LOZEAU DRURY LLP
T 510.836.4200
F 510.836.4205
410 12th Street, Suite 250
Oakland, Ca 94607
www.lozeaudrury.com
richard@lozeaudrury.com

Via Email and Overnight Mail

December 10, 2018

Los Angeles County Board of Supervisors
Executive Office of the Board, Room 383
Kenneth Hahn Hall of Administration
500 West Temple St. Ste 383
Los Angeles, CA 90012
executiveoffice@bos.lacounty.gov

Jodie Sackett
County of Los Angeles
Regional Planning Department
Impact Analysis Section
320 W. Temple St., Room 1348
Los Angeles, CA 90012
JSackett@planning.lacounty.gov

Re: Centennial Project, Environmental Impact Report (State Clearinghouse No. 2004031072); County Project No. 02-232; General Plan Amendment No. 02-232; Zone Change No. 02-232; Vesting Tentative Parcel Map No. 060022; Conditional Use Permit No. 02-232; Development Agreement No. RPPL2016003940

Honorable Members of the Board of Supervisors:

I am writing on behalf of the Laborers International Union of North America, Local Union 300 and its members living in Los Angeles County ("LiUNA"), regarding the Centennial Project, Environmental Impact Report (State Clearinghouse No. 2004031072); County Project No. 02-232; General Plan Amendment No. 02-232; Zone Change No. 02-232; Vesting Tentative Parcel Map No. 060022; Conditional Use Permit No. 02-232; Development Agreement No. RPPL2016003940 ("Project"), and the environmental impact report ("EIR") prepared for the Project.

We have reviewed the Draft Environmental Impact Report ("DEIR") and Final Environmental Impact Report ("FEIR") for the Project and conclude that the documents fail to comply with the California Environmental Quality Act ("CEQA"). We therefore request that the City prepare a Revised Environmental Impact Report ("REIR") to address the deficiencies on the EIR.

In particular, LIUNA is very concerned that the EIR fails to adequately address risks that pose particular concerns to construction workers, such as:

- The EIR dismisses the risks of Valley Fever as less than significant, and as a result, proposes wholly inadequate mitigation measures. The Project Site is in one an area heavily affected by Valley Fever, and this disease poses extreme risks to construction workers.

- The EIR fails to analyze impacts related to indoor air quality. Industrial Hygenist Francis "Bud" Offermann, PE, submits comments herewith showing that the Project will create cancer risks of between 125 to 180 per million due to indoor air quality hazards related to formaldehyde. (Exhibit A). The EIR fails entirely to analyze or mitigate this impact.

LIUNA asks the County to prepare a Revised Draft EIR ("RDEIR") to analyze and mitigate these significant impacts.

PROJECT DESCRIPTION

The Project site encompasses approximately 12,323 acres and would allow up to 19,333 dwelling units (du) on approximately 4,987 gross acres of land designated for residential uses. Other land uses include approximately, 7,363,818 square feet (sf) of Business Park uses (office, research and development, and warehousing or light manufacturing uses) on approximately 597 gross acres; and approximately 1,034,550 sf of Commercial uses on approximately 102 acres. Proposed Institutional/Civic land uses (such as schools for higher education, medical facilities, library, and other civic uses) encompass approximately 1,568,160 sf on approximately 110 acres.

The Project site consists of approximately 12,323 acres (or approximately 19.3 square miles) and is located in the northwestern portion of the Antelope Valley in unincorporated Los Angeles County and is contiguous to the southern boundary of Kern County. The Project site's western boundary is approximately one mile east of Interstate (I) 5, and State Route (SR) 138 runs through the southern portion of the Project site. The Project site is located approximately 35 miles north of Santa Clarita, 5 miles east of Gorman, 36 miles west of Lancaster, and 50 miles south of Bakersfield. The community of Gorman in Los Angeles County is adjacent to I-5 approximately four miles north of the I-5/SR-138 junction.

LEGAL STANDARD

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.

The lead agency must evaluate comments on the draft EIR and prepare written responses in the final EIR ("FEIR"). (PRC §21091(d)) The FEIR must include a "detailed" written response to all "significant environmental issues" raised by commenters. As the court stated in *City of Long Beach v. LA USD* (2009) 176 Cal.App.4th 889, 904:

> The requirement of a detailed written response to comments helps to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and that public participation in the environmental review process is meaningful.

