically, the RDEIR fails to look for pesticide residues and other contaminants in soils at the site and potentially hazardous underground storage tanks.

The analysis of potential hazardous waste conditions in the RDEIR was based on the preparation of an April 2013 Phase I Environmental Site Assessment ("Phase I ESA"). Despite acknowledging that the Project site was formerly used for agricultural purposes for approximately 50 years, that DDT and other pesticides are likely present in the soil, and that DDT and other pesticides may cause cancer (App. C, 39-40), the City did not take any soil samples to determine if any hazardous residues remain in the soil.

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The Project site was formerly used for agricultural purposes since 1953, and the majority of the Project site was used for vineyard production as recent as 2005. (DEIR App. C, 40.) The City admits that "there is a significant potential for agriculturally-related persistent compounds to exist within the soils. Such agriculturally related compounds typically contain residues of DDT derivatives or heavy metals from pesticides and fertilizers" and that DDT and other pesticides may cause cancer. (App. C, 39-40.) Indeed the Phase I ESA actually recommends a Phase II ESA, including soil testing of all areas of the Project site previously used for agricultural land uses. (DEIR, App. C, 43.) The City ignores all of this evidence and the recommendation of its own experts, and in doing so provides an incomplete baseline.

By failing to quantify the presence of persistent chemicals in the soil, the RDEIR fails to identify any baseline supported by substantial evidence from which to assess the

significance of potential exposure to workers who may be exposed to contamination by touching soil or breathing the dust. Soil sampling and a Phase II ESA report must be prepared for the site and the DEIR revised to include a proper baseline of hazardous materials and exposure risks at the site, and if needed, appropriate mitigation measures must be included.

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cont.

In addition to potential agricultural chemical residue, the City ignored other potentially hazardous risks located on the Project site. According to the Phase I ESA, “[t]wo possible vent pipes/transfer lines were noted during the site reconnaissance possible indicating the presence of a UST.” (RDEIR, App. C, 33.) The Phase I ESA recommends a Phase II to determine whether the vent pipes are associated with USTs, and if so, careful extraction under the supervision of a qualified hazmat professional. (RDEIR, App. C, 43.) The DEIR fails to establish an adequate baseline because it does not disclose whether USTs are present on site, and if so, the status of these USTs. A revised DEIR is required to disclose this important information.

5-18

The RDEIR proposes to build a project on a potentially contaminated site, and is attempting to avoid cleanup of the site by refusing to determine if the site is or is not contaminated. CEQA does not allow this. *CREED v. Chula Vista* (2011) 197 Cal. App. 4th 327. The RDEIR attempts to include a Phase II ESA study as a mitigation measure after Project approval. (RDEIR, HAZ-1). But this information is needed to establish an environmental setting for the EIR. It is not a mitigation measure.

The City should follow the recommendations made by its consultants in the Phase I ESA, including:

1. Phase II ESA soil testing in high-REC probability areas. These include: 1) within the detention basin in the vicinity of distressed vegetation, effluent streambed, and stained soil; 2) in the vicinity of parcels 1-3 and other parcels where troughs in the topography collect rainfall and ponding occurs or soil stains are evident; 3) areas formerly used for agricultural land use.
2. If the vent pipes within proposed Parcels 8 and 9 are associated with USTs, careful extraction under the supervision of a qualified hazardous professional is recommended.
3. A contractor licensed in the removal and remediation of hazardous materials should be used to remove all materials stored or disposed of onsite.
4. Imported soil must be removed from within the subject property. Sampling must be performed to assure it is free of contamination if soil is to be integrated within the site.
5. The municipal water supply must be utilized in the future development of the property.

5-19

6. A more thorough investigation is warranted of historic Crestmore Disposal Site monitoring data to characterize the nature and extent of migratory VOCs and groundwater contamination and their potential impact on the proposed development.
7. Environmental investigation, sampling, and remediation should be conducted under a workplan as recommended by the CA DTSC; this must be overseen by the local regulatory agency that has jurisdiction to oversee hazardous substance cleanup.

5-19  
cont.

(RDEIR, App. C, 43-44.) Without this information, the RDEIR fails to establish an adequate environmental setting for the Project. A revised EIR should be circulated to the public with this additional information, and any required mitigation.

During earthmoving activities, construction workers and the public may be exposed to Project site soils which may contain harmful levels of pesticide residuals associated with agricultural activities on the site, as well as other potentially hazardous residues on site including petroleum hydrocarbons. To protect worker safety, Project site soils must be sampled. Sampling results should be compared to health-protective regulatory screening levels such as U.S. EPA Regional Screening Levels<sup>7</sup> and California Human Health Screening Levels.<sup>8</sup>

5-20

Soil sampling results should also be evaluated for the protection of nearby residents, located 150 feet from the Project's eastern boundary and 250 feet from the southern boundary. Inhalation of pesticides has been linked to asthma in recent research.<sup>9,10</sup> A report prepared by the California Department of Health identifies pesticides as an asthma trigger.<sup>11</sup> Offsite receptors, including any children living in the neighboring residences, may be exposed to pesticide residuals via dust generated during Project construction.

