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Via Email

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Vice Mayor Pat Gacoscos
Councilmember Emily Duncan
Councilmember Jaime Patiño
Councilmember Gary Singh
City of Union City
City Council
c/o Anna Brown, City Clerk
34009 Alvarado-Niles Road
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Carmela Campbell, Director
Economic and Community Development
City of Union City
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**Re: CITY COUNCIL AGENDA ITEM 6.a (June 8, 2021)
Environmental Impact Report for the Station East Residential/Mixed Use
Project (SCH No. 2020039032); General Plan Amendment (AG-20-001);
Specific Plan Amendment (SP-20-001); Zoning Text Amendment (AT-20-
002); Zoning Map Amendment (A-20-001); Development Agreement (DA-20-
001); and Tentative Tract Map (TTM-20-001)**

Dear Mayor Dutra-Vernaci, Vice Mayor Gacoscos, Honorable Councilmembers, Ms. Brown,
and Ms. Campbell:

This supplemental comment letter is submitted on behalf of **Laborers International Union
of North America, Local Union No. 304** and its members living and working in and around
Union City (collectively “LIUNA”) regarding the Draft Environmental Impact Report (“DEIR”) and
Final Environmental Impact Report (“FEIR”) prepared for the Station East Residential/Mixed
Use Project proposed by Integral Communities in Union City, California (SCH No. 2020039032)
 (“Project”).

This comment supplements LIUNA’s comment letter regarding the DEIR submitted to
the Union City Economic & Community Development Department on December 21, 2020,
incorporated by reference herein (“LIUNA’s DEIR Comment”), and LIUNA’s comment letter
regarding the FEIR submitted to the Union City Planning Commission on May 13, 2021.
LIUNA’s DEIR Comment raised concerns as to the DEIR’s analysis and conclusion related to
indoor and outdoor air quality, cancer risks from emissions of formaldehyde and diesel
particulate matter, impacts to special-status species of wildlife, and greenhouse gas emissions.

Although the FEIR contained responses to LIUNA's DEIR Comment, LIUNA maintains that the EIR fails to comply with the California Environmental Quality Act ("CEQA") and fails to adequately analyze and mitigate the Project's significant environmental impacts.

LIUNA's DEIR Comment included an analysis by wildlife biologist Shawn Smallwood, PhD, who concluded that the DEIR failed to adequately analyze and mitigate the Project's significant impacts on biological resources. LIUNA's DEIR Comment also included an analysis by environmental consulting firm SWAPE, that concluded the DEIR failed to adequately analyze and mitigate the Project's air quality and greenhouse gas impacts. Dr. Smallwood and SWAPE reviewed the FEIR's responses to LIUNA's DEIR Comment. Dr. Smallwood's reply to the FEIR is attached hereto as Exhibit A. SWAPE's reply to the FEIR is attached hereto as Exhibit B. As discussed below, the EIR still fails to discuss, disclose, or mitigate the significant impacts raised by Dr. Smallwood and SWAPE in LIUNA's DEIR Comment.

Therefore, LIUNA requests that the City Council refrain from approving the Project at and certifying the EIR. Instead, LIUNA requests the City Council direct staff to address the shortcomings described below and in our previous comments in a revised draft environmental impact report ("RDEIR") subject to public review and comment prior to the City's approval of the Project.

I. PROJECT DESCRIPTION

The Project is a mixed-use development on a 26.5-acre site located between 7th Street and the Niles subdivision Union Pacific Railroad ("UPRR") tracks in the city of Union City. The Project proposes development of up to 1.8 million square feet, including up to 974 new residential units (apartments, condominiums, and townhome style condominiums) and approximately 30,800 square feet of commercial space. The Project site would include 11 planning areas with 33 residential buildings and one community building. Most of the new buildings would be between three and five stories tall. The Project would include three community parks, one tot lot, and one outdoor amphitheater throughout the site. The Project would include 1,791 parking spaces for vehicles, and 458 parking spaces for bicycles.

The site is currently occupied by existing vacant industrial uses, surface parking lots, asphalt or concrete storage lots, a roadway, railroad spur improvements, and vacant unpaved areas, including agricultural, annual grassland, landscaped, and ruderal areas. The Project includes demolition of the existing buildings and parking lots.

