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*Via Email*

January 19, 2021

William He, AICP, Associate Planner  
City of American Canyon Community  
Development Department  
4381 Broadway, Suite 201  
American Canyon, CA 94503  
whe@cityofamericancanyon.org

**Re: SDG Commerce 217 Distribution Center (PL20-0008) - Mitigated Negative Declaration**

Dear Mr. He:

I am writing on behalf of **Laborers International Union of North America, Local 324** (“LIUNA”) and its members living and working in and around the City of American Canyon regarding the Draft Initial Study and Mitigated Negative Declaration (“MND”) prepared for the proposed SDG Commerce 217 Distribution Center Project (the “Project”).

After reviewing the MND prepared for the Project along with our experts, we believe there is a fair argument that the Project may have significant adverse environmental impacts and that an environmental impact report (“EIR”) should therefore be prepared pursuant to the California Environmental Quality Act (“CEQA”), Public Resources Code §§ 21000, et seq.

LIUNA submits herewith the expert comments of wildlife ecologist Dr. Shawn Smallwood. Dr. Smallwood’s expert comments and resume are attached hereto as Exhibit A. LIUNA also submits herewith comments on the Project’s air and greenhouse gas emissions from the environmental consulting firm Soil/Water/Air Protection Enterprise (“SWAPE”). SWAPE’s comments and the resumes of their consultants are attached hereto as Exhibit B.

### **PROJECT DESCRIPTION**

The Project proposes to issue a conditional use permit to construct and operate a 217,294 square foot wine distribution center on a 10.39-acre parcel in close proximity to the Napa River and an area identified by the Audubon Society as an “Important Bird Area.” In addition to the 10.39 acre building site, the Project also involves excavation and operation of a borrow area

covering most of the adjacent 10.17 acre parcel immediately to the south of the building site. The proposed building would be bordered by 134 parking stalls on the north edge of the building parcel and 21 truck docking bays on the north side of the proposed building. The building would be heavily insulated and refrigerated. Grading and filling will occur throughout the Project site as well as most of the adjacent borrow area parcel. During construction, about 17,000 cubic yards of stockpiled soil will be transported and another 21,000 cubic yards of soil will be excavated from the adjacent site. Construction of the project would be done in a single phase lasting approximately 9.5 months. Types of heavy diesel equipment to be used to construct the facility will include a self-loading dirt scraper, bulldozer, motor grader, compactor, roller, water truck, backhoe, excavator, trencher, drilling auger, front end loader, paving machine, laser screed, concrete finishing trowels, tractor, crane, forklift, generator, man lift, scissor lift, welding machine, and light tower. Operation of the Project is estimated to generate a total of 367 daily project trips and, prior to mitigation, increase the daily vehicle miles travelled (“VMT”) in the area by 2,355 VMT. The closest residence is about 500 feet from the Project’s borrow area.

### **LEGAL STANDARDS**

As the California Supreme Court held, “[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.” (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320 [“*CBE v. SCAQMD*”], citing, *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504–505.) “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 [“*CBE v. CRA*”].)

The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.) The EIR is an “environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return.” (*Bakersfield Citizens*, 124 Cal.App.4th at 1220.) The EIR also functions as a “document of accountability,” intended to “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” (*Laurel Heights Improvements Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.) The EIR process “protects not only the environment but also informed self-government.” (*Pocket Protectors*, 124 Cal.App.4th at 927.)

An EIR is required if “there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” (Pub. Resources Code, § 21080(d); see also *Pocket Protectors*, 124 Cal.App.4th at 927.) In limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact thus requiring no EIR (14 Cal. Code Regs., § 15371 [“CEQA Guidelines”]), only if there is not even a “fair

argument” that the project will have a significant environmental effect. (Pub. Resources Code, §§ 21100, 21064.) Since “[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process,” by allowing the agency “to dispense with the duty [to prepare an EIR],” negative declarations are allowed only in cases where “the proposed project will not affect the environment at all.” (*Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440.)

Where an initial study shows that the project may have a significant effect on the environment, a mitigated negative declaration may be appropriate. However, a mitigated negative declaration is proper *only* if the project revisions would avoid or mitigate the potentially significant effects identified in the initial study “to a point where clearly no significant effect on the environment would occur, and . . . there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” (Public Resources Code §§ 21064.5 and 21080(c)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331.) In that context, “may” means a *reasonable possibility* of a significant effect on the environment. (Pub. Resources Code, §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors*, 124 Cal.App.4th at 927; *League for Protection of Oakland's etc. Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–905.)