The FEIR's responses to comments must be detailed and must provide a reasoned, good faith analysis. (14 CCR §15088(c)) Failure to provide a substantive response to comment render the EIR legally inadequate. (*Rural Land Owners Assoc. v. City Council* (1983) 143 Cal.App.3d 1013, 1020)

The responses to comments on a draft EIR must state reasons for rejecting suggested mitigation measures and comments on significant environmental issues. "Conclusory statements unsupported by factual information" are not an adequate

response. (14 CCR §15088(b, c); *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3rd 348) The need for substantive, detailed response is particularly appropriate when comments have been raised by experts or other agencies. (*Berkeley Keep Jets v. Bd. of Port Comm'rs* (2001) 91 Cal.App.4th 1344, 1367; *People v. Kern* (1976) 72 Cal.app.3d 761) A reasoned analysis of the issue and references to supporting evidence are required for substantive comments raised. (*Calif. Oak Found. v. Santa Clarita* (2005) 133 Cal.App.4th 1219)

The FEIR abjectly fails to meet these legal standards, as it is riddled with conclusory statements lacking any factual support or analysis.

DISCUSSION

1. The EIR Fails to Adequately Analyze Valley Fever.

The EIR admits that the Project is being constructed in an area with one of the highest incidences of the potentially deadly disease, Valley Fever. (DEIR p. 5.3-14). The DEIR states (DEIR, p. 5.3-17):

> As discussed above, Valley Fever spores have the potential to be found in soils of the Antelope Valley. The site is currently a large expanse of undeveloped land, which experiences periodic high winds and supports widespread grazing and some agricultural activity. These conditions would result in (1) disturbance of existing soils on the site; (2) dust formation associated with this disturbance; and (3) a resultant risk of Valley Fever for residents in the Project area. However, grading required for site development would have a more intensive surface disturbance and, as such, would increase the risk of Valley Fever exposure if spores are present on the Project site and become airborne in fugitive dust.

The EIR also admits that construction workers are most at risk from the disease since it is caused by spores living in soil which are disturbed during construction. Nevertheless, the EIR concludes that this risk is less than significant, and proposes wholly inadequate mitigation measures. (DEIR p. 5.3-1). Industrial hydgenist, Francis "Bud" Offermann, PE, has submitted comments herewith concluding that the Project creates a significant risk of Valley Fever for construction workers and others. (Exhibit A). LIUNA urges the County to analyze this impact in a Revised Draft EIR, to acknowledge the impact as significant, and to impose all feasible mitigation measures to safeguard construction workers who are most at risk.

According to the Centers for Disease Control ("CDC") (https://www.cdc.gov/features/valleyfever/index.html):

> Valley fever is a fungal lung infection that can be devastating… Valley fever is an infection caused by a fungus that lives in the soil. About 10,000 cases are reported in the United States each year, mostly from Arizona and California. Valley fever can be misdiagnosed because its symptoms are similar to those of other illnesses. Here are some important things to know about Valley fever, also called coccidioidomycosis.
>
> From soil to lungs
> The fungus that causes Valley fever, Coccidioides, is found in the southwestern United States, parts of Mexico and Central America, and parts of South America…
>
> Many people who are exposed to the fungus never have symptoms. Other people may have flu-like symptoms, including:
>
> Fatigue (tiredness)
> Cough
> Fever
> Shortness of breath
> Headache
> Night sweats
> Muscle aches or joint pain
> Rash on upper body or legs
>
> The symptoms of Valley fever can be similar to those of other common illnesses, which may cause delays in getting patients correctly diagnosed and treated. For many people, symptoms will go away without any treatment, after weeks or months. Healthcare providers prescribe antifungal medication for some people to try to reduce symptoms or prevent the infection from getting worse. People who have severe lung infections or infections that have spread to other parts of the body always need antifungal treatment and may need to stay in the hospital.

According to the Los Angeles County Department of Public Health (http://publichealth.lacounty.gov/acd/Diseases/Cocci.htm):

> Blacks, Latinos, Native Americans, Filipinos, males, pregnant women, the very young (<5 years), elderly, and immunocompromised individuals are at high risk for severe disease.