II. 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 Env’t v. Cal. 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, supra*, 91 Cal. App. 4th at pp. 1344, 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.” Pub. Res. Code § 21081; 14 Cal.Code Regs. § 15092(b)(2)(A) & (B). 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, 732.

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 at p. 1355 (quoting *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391 409, fn. 12). As the court stated in *Berkeley Jets*, “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.’” *Id.* More recently, the California Supreme Court has emphasized that:

When reviewing whether a discussion is sufficient to satisfy CEQA, a court must be satisfied that the EIR (1) includes sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed

project raises [citation omitted], and (2) makes a reasonable effort to substantively connect a project's air quality impacts to likely health consequences.

Sierra Club v. Cty. of Fresno (2018) 6 Cal.5th 502, 510 (2018) (citing *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 405). “Whether or not the alleged inadequacy is the complete omission of a required discussion or a patently inadequate one-paragraph discussion devoid of analysis, the reviewing court must decide whether the EIR serves its purpose as an informational document.” *Sierra Club v. Cty. of Fresno*, 6 Cal.5th at 516. Although an agency has discretion to decide the manner of discussing potentially significant effects in an EIR, “a reviewing court must determine whether the discussion of a potentially significant effect is sufficient or insufficient, i.e., whether the EIR comports with its intended function of including ‘detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’” *Id.* (citing *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197). As the Court emphasized:

[W]hether a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question. A conclusory discussion of an environmental impact that an EIR deems significant can be determined by a court to be inadequate as an informational document without reference to substantial evidence.

Sierra Club v. Cty. of Fresno, 6 Cal.5th at 514.

The lead agency must evaluate comments on the draft EIR and prepare written responses in the final EIR (“FEIR”). Pub. Res. Code § 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. CEQA Guidelines § 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. CEQA Guidelines §§

15088(b), (c); *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3rd 348. The need for a substantive, detailed response is particularly appropriate when comments have been raised by experts or other agencies. *Berkeley Keep Jets*, 91 Cal.App.4th at 1367; *People v. County of Kern* (1976) 62 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.

III. THE PROJECT WILL HAVE SIGNIFICANT IMPACTS ON BIOLOGICAL RESOURCES THAT THE EIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE.

LIUNA's DEIR Comment discussed the City's failure to establish a baseline for special status species at the Project site, and the Project's significant impacts to biological resources. LIUNA's concerns regarding the Project's impacts to biological resources are based on the expert analysis and opinions of wildlife biologist Dr. Shawn Smallwood. Dr. Smallwood's comment on the DEIR identified that the DEIR failed to establish a baseline at the Project site, failed to provide substantial evidence to support the conclusion that the Project will not impact wildlife movement, and failed to adequately analyze and mitigate the Project's significant impacts on biological resources from the Project's increased traffic, window collisions, and house cats.

Despite the City's duty to investigate issues relating to a project's potential environmental impacts, the City and the EIR have, thus far, attempted to deny Dr. Smallwood's expert analysis and refuse to consider with any informed expertise the Project's likely impacts on biological resources. *See County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1597-98 ("[U]nder CEQA, the lead agency bears the burden to investigate potential environmental impacts."). Rather than objectively study these serious impacts to birds, staff attempted to critique Dr. Smallwood's expert analysis without itself bringing any expertise to bear on the Project's impacts to biological resources. *See FEIR*, pp. 3-97 – 3-115. Dr. Smallwood has reviewed the City's comments and prepared a response, which is attached as Exhibit A to these comments.

A. The EIR fails to establish a baseline for special status species at the Project site.

Dr. Smallwood reviewed the DEIR and noted that not a single survey was conducted at the Project site to determine the presence or absence of special status species. LIUNA DEIR Comment, p. 6. Dr. Smallwood pointed out the absence of any detection level surveys that would provide actual evidence of the presence or absence of species at the Project site. *Id.* Based on his expert opinion and his observations at the Project site, there had been no effort to detect whether or not numerous sensitive species are in harm's way from the Project. *Id.*