Under the “fair argument” standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency’s decision. (CEQA Guidelines, § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-15; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.) The “fair argument” standard creates a “low threshold” favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. (*Pocket Protectors*, *supra*, 124 Cal.App.4th at 928.)

The “fair argument” standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

This ‘fair argument’ standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. The lead agency’s decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.

(Kostka & Zishcke, *Practice Under CEQA*, §6.29, pp. 273-274.) The Courts have explained that “it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency’s determination. Review is de novo, with a **preference for resolving doubts in favor of environmental review.**” (*Pocket Protectors*, 124 Cal.App.4th at 928 [emphasis in

original].)

As a matter of law, “substantial evidence includes . . . expert opinion.” (Pub. Resources Code, § 21080(e)(1); CEQA Guidelines, § 15064(f)(5).) CEQA Guidelines demand that where experts have presented conflicting evidence on the extent of the environmental effects of a project, the agency must consider the environmental effects to be significant and prepare an EIR. (CEQA Guidelines § 15064(f)(5); Pub. Res. Code § 21080(e)(1); *Pocket Protectors*, 124 Cal.App.4th at 935.) “Significant environmental effect” is defined very broadly as “a substantial or potentially substantial adverse change in the environment.” (Pub. Resources Code, § 21068; see also CEQA Guidelines, § 15382.) An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.” (*No Oil, Inc.*, 13 Cal.3d at 83.) In *Pocket Protectors*, the court explained how expert opinion is considered. The Court limited agencies and courts to weighing the admissibility of the evidence. (*Pocket Protectors*, 124 Cal.App.4th at 935.) In the context of reviewing a negative declaration, “neither the lead agency nor a court may ‘weigh’ conflicting substantial evidence to determine whether an EIR must be prepared in the first instance.” (*Id.*) Where a disagreement arises regarding the validity of a negative declaration, the courts require an EIR. As the Court explained, “[i]t is the function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project.” (*Id.*)

CEQA requires that an environmental document include a description of the project’s environmental setting or “baseline.” (CEQA Guidelines, § 15063(d)(2).) The CEQA “baseline” is the set of environmental conditions against which to compare a project’s anticipated impacts. (*CBE v. SCAQMD*, 48 Cal.4th at 321.) CEQA Guidelines section 15125(a) states, in pertinent part, that a lead agency’s environmental review under CEQA:

...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*”].)

A threshold of significance may be useful to determine whether an environmental impact normally should be considered significant. (CEQA Guidelines, § 15064.7(a).) “A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.” (*CBE v. California Resources Agency*, 103 Cal.App.4th at 111.)

“A threshold of significance is not conclusive, however, and does not relieve a public agency of the duty to consider the evidence under the fair argument standard.” (*Mejia v. City of*

*Los Angeles* (2005) 130 Cal.App.4th 322, 342; see also *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1108-1109; *CBE v. California Resources Agency*, 103 Cal.App.4th at 110-114; CEQA Guidelines, § 15064(b).) A public agency cannot, as the City does here, apply a threshold of significance or regulatory standard “in a way that forecloses the consideration of any other substantial evidence showing there may be a significant effect.” (*CBE v. California Resources Agency*, 103 Cal.App.4th at 114.)

## ANALYSIS

### **I. There is a Fair Argument That the Project May Have Significant Traffic and GHG Impacts Because the Purported Mitigation Measure for VMT is Not Supported by Substantial Evidence and Defies Common Sense.**

The MND’s analysis of the Project’s VMT impacts is not based on substantial evidence because it relies upon entirely unrealistic assumptions about the distance a bike commuter would ride to and from work. The MND would have one believe that by constructing a 300 feet long Tier 1 bike lane down the street from the Project, 32 commuters would no longer drive an average of 34.6 miles to and from work, but would instead **bike 34.6 miles** to and from work. (MND, Appendix, GHD Draft Technical Memorandum, p. 6 (Nov. 19, 2020) (“VMT Memo”).)