5-21

Soil sampling and a Phase II ESA report should be prepared for the site and the DEIR revised to include a proper baseline of hazardous materials and exposure risks at the site, and if needed, appropriate mitigation measures must be included.

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<sup>7</sup> <http://www.epa.gov/region9/superfund/prg/>

<sup>8</sup> <http://www.calepa.ca.gov/brownfields/documents/2005/CHHSLsGuide.pdf>

<sup>9</sup> <http://extension.psu.edu/ipm/resources/urbanphilly/partnerships/handouts/asthma-pests.pdf>

<sup>10</sup> <http://www.ncbi.nlm.nih.gov/pubmed/21368619>

<sup>11</sup> <http://www.cdph.ca.gov/programs/caphi/Documents/AsthmaStrategicPlan.5-5-08.pdf>, p. 22

#### **D. The RDEIR Fails to Disclose and Mitigate the Project's Significant Traffic Impacts.**

Traffic Engineer Tom Brohard, P.E., concludes that the RDEIR traffic analysis is incomplete and erroneous, and that the Project will have significant unmitigated impacts on traffic in the area. Mr. Brohard states:

The findings and conclusions of the TIA, upon which the Draft EIR relies, are based upon analyses of baseline data that is out of date. No evidence is presented that the traffic volumes counted in 2012 represent existing conditions or conditions that would occur on Opening Day for the Project. Other traffic volume data was obtained from outdated Caltrans publications in 2010 and in 2011. More current data from Caltrans is now available for conditions in 2013. Errors were found in taking data and calculation results from the TIA and then transposing information in the Draft EIR, making it impossible to determine which freeway segments are impacted and which are not impacted.

The Draft EIR proposes an ineffective Transportation Management Association which would not keep trucks out of the nearby residential neighborhoods. In addition, there are a number of conflicts between the Mitigation Measures listed in the Draft EIR and those identified in the TIA, specifically those that are required as part of the Project and those required as measures to mitigate direct significant impacts of the Project.

5-22

Based on the number of errors and conflicts both within the Draft EIR itself and with the TIA, these documents require significant revisions to accurately quantify and properly analyze the traffic and transportation aspects of the Proposed Project, and disclose to decision makers and the public all of the significant traffic and transportation impacts of the West Valley Logistics Center Project.

(Brohard Comment, p. 1).

Mr. Brohard points out that the RDEIR's traffic analysis is based on three-year old data. The Institute of Transportation Engineers, ITE, states "The characterization should represent current conditions (the information should be no more than 1 year old). These baseline data will provide a foundation for assessing the land use and transportation implications of changes over time." Page 21 further emphasizes the need for current data by stating "Unless these are locally preferred criteria to the contrary, traffic volume data should generally be no older than 1 year." (Brohard Comment, p. 2). By failing to use current traffic data, the RDEIR fails to describe the existing environment as the current CEQA baseline.

Mr. Brohard concludes that the RDEIR's traffic analysis is clearly erroneous for several nearby on and off ramps from I-10 freeway. (Brohard p. 4).

Mr. Brohard concludes that the RDEIR relies on ineffective and unenforceable traffic mitigation measures, and that despite these measures, it is still likely that trucks from the Project will use residential streets. (Brohard, p. 5). 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).

5-22  
cont.

### **E. The Project Will Have Significant Biological Impacts.**

Dr. Shawn Smallwood concludes that the Project will have significant impacts on several special status species. These comment echo earlier comments made by the California Department of Fish and Wildlife (DFW). The DFW comments are attached hereto. Dr. Smallwood's comments will be submitted in the near future.<sup>12</sup>

5-23

### **VI. The RDEIR'S Discussion of Alternatives is Inadequate.**

The RDEIR identifies Alternative 5 (Reduced Intensity Logistics Center Alternative), as the environmentally superior alternative. (RDEIR 5-42). The RDEIR concludes that Alternative 5 would reduce impacts to aesthetics, air quality/GHG, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, and noise. (Id.). Nevertheless, the RDEIR fails to recommend adoption of Alternative 5 "Because Alternative 5 would involve a reduced development potential (a reduction of 30%), it would not meet project objectives related to jobs creation and economic development opportunities to the same extent as would the proposed project. In addition, Alternative 5 would result in substantially reduced public benefit payments to the City, and place the applicant in the position of having purchased a fully entitled development site and allowing for use of 70% of the site's approved development capacity, while eliminating no project-related significant unavoidable impacts." This rationale is insufficient under CEQA to reject the clearly superior Alternative 5. It is not sufficient that Alternative 5 would be less profitable than the proposed Project. Under CEQA, the City bears the burden to show that the environmentally superior alternative is infeasible – meaning that it cannot be implemented.