According to the California Department of Public Health (CDPH), a significant increase in Valley Fever cases occurred in 2017. CDPH also states (https://www.cdph.ca.gov/Programs/OPA/Pages/NR18-041.aspx):

> Most infected people will not show signs of illness. Those who do become ill with Valley Fever may have flu-like symptoms that can last for two weeks or more. While most people recover fully, some may develop more severe complications which include pneumonia, or infection of the brain, joints, bone, skin, or other organs. There is currently no vaccine, but antifungal medications are available. Individuals should specifically ask their health care provider about Valley Fever if they think they may be infected.
>
> People who live, work, or travel in Valley Fever areas are also at higher risk of getting infected, especially if they work outdoors or participate in activities where soil is disturbed.

The EIR does not impose adequate mitigation measures. Instead, it relies on patently inadequate measures, such as:

> PDF 3-1 Prior to sale, lease, or rental of any residential structure or portion thereof on the Centennial Project site, the Project Applicant/Developer shall provide to each prospective purchaser or tenant a notice and statement of acknowledgment that shall be executed (i.e., read and signed) by the prospective purchaser, lessee, or tenant that the property within Centennial may present a temporary risk of exposure to Valley Fever spores during construction or other earth-moving activities. The form shall include strategies to reduce potential exposure to Valley Fever spores. The form and method of distribution of said notice and statement of acknowledgment shall be as approved by the County.

This measure is inadequate because it relies on undefined measures that will be developed by County staff after approval of the Project. CEQA prohibits such deferred mitigation[1].

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[1] Mitigation measures must be clearly described in the EIR so the public can determine their adequacy. "[M]itigation measure[s] [that do] no more than require a report be prepared and followed" do not provide adequate information for informed decisionmaking under CEQA. *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794; Guidelines § 15126.4(a)(1)(B).

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

Mitigation Measure 3-2 requires that Valley Fever pamphlets be distributed to workers, but does not include a training requirement. It also includes the following measure:

> Hire crews from Los Angeles and/or Kern County populations, or other areas where Valley Fever is endemic, where possible, since it is more likely that they have been previously exposed to the fungus and are therefore immune. (DEIR p. 5.3-26).

This measure is unenforceable and ineffective. First, there is no assurance that residents of Kern or Los Angeles Counties are immune to Valley Fever. Immunity only develops among people who have actually contracted Valley Fever and recovered. (https://vfce.arizona.edu/valley-fever-people/faqs). Certainly, not all residents of Los Angeles and Kern have contracted Valley Fever, making this measure non-sensical. Furthermore, the measure is likely unconstitutional since it would interfere with the workers' right to travel. CEQA prohibits unenforceable mitigation measures.

Mitigation Measure 3-2 includes provision of respirators for workers, but it does not specify the quality of such respirators. Only HEPA or N95 respirators would provide adequate protection from Valley Fever. Lesser respirators may provide little or no protection (https://www.cdph.ca.gov/Programs/CCDPHP/DEODC/OHB/CDPH%20Document%20Library/CDPH-VF-Webinar-Slides.pdf).

These measures are clearly inadequate to safeguard workers. Industrial hygienist Offermann, PE, recommends numerous mitigation measures to reduce the risk of Valley Fever. Many of these are also suggested by CDPH. These measures are not analyzed in the EIR, including (https://www.cdph.ca.gov/Programs/CCDPHP/DEODC/OHB/CDPH%20Document%20Library/CDPH-VF-Webinar-Slides.pdf) (Exhibit B):

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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.)