The MND identifies a threshold of significance for assessing a Project’s VMT-related impacts of requiring a 15 percent reduction in VMT for the Project “compared with current regional VMT generation for similar uses.” (MND, p. 91.) Relying on an analysis conducted by GHD, the MND identifies that the “[c]ountywide average daily VMTs for employees and visitors are 11.7 and 31.3 miles, with an average of 17.4 daily VMT.” (*Id.*) Based on these numbers, the MND states that the “average daily project trip length has been calculated to be 17.3 miles, with a total daily 2,355 VMT.” (*Id.*) The MND identifies a baseline threshold of 1,354 VMT as the VMT level that is 15 percent less than the County’s average VMT. (VMT Memo, p. 4.) Thus, in order to be consistent with the 15 percent reduction from the average VMT threshold, the MND states that the Project must reduce its estimated VMT of 2,355 by 1,001 VMT. (*Id.*)

GHD then recommends a single measure purporting to achieve this dramatic reduction in the Project’s estimated VMT. GHD and the MND state that extending by a mere 300 feet the Class I bike path on Commerce Court, which currently runs past the existing SDG Commerce 330 warehouse, to connect to the northern driveway of the elementary school under construction would reduce the Project’s VMT by 1,119 VMT. (*Id.*, p. 6.) GHD’s rationale for this assertion is based, in part, on an estimate of the number of new bike commuters that would be added to the City’s bike network by the addition of the 300-foot connector lane. GHD estimates the new lane would entice 32 new bike commuters. (*Id.*, p. 18.) GHD then claims that these 32 new bike commuters would take the place of 32 car commuters who otherwise would each have driven 34.6 miles to and from work. (*Id.*)

Assuming GHD’s estimate of 32 new commuters biking to work as a result of constructing the 300-foot bike lane is correct, the car trip lengths that GHD claims those users’ bike trips would replace are preposterous. There is no evidence that the new bike commuters

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who would be enticed onto their bikes by the new 300-foot of bike lane would include any car commuter who currently travels 17.3 miles to and from their work. The 17.3 mile figure applied by GHD has nothing to do with the average length of bike commuter trips. Instead, that number is the average trip length for commuters traveling by *automobile* calculated for the project area. (*Id.*, p. 4.)

The average length of a bike commuter trip is much lower than the average length of a commute by car. The California Air Resources Board (“CARB”) has published a quantification methodology to estimate VMT reductions associated with bike facilities. (CARB, Quantification Methodology (Nov. 1, 2019) (attached as Exhibit C).) Equation 22 of that guidance provides a formula for estimating “VMT Reductions for Bicycle Facility or Walkway.” (*Id.*, p. 18.) GHD completely ignores this guidance in its analysis. Putting that aside, CARB’s factors include its expert determination of the average bike trip length to be used in a VMT reduction calculation. CARB pins the “[a]verage length of auto trip replaced” at “1.5 miles for cycling.” (*Id.* See also ITS Report, p. 5. See *id.*, p. 7 (“The trip length factor, L, is based on the average length of bicycle trips taken for any purpose, using the default 1.5-mile average from most recent California Household Travel Survey data”) (attached as Exhibit D).)

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Even assuming GHD’s overly simplistic equation is otherwise correct, applying CARB’s 1.5 mile average of auto trip replaced by a bike trip dramatically reduces the MND’s inflated VMT reduction claim. Based on a realistic trip length for bicycles that would use the 300-foot lane, and according to GHD’s truncated equation, the new 300-foot bike lane would only reduce VMT by 97.5 VMT (65 daily commute trips by new bike commuters x 1.5 bicycle trip length). Thus, GHD’s claim that the 300-foot length of bike lane would miraculously remove 1,119 VMTs from Commerce Court is entirely without basis in evidence or common sense. Instead, that modest bike facility would only remove about 97.5 VMT, leaving the Project over 900 VMT short of the 15 percent reduction from the County average necessary to eliminate the Project’s significant transportation impacts. As a result, the MND is inconsistent with the CEQA Guidelines, 14 Cal.Admin Code § 15064.3 which requires that “[a]ny assumptions used to estimate vehicle miles traveled and any revisions to model outputs should be documented and explained in the environmental document prepared for the project.” Moreover, there is a fair argument that the Project may have significant transportation impacts requiring the preparation of a full EIR.