5-24

Here, the RDEIR's alternatives analysis violates CEQA because the RDEIR improperly dismisses the feasible and less environmentally damaging Reduced Office/Business Park alternative without substantial evidence. As explained by the

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<sup>12</sup> *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109.



Supreme Court, an environmentally superior alternative may not be rejected simply because it is more expensive or less profitable:

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.

5-24

(*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.) None of this information was provided in the DEIR. The DEIR provides no analysis to show whether the environmentally superior Alternative 5 would or would not be economically feasible, and therefore, it cannot be rejected as infeasible. (*Watsonville Pilots Ass'n v. City of Watsonville* (2010) 183 Cal. App. 4th 1059, 1087).

Additionally, the RDEIR entirely fails to mention an alternative location for the proposed Project. It is well-established that off-site alternatives should be considered under CEQA. As the Supreme Court has explained, an EIR is required to explain in detail why various alternatives were deemed infeasible, and should explore the potential to locate the project somewhere other than proposed. (*Laurel Heights I*, 47 Cal.3d at 404-406; *Goleta Valley*, 197 Cal.App.3d 1180-81.) This is particularly true when a project proposes to change a site's land use designation. "A proposed change in allowed uses raises policy question of whether the site is appropriate for the new use. Resolution of this question depends on a comparison of the advantages and disadvantages of the site with other sites that are or could be designated for the same use." (Practice Under the California Environmental Quality Act, 2nd ed., Kostka & Zischke, 759-760.)

5-25

Here, the RDEIR should consider an alternative location that is not within 1,000 feet of sensitive receptors. The California Air Resources Board ("CARB") recommends avoiding siting of distribution centers that accommodate more than 100 trucks per day within 1,000 feet of sensitive land uses, such as residences. (Air Quality and Land Use Handbook: A Community Health Perspective ["CARB Handbook"], California Air Resources Board, April 2005, 4.) This recommendation is based on CARB's estimate that an 80 percent drop-off in pollutant concentrations occurs at approximately 1,000 feet from a distribution center. (CARB Handbook, 6.) In contrast to the recommendations of CARB, the proposed Project is sited only 150 feet from sensitive receptors. (DEIR, 4.2.2-6.) The DEIR should consider an alternative site for the proposed Project that is more than 1,000 feet from sensitive receptors in order to greatly mitigation and potentially avoid these impacts to sensitive receptors.

5-26

## VII. THE CITY SHOULD PREPARE AND RECIRCULATE A REVISED DEIR.

Recirculation of an EIR prior to certification is required "when the new information added to an EIR discloses: (1) a new substantial environmental impact resulting from the project or from a new mitigation measure proposed to be implemented; (2) a substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance; (3) a feasible project alternative or mitigation measure that clearly would lessen the environmental impacts of the project, but which the project's proponents decline to adopt; or (4) that the draft EIR was so fundamentally and basically inadequate and conclusory in nature that public comment on the draft was in effect meaningless." *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal. App. 3d 1043; CEQA Guidelines § 15088.5(a).

5-27

Recirculation is required where "significant new information" has been added to an EIR. *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 447. New information is "significant" where it results in a change to the EIR's analysis or mitigation of a substantial adverse environmental effect. *Id.* Here, the DEIR must be revised to address the many deficiencies identified above.

Unless the DEIR is revised to address these deficiencies and unless that DEIR is recirculated for further public review, the public and decision makers will be deprived of an opportunity for full input and informed decision making.

## VIII. CONCLUSION

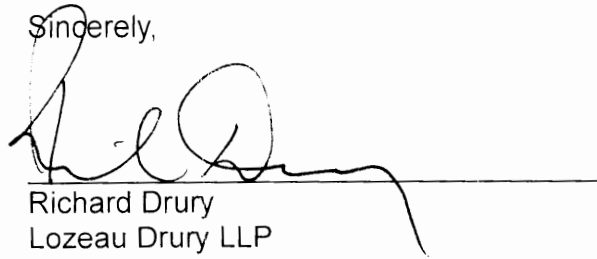
LIUNA Local Union No. 783 believes the West Valley Logistics Center Specific is wholly inadequate and requires significant revision, recirculation and review. Moreover, LIUNA believes that the Project as proposed would result in too many unmitigated adverse impacts on the environment to be justified. Given the significant greenhouse gas and air quality problems facing the city and the State, and given that there is no evidence provided that an additional 3 million square feet of industrial space is needed, LIUNA believes the proposed Project should be reconsidered.

5-28

Please include this letter and all accompanying exhibits in the record of proceedings for this Project. Both these comments and the enclosed expert comments include documents available from the Internet. Where possible, the comments have included a citation to a specific Web page containing the cited document.

Thank you for your attention to these comments.

Sincerely,



A handwritten signature in black ink, appearing to read 'Richard Drury', is written over a horizontal line. The signature is fluid and cursive, with a long tail extending to the right.

Richard Drury  
Lozeau Drury LLP

5-28  
cont.