Instead of requiring detection level surveys, the City restates its conclusion from the DEIR that "[t]here is no requirement under CEQA to conduct presence/absence surveys to assess

a project's effects on biological resources, *although such surveys do support an analysis when a project has the potential to result in significant impacts on biological resources.*" FEIR, p. 3-98 (emphasis added). However, as Dr. Smallwood notes, "[w]hether CEQA requires presence/absence surveys is beside the point" because "[a]bsence determinations are unsupported without either clear separation between the species' geographic range and the project site or the outcome of detection surveys." Ex. A, p. 1. Further, the City adopts the wrong approach for determining whether detection surveys are warranted. *Id.* at 2. "A site such as the project suite, where it is a last remaining patch of open space in a sea of urban sprawl, expectation of the likelihoods of occurrences of special-status species should increase." *Id.* The City should perform detection surveys for special-status species of wildlife at the Project site or it should assume the presence of special-status species in order to establish a proper baseline and not determine the absence of special-status species based on bias speculation. *Id.*

In order to determine species' likely use of the Project site, Dr. Smallwood noted that the City could have used eBird, iNaturalist, or any additional resource beyond just the California Natural Diversity Data Base. LIUNA DEIR Comment, p. 7. However, the City again states its refusal to use them because "there is no requirement to search databases to conduct a reasonably adequate analysis for an EIR." FEIR, p. 3-98. Dr. Smallwood notes that by refusing to use these databases, the City implies that only the databases it selects to use can provide reliable information on species' absence or presence at the Project site. Ex. A, p. 2. Dr. Smallwood also states that the City inappropriately relies on California Natural Diversity Data Base ("CNDDDB") for supporting its absence determinations. *Id.* "CNDDDB is suitable for confirming presence of a species, but not for supporting absence determinations. CNDDDB is not based on scientific sampling, and is dependent on property access and voluntary investigator reporting." *Id.* CNDDDB cannot possibly inform a determination of which species occupy a site unless earlier detection surveys were performed and the results transmitted to CNDDDB. *Id.*

Dr. Smallwood also concluded that the DEIR's assessment of species occurrence likelihoods was grossly deficient. LIUNA DEIR Comment, p. 7. In response, the City again characterized nesting habitat as distinct from other types of habitat and relies on the fact that the Project site is surrounded by development to conclude that no nesting habitat occurs on the Project site and the likelihood of foraging is low. FEIR, pp. 3-105 – 3-106. However, Dr. Smallwood again criticizes the City's characterization of habitat and points to the fact that he observed a peregrine falcon at the Project site during a singular site visit, making the likelihood of foraging "certain" - not "low" as the City maintains. Ex. A, p. 3.

By failing to conduct any surveys and disregarding the absence of key species from the Project site, ignoring numerous other species likely to be present, the EIR fails to establish and otherwise continues to skew the entire biological resources baseline for the Project. This entire section should be redone, starting with properly timed, truly focused, detection surveys of the entire site and complete list of special status bird species that may be adversely affected by the Project.

B. The EIR's Conclusion that the Project Will Not Impact Wildlife Movement is Not Supported by Substantial Evidence.

Dr. Smallwood commented that the DEIR improperly dismissed the Project's potential impact on wildlife movement because the site was not within or adjacent to any known regional wildlife movement corridors and no natural corridors connect the site. LIUNA DEIR Comment, p. 8. Dr. Smallwood noted that the City relied on a false CEQA standard and was otherwise incorrect because the Project site is located within the Pacific Flyway. *Id.* In response, the City added the statement, "Within the BIOS, a map produced by CDFW (Terrestrial Connectivity, Areas of Conservation Emphasis) shows the project site within an area that has been assigned a connectivity rank of *Limited Connectivity Opportunity*, which is the lowest available rank, and a statewide terrestrial rank of *Low*, also the lowest available rank." FEIR, p. 3-110. Additionally, the City again states that the development of the Project site would not substantially interfere with wildlife movement in the vicinity or the region due its small size, insufficient quality habitat, location within disturbed areas, and nearness of better-quality habitat to the east. *Id.* at 3-111. However, Dr. Smallwood states that the City misapplies the California Essential Habitat Connectivity Project and it is too course for the conclusion drawn from it by the City. *See Ex. A*, p. 5. Additionally, Dr. Smallwood states that the City merely speculates about the factors that contribute to the Project site's value to wildlife movement, providing no evidence and citing to no sources that support its speculative assertions. *Id.*

C. The Project will have a Significant Impact on Wildlife From Vehicle Collisions Because of Increased Traffic Generated by the Project.