## II. An EIR is Required because the Project will have Significant Impacts on Biological Resources.

### A. THE MND Fails to Adequately Analyze Impacts to Biological Resources Because It Relies Upon an Incomplete Baseline and the Project May Have Adverse Impacts on Numerous Sensitive Species Currently Using the Site or Adjacent Areas.

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On January 23, 2019 and January 5, 2021, Dr. Shawn Smallwood visited the site. (Smallwood Comments, p. 1.) His first-hand observations of wildlife at the site as well as his review of reliable bird sightings reported on eBird demonstrate that the MND relies upon a

truncated list of species present at the site and fails to address impacts on numerous sensitive species that currently use the site. Dr. Smallwood's observations and expert comments are substantial evidence that the Project may have significant biological impacts, including adverse impacts on bald eagles, northern harriers, peregrine falcons, Cooper's hawks, red-tailed hawks, great horned owls, Swainson's hawks, burrowing owls, Nuttall's woodpecker, and other bird species. (*Id.*, p. 2.)

During his brief visit on January 23, 2019, Dr. Smallwood observed a bald eagle flying over and hunting the site and identified a northern harrier and Cooper's hawk foraging on the project site. (Smallwood Comments, pp. 2, 5.) He also observed numerous other bird species. (*Id.*, pp. 2-9.) Many species were not just passing by the site but actively engaged in using the habitat available there. (*Id.*, p. 2.) For example, Dr. Smallwood observed many species spending considerable time at the site and displaying courtship or territorial behaviors indicative of breeding. (*Id.*) Such species included red-winged blackbirds, Say's phoebe, red-tailed hawks, and American kestrels. (*Id.*) He also observed a great-horned owl perched immediately adjacent to the site. (*Id.*)

Dr. Smallwood also has gathered information regarding numerous bird sightings in and around the site that are posted on a web-based service called eBird. (Smallwood Comments, pp. 13-16.) Dr. Smallwood's experience with this service indicates that it is reliable source of bird sighting information, being based on the observations of reputable birders. (*See id.*, p. 16.) He also points out the limitations of the MND only relying upon the California Natural Diversity Data Base ("CNDDDB") to document the potential presence of wildlife species at and around the Project site. (*Id.*, pp. 11, 16.) Numerous additional sensitive species are identified near the site that are not addressed in the biological report or the MND, including the endangered Willow flycatcher and species of concern including the Oak titmouse, Loggerhead shrike, tricolored blackbirds and many others. (*Id.*, pp. 13-15.)

As a result of the omission of numerous sensitive species using the site and evidence of even more additional species in the immediate vicinity of the site, the MND's evaluation of the project's biological impacts is not supported by substantial evidence. Dr. Smallwood's observations and expert comment is substantial evidence of a fair argument that the project may have an adverse impact on bald eagles, various hawks, and other species currently utilizing the site for courtship, foraging habitat and for movement.

The MND does mention a number of species, including Swainson's hawks and burrowing owls. However, the biological report fails to disclose information that these species have been observed much closer to the project site than is indicated in the MND or the biological report. (Smallwood Comments, p. 16.) For example, the MND indicates that Swainson's hawks and burrowing owls are, respectively, 2.5 and 2.6 miles away from the project site. However, Dr. Smallwood identifies sightings of these two species within 0.2 miles of the site. As he states, this indicates a high likelihood that these species are using this open foraging area as well.

The MND is particularly unreliable regarding its treatment of another species of special concern, the Northern harrier. As Dr. Smallwood explains:

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Relying on CNDDDB records, Monk & Associates (2020) claim the nearest northern harrier location was 2.7 miles away. However, not only did I see a northern harrier fly over the project site, but multiple other observers reported northern harrier sightings nearby.

(Smallwood Comments, p. 16.)