Protect operators with enclosed cabs on construction equipment:

- Air conditioned with HEPA air filtration
- Windows closed & 2-way radio for communication
- Wet-clean inside cabs

Maintain effective cab pressurization and filtration on construction equipment:

- Positive pressure
- 0.08 to 0.25 inches water gauge
- Cab integrity
  – Tight door seals, gaskets
  – Holes sealed up
- Replace clogged filters
- Provide cooling and heating

Use respirators with N95 or P100 (HEPA) filters

Implement a Respiratory protection program
• Program coordinator
• Medical clearance
• Fit testing
• Training
• Written policy on when to use respirators
– Disturbing soil
– Near soil-disturbing work
– When dust is uncontrolled

Plan to take action when dust
cannot be controlled
• Have rules for stopping work for excess dust or wind
• Monitor conditions
• Move indoors or into vehicles with HEPA-filtered A/C
• Don respirators quickly if conditions get worse

Preventing "take-home" dust
Taking contamination offsite exposes workers & others
• Provide clean area to wash up (showers if possible)
• Require change of clothing
• Provide boot cleaning stations
• Wet-clean tools and equipment

A Revised Draft EIR is requires to disclose the significant risks posed by Valley Fever, and to propose all feasible mitigation measures to reduce those risks

including all measures proposed by the California Department of Public Health and other expert agencies.

2. The EIR Fails to Analyze Indoor Air Quality Impacts.

We submit herewith the comments of indoor air quality expert, Francis Offermann, PE, CIH. (Exhibit A). Mr. Offermann, a Certified Industrial Hygienist, concludes that it is likely that the Project will expose future residents to significant impacts related to indoor air quality, and in particular, emissions for the cancer-causing chemical formaldehyde. Mr. Offermann is one of the world's leading experts on indoor air quality and has published extensively on the topic.

Mr. Offermann explains that many composite wood products typically used in modern home construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. He states, "The primary source formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. These materials are commonly used in residential building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims."

Formaldehyde is a known human carcinogen. Mr. Offermann states that there is a fair argument that residents of the Amare Project will be exposed to a cancer risk from formaldehyde of approximately 180 per million. This is far above the South Coast Air Quality Management District (SCAQMD) CEQA significance threshold for airborne cancer risk of 10 per million. Mr. Offermann states:

> Therefore, the cancer risk of a resident living in a median California home with the median indoor formaldehyde concentration of 36 µg/m3, is 180 per million as a result of formaldehyde alone. Assuming the Amare project will be built using typical materials and construction methods used in California, there is a fair argument that future residents will experience a cancer risk from formaldehyde of approximately 180 per million. The CEQA significance threshold for airborne cancer risk is 10 per million, as established by the South Coast Air Quality Management District (SCAQMD). There is a fair argument that the Amare project will expose future residents to a significant airborne cancer risk of 180 per million, which is 18 times above the CEQA significance threshold. This impact should be analyzed in an environmental impact report ("EIR"), and the agency should impose all feasible mitigation measures to reduce this impact. Several feasible mitigation measures are discussed below and these and other measures should be analyzed in an EIR.

Even if the Project uses modern "CARB-compliant" materials, Mr. Offermann concludes that formaldehyde will create a cancer risk more than ten times above the CEQA significance threshold. Mr. Offermann concludes that this significant environmental impact should be analyzed in an EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure.

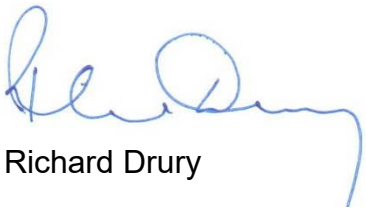
When a Project exceeds a duly adopted CEQA significance threshold, as here, this alone establishes a fair argument that the project will have a significant adverse environmental impact and an EIR is required. Indeed, in many instances, such air quality thresholds are the only criteria reviewed and treated 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 made clear the substantial importance that an air district 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 NOx is 55 pounds per day, these estimates [of NOx emissions of 201 to 456 pounds per day] constitute substantial evidence supporting a fair argument for a significant adverse impact"). Since expert evidence demonstrates that the Project will exceed the BAAQMD's CEQA significance threshold, there is a fair argument that the Project will have significant adverse and an EIR is required.

Mr. Offermann suggests several feasible mitigation measures, such as requiring the use of no-added-formaldehyde composite wood products, which are readily available. Mr. Offermann also suggests requiring air ventilation systems which would reduce formaldehyde levels. Since the EIR does not analyze this impact at all, none of these or other mitigation measures are considered.

CONCLUSION

For the foregoing reasons, and for the reasons set forth by other commenters (which are incorporated herein by reference), the EIR for the Centennial Project is legally inadequate. A revised EIR is required to analyze and mitigate the proposed Project's significant impacts.

Sincerely,



Richard Drury