Regarding impacts to burrowing owls, the MND improperly downplays potential impacts by claiming that, although the site contains many ground squirrel burrows that are frequently relied upon by burrowing owls, their significance is downplayed because Monk & Associates claims they are of “recent origin.” (Smallwood Comments, p. 12.) Dr. Smallwood, relying on his own studies of burrowing owls, refutes the relevance of the age of ground squirrel burrows to their likely use by burrowing owls. (*Id.*)

Likewise, the MND relies on a claim that because the site was cleared of eucalyptus trees in 2012, that somehow that activity over eight years ago continues to affect the site’s use by wildlife. The MND asserts that “[t]he loss of foraging habitat associated with the project is not considered substantial as the entire project site consisted of a eucalyptus grove until 2012, and thus did not historically provide potential foraging habitat.” (MND, p. 33.) Dr. Smallwood discusses the scientific problems with this assertion, concluding that “[t]he [MND] misleads where it claims that the removal of a eucalyptus grove years ago doomed the occurrence of wildlife species there today.” (Smallwood Comments, p. 12.)

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Dr. Smallwood notes the likely presence of bats utilizing the site for foraging and movement. (Smallwood Comments, p. 16.) The MND claims that the Project will not impact bats because the Project site “contains no roosting or nesting habitat because it has no trees, rock faces, structures, or cliffs.” (MND, p. 34.) However, as Dr. Smallwood points out, “Trees surround the site. Bats undoubtedly roost in those trees. The site supports those roosts by providing forage. Night roosts of pallid bat, in particular, are typically located close to forage on open ground.” (Smallwood Comments, p. 16.)

Dr. Smallwood notes that the MND and accompanying biological report fail to provide the information necessary to corroborate the level of effort and adequacy of the reconnaissance level survey done by the City’s consultant. As Dr. Smallwood explains:

Monk & Associates reported no details of their surveys, such as who exactly did the surveys, when they arrived, how long they stayed, and what methods they used. The reporting did not include the most basic information that a wildlife ecologist would need for assessing whether the survey truly met due diligence standards.

(Smallwood Comments, p. 10.) This exacerbates the absence of substantial evidence to justify the MND’s wildlife baseline.

Dr. Smallwood also debunks the MND’s effort to bolster the cursory biological



assessment with a so-called peer review. As Dr. Smallwood notes, no description of the peer-review nor any responses to review comments is provided in the MND and the date of the peer review appears inconsistent with the date of Monk & Associates site visit. (Smallwood Comments, p. 10.)

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The evidence of nearby sightings of numerous sensitive species and the flaws in the MND and accompanying biological report identified by Dr. Smallwood support a fair argument that the Project may have adverse impacts on their foraging and movement. For this reason and those discussed above, an EIR must be prepared to address impacts to these many sensitive bird and bat species.

### **B. The Project will have a Significant Impact on Wildlife Movement and Habitat Fragmentation.**

The MND fails to adequately analyze the Project's impact on wildlife movement. Instead, the MND improperly dismisses the Project's potential to impact wildlife movement by claiming there needs to be a "corridor" on the site to effect wildlife movement, that other nearby areas are better movement areas, or otherwise asserting without evidence that this particular large warehouse would not disrupt wildlife movement. As Dr. Smallwood states:

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The project would obviously interfere with wildlife movement in the region. Having studied millions of GPS telemetry data from 35 golden eagles tracked since 2013, I noticed a strong avoidance of anthropogenic structures such as warehouses and residential neighborhoods. I assume bald eagles express a similar level of avoidance. If this assumption is true, then the bald eagle I saw fly over the site in 2019 might not do so again since the SDG Commerce 330 warehouse was built. Many other species would continue to fly over the project site despite the neighboring warehouse. I have recorded many observations of animals moving across fields next to warehouses, including red-tailed hawks, peregrine falcons, and many others.

(Smallwood Comments, p. 20.) Dr. Smallwood's direct observations and expert opinion are substantial evidence of a fair argument that the Project may have adverse impacts on wildlife movement at the site and in the vicinity.

### **C. The MND Fails to Analyze the Project's Impacts on Wildlife from Additional Traffic Generated by the Project.**

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The MND contains no analysis of the impacts of the Project's added road traffic on special-status species of wildlife, including species such as the California red-legged frog and California tiger salamanders. (Smallwood Comments, p. 20-21.) Regardless of whether these species live on site, these and other special status species must cross roadways that will experience increased traffic volume as a result of the Project. (*Id.*)

As Dr. Smallwood explains, "[i]ncreased use of existing roads will increase wildlife

fatalities....” (*Id.*, p. 20.)

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The traffic would effectively extend the project’s footprint well beyond the floor space, as trucks and cars traveling to and from the warehouse will drive over roads and highways that are also crossed by wildlife. On 23 January 2019 I saw two road-killed striped skunks on American Canyon Drive, and on 15 January 2021 I saw a road-killed striped skunk and an opossum killed on the same road—a road likely to be used by trucks and cars servicing the project. California red-legged frogs (*Rana draytonii*), which Monk & Associates (2020) concluded will suffer no impacts because CNDDDB records are lacking west of Highway 29, will cross roads used by vehicles servicing the project. A shortfall of the [MND] is its failure to analyze the impacts of the project’s added road traffic on special-status species of wildlife, including California red-legged frog, California tiger salamander (*Ambystoma californiense*), and American badgers (*Taxidea taxus*) that, regardless of whether they live on the site, must cross roadways that will experience increased traffic volume caused by this project.

(*Id.*) Given the fair argument of a threat to wildlife posed by existing traffic and additional traffic from the Project, as discussed by Dr. Smallwood, an EIR is necessary to evaluate the direct and cumulative impacts of the Project’s vehicle collisions with wildlife.

#### **D. The MND Fails to Analyze the Project’s Impacts from the use of Pest Control Measures.**

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The MND does not discuss the potential impact of using pesticides inside and outside of the proposed warehouse. As a wine storage distribution facility, there will likely be steps taken to abate pests. There are many businesses that provide services for controlling stored products pests, perching birds, and rodents and other mammal pests within and around distribution warehouses. (Smallwood, p. 21.) These businesses advertise exclusion strategies and fumigation for stored products pests, glue boards for rodents, and other measures including anticoagulant poisons and acute toxicants. “[T]he use of toxicants can harm non-target wildlife through direct exposure and indirect exposure via predation and scavenging.” (*Id.*) “[P]est control involving toxicants can result in the spread of toxicants beyond the project site.” (*Id.*)

An EIR is needed to analyze the potential impacts of animal damage control associated with the proposed Project. Anticipated animal control strategies at the Project should be detailed, and impacts mitigated.

#### **E. The Project will have Cumulative Impacts on Biological Resources.**

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Dr. Smallwood concludes that the Project will have a significant cumulative impact on biological resources. (Smallwood Comments, p. 22.) An EIR is needed to fully analyze and mitigate the Project’s cumulative biological impacts, including not only future projects but the existing impacts as well.

**III. The IS Utilized Unsubstantiated Input and Output Parameters to Estimate Project Emissions.**

**A. The MND fails to explain how the City Calculated the Project's Average Daily Construction Emissions of ROG<sub>s</sub> and NO<sub>x</sub>.**

7 The MND and Appendix B fail to provide sufficient information for a reviewer to understand and corroborate how the average daily emissions during construction were derived. As SWAPE explains, it is entirely unclear where the emissions estimates reported in the MND come from, because the estimates do not match those provided in any of the CalEEMod output files. (SWAPE Comments, pp. 2-3.) The MND provides the Project's emissions estimates in pounds per day. (MND, p. 22.) This indicates that the estimates should have come from either the winter or summer output file. (SWAPE Comments, pp. 2-3.) However, reviewing both the summer and winter output files and the emissions estimates, SWAPE's review could not match either. Insufficient details are provided in the MND either to inform the reader of the full extent of the air pollution and impacts that will result from the Project or how the insignificant determination was calculated and derived. The MND does not disclose a valid average daily emission calculation. For this reason, there is a fair argument that the Project may have significant air quality impacts.

**B. The MND Used Improper Modeling Inputs, Including for Water Use for Parking and Solid Waste Generation.**

8 Review of the Project's CalEEMod output files also demonstrates that the Project Applicant fails to adequately support substantial reductions in several air quality modelling inputs. In particular, the input for water use rate is decreased by almost 100 percent from the default value of 50,248,312.50 gallons per year ("gpy") to a mere 768 gpy. (SWAPE Comments, p. 8.) However, the Project is estimated to require an average of 142 gallons per day ("gpd") of potable water and 541 gpd of recycled water, resulting in a total daily water demand of 683 gpd or 249,295 gpy. Thus, the model underestimates the Project's total yearly water demand by approximately 239,186 gpy.

8 SWAPE also points out the lack of justification for the reduction in modeling inputs for solid waste generation by the Project. It is not explained how the Project would have dramatically lower solid waste rates than other typical projects. (SWAPE Comments, pp. 7-8.) Likewise, further corroboration that there would not be any weekend trips occurring at the facility or the lack of any potential for natural gas use by the Project should be further corroborated and explained in the MND. (*Id.*, pp. 5-7.) Lastly, the modelling relies on surface watering and limited vehicle speeds among other BMPs identified by BAAQMD. However, nothing in the MND sets forth these measures as mandatory BMPs or conditions of the Project. (*Id.*, pp. 9-11; MND, p. 23.) Because of the uncertainty resulting from inadequate justifications or miscalculation of annual water use, the MND's reliance on the CalEEMod analysis is not supported by substantial evidence that eliminates a fair argument that the Project may have significant air quality impacts.

**IV. SWAPE’s CalEEMod Modeling Run Indicates a Fair Argument That the Project May Have a Significant Air Quality Impact.**

⑨ SWAPE reran the CalEEMod run for the Project adjusting for the deficiencies in the inputs that it identified. (SWAPE Comments, p. 11.) The resulting model result indicates that the Project may exceed the BAAQGM daily emission threshold of 54 lbs/day. This is substantial evidence of a fair argument that the Project may have a significant air quality impact.

**V. The IS Inadequately Evaluates Emissions of Diesel Particulate Matter.**

⑩ Diesel particulate matter (“DPM”) is a known human carcinogen. The MND attempts to piggy-back on a health risk assessment performed for the nearby SDG Commerce 330 warehouse. (MND, p. 26.) This effort to borrow the HRA performed for that other project is problematic for a number of reasons.

**A. The HRA Fails to Account for the Fact That the Nearest Sensitive Receptor to the Project’s Emissions is Located Only 500 Feet From the Soil Borrow Site.**

⑪ Although the MND notes that there is “one residence about 1,000 feet east of the site (on the Couch property),” this is referring to the site of the proposed warehouse building. (MND, p. 74.) In fact, the closest receptor is only 500-feet from the borrow pit portion of the Project. (*Id.*, p. 77 (Table Noise-4).) For the SDG Commerce 330 project, the sensitive receptor distance was about 900 feet. Because the closest receptor to the Project’s affected area is only 500 feet, a new health risk assessment specific to the Project must be prepared. (SWAPE Comments, pp. 12-14.) Based on the current MND, there remains a fair argument that the Project may have a significant health risk impact on the nearest sensitive receptor.

**B. SWAPE’s Analysis Provides Substantial Evidence of a Fair Argument that the Project may have Significant Health Risk Impacts from its Emissions of Toxic Air Contaminants.**

⑫ Based on the limited information provided by the MND, a fair argument exists that the Project may have a significant health risk impact to nearby sensitive receptors. SWAPE has prepared a Level 2 health risk screening assessment (“HRSA”) for the project. BAAQMD recommends a significance threshold of an increased cancer risk of 10 in one million and an increased cumulative cancer risk of 100 in a million from all local sources. Applying the U.S. Environmental Protection Agency’s AERSCREEN model, as recommended by OEHHA and the California Air Pollution Control Officers Association, SWAPE calculates that construction and operation of the Project will result in cancer risks to adults, infants, children and nearby residents over the course of a 30-year residential lifetime of, respectively, 11 in one million, 86 in one million, 73 in one million, and 180 in one million, all in excess of BAAQMD’s threshold. (SWAPE Comment, pp. 14-18.) Based on this substantial screening evidence, a fair argument is present that the Project may have significant health risk impacts on nearby residents.

**VI. There is a Fair Argument That the Project May Have Significant GHG Impacts.**

SWAPE also reviewed the MND's discussion of the Project's potential GHG impacts. In addition to the deficiencies in the air modelling discussed above, a number of glaring problems with the analysis demonstrates that a fair argument remains that the Project may have significant GHG impacts.

**A. The MND's Reliance on the 1,100 MT CO<sub>2</sub>e Per Year Threshold is Only Designed to Achieve the GHG Reductions Required by 2020 and is Insufficient to Align the Project With the State's 2030 GHG Reduction Targets.**

As the BAAQMD states in its 2017 CEQA guidelines, BAAQMD based its GHG "bright line" significance threshold on the amount of GHG reductions that were necessary in the Bay area to achieve the AB 32 reduction goals by 2020. (BAAQMD CEQA Guidelines, p. D-16 (available at [https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa\\_guidelines\\_may2017-pdf.pdf?la=en](https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en).) The threshold referenced in the MND is a bright-line threshold of 1,100 MT CO<sub>2</sub>e. (*Id.*, p. D-21. See SWAPE Comments, pp. 19-20.) That threshold was only intended to ensure compliance with AB 32's reduction goals required by 2020. (*Id.*) The 2020 GHG reduction goals sought to reduce business as usual GHG emissions to 1990 levels. In 2018, the Air Resources Board established the subsequent GHG reduction goal to reduce 1990 levels by another 40 percent by 2030. (California's 2017 Climate Change Scoping Plan, Executive Summary (Nov. 2017) (available at [https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping\\_plan\\_2017\\_es.pdf](https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping_plan_2017_es.pdf).) That is the current goal with which the Project must ensure consistency order to claim no fair argument of a potential GHG impact.

As SWAPE points out, the Association of Environmental Professionals ("AEP") has derived a threshold of significance that is consistent with achieving the 2030 GHG reduction goals for projects coming online after 2020. AEP and SWAPE identify a "2030 Land Use Efficiency Threshold" of 2.6 metric tons of CO<sub>2</sub> equivalents per service population per year ("MT CO<sub>2</sub>e/SP/year") as a threshold of significance necessary for any specific project to be consistent with the 2030 reduction goals. As AEP states:

Once the state has a full plan for 2030 (which is expected in 2017), and then a project with a horizon between 2021 and 2030 should be evaluated based on a threshold using the 2030 target. A more conservative approach would be to apply a 2030 threshold based on SB 32 for any project with a horizon between 2021 and 2030 regardless of the status of the Scoping Plan Update.

(*Final White Paper Beyond 2020 and Newhall: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California*, October 18, 2016, p. 40 (available at: [https://califaep.org/docs/AEP-2016\\_Final\\_White\\_Paper.pdf](https://califaep.org/docs/AEP-2016_Final_White_Paper.pdf).)

Applying the Project's estimate that it will create 50 new jobs, SWAPE calculates the

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(cont.)

2030 Land Use Efficiency Threshold for the project to be 11.80 MT CO<sub>2</sub>e/SP/year - well in excess of the calculated significance threshold of 2.6 MT CO<sub>2</sub>e/SP/year. (SWAPE Comments, pp. 20-21.) Based on this substantial evidence, there is a fair argument that the Project may have significant GHG impacts.

**B. The Project's Failure to Reduce its Expected VMT and Its Levels of VMT Per Capita are Evidence of a Fair Argument That the Project May Have Significant GHG Emission Impacts.**

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In addition to failing to reduce its VMT by fifteen percent of the Project area average, as discussed above, the MND also is inconsistent with CARB's 2017 Scoping Plan's guidance on evaluating GHG impacts using a Project's VMT per capita calculations. CARB has provided County- and State-based VMT per capita baseline calculations and the necessary per capita reductions necessary to be consistent with the Scoping Plan's GHG reduction targets. (SWAPE Comments, p. 22, n. 44.) SWAPE has applied that guideline to calculate the Project's VMT per capita. (*Id.*, p. 22 & Attachment C.) Using the tables provided by CARB, SWAPE calculates that VMT per capita within Napa County must be reduced to 19.37 in order to be consistent with the 2030 GHG reduction target. (*Id.*, p. 22.) SWAPE calculates the Project's daily VMT per capita to be 33.21, well in excess of the VMT per capita levels necessary to meet the State reduction goals for 2030. (*id.*, p. 22.) As a result, the MND is incorrect in asserting that the Project is consistent with the 2017 Scoping Plan and AB 32. SWAPE's analysis is substantial evidence of a fair argument that the Project may have significant GHG emission impacts.

**CONCLUSION**

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For the foregoing reasons, the MND is inadequate and an EIR is required to analyze and mitigate the Project's potentially significant environmental impacts. LIUNA reserves the right to supplement these comments in advance of and during public hearings concerning the Project. *Galante Vineyards v. Monterey Peninsula Water Management Dist.*, 60 Cal. App. 4th 1109, 1121 (1997). Thank you for your attention to these comments.

Sincerely,



Michael Lozeau  
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