Dr. Smallwood noted that the Project will generate an average of 8,080 new daily vehicle trips, resulting in an estimated 208 birds killed per year by front-end blunt force collision with Project-related vehicles. LIUNA DEIR Comment, p. 10. Rather than analyze this potentially significant impact, the City states that "the intent of an EIR is not to analyze every possible impact on biological resources but to identify and analyze those that are potentially significant," and "[c]onsidering that the site is surrounded by urban development, including roads; is not within any known wildlife corridor; and developed, it was reasonable for the EIR to not analyze wildlife/vehicle collisions." FEIR, p. 3-111. The City did not refute Dr. Smallwood's prediction of the number of wild animals killed by project-generated traffic but also failed to provide any evidence that this impact would not be significant. The City's response also treats traffic generated by the Project as if it would be confined to the Project site. As Dr. Smallwood notes, it would not be. *Ex. A*, p. 5. "Traffic generated by the project would extend far beyond the surrounding urban development and it would cross many wildlife corridors." *Id.* The City's conclusion is not supported by substantial evidence and an RDEIR is required to adequately analyze this potentially significant impact.

D. The EIR Fails to Analyze the Project's Impact on Lost Breeding Capacity.

Dr. Smallwood commented that the DEIR failed to analyze the lost breeding capacity of birds that would result from the removal of 68 existing trees on the Project site. LIUNA DEIR Comment, p. 10. Dr. Smallwood cited two studies to estimate that development of the Project would result in the loss of 302 bird nests per year, preventing the generation of 876 new birds per year. *Id.* Rather than analyze this potential impact or provide evidence to the contrary, the City merely refused to analyze the impact because “it would not be considered potentially significant under any of the significance criteria used for the analysis of effects on biological resources” and “[t]he trees are unlikely to be used by special-status species.” FEIR, p. 3-111. However, as Dr. Smallwood notes, there is no limitation on candidate impacts to consider under the Biological Resources category of Appendix G of the CEQA statute and guidelines. Ex. A, p. 6. Additionally, the City provides no evidence to support its conclusion that the 68 trees are unlikely to be used by special-status species. *Id.* All native birds are protected by both the federal and State Migratory Bird Treaty Acts and it is not just the trees that contribute to bird breeding capacity at the site, but also shrubs, grassland, and bare soil and gravel. *Id.*

Dr. Smallwood also notes that even through the Project would include the planting of 736 trees, these trees would be seedlings or saplings at best, and therefore unusable as nest substrate for birds for years afterwards. *Id.* at 8. Further, with the replacement of soils and grassland by impervious surfaces and building structures, most bird species would also lose their foraging opportunities and the question of whether or when the planted trees could support nests would no longer matter. *Id.*

The City’s failure to analyze this potentially significant impact and failure to support its conclusion that the Project would have a less than significant impact on nesting birds with substantial evidence requires the City to prepare an RDEIR.

E. The Project Will have a Significant Impact on Birds from Window Collisions, which the EIR Fails to Address.

Dr. Smallwood predicted that the Project would result in 1,909 bird deaths per year due to collisions with the Project’s clear glass windows. LIUNA DEIR Comment, p. 11. Again, rather than analyze this potentially significant impact or provide any substantial evidence to support its conclusion, the City states that “the goal of an EIR is not to analyze every possible impact on biological resources but to identify and analyze those that are potentially significant,” and “[g]iven the absence of a local planning policy or ordinance mandating the use of bird-safe design elements, the project would no impact under CEQA.” FEIR, p. 3-112. Window collisions are often characterized as either the second or third largest source of human-caused bird mortality and Dr. Smallwood did identify a potentially significant impact on birds yet the City refuses to analyze it. Ex A, p. 9. Further, Dr. Smallwood notes that neglecting an ongoing environmental issue does not absolve the City of responsibility for analyzing it as a potential impact to birds. *Id.* at 11.

Dr. Smallwood has provided ample evidence that the Project will result in significant impacts to birds due to window collisions and the City has a duty to investigate these impacts, which they have thus far failed to do. Additionally, the EIR provides no analysis of cumulative impacts on birds caused by window collisions in the City, nor any analysis of the proposed project's contribution to cumulative impacts of window collisions. An RDEIR is required to fully analyze and mitigate these impacts.

F. The EIR Fails to Analyze the Impacts of House Cats on Wildlife.

Dr. Smallwood noted that the DEIR failed to analyze the Project's impacts on wildlife due to the house cats the Project will add to the Project site despite the fact that house cats are one of the largest sources of avian mortality in North America. LIUNA DEIR Comment, p. 11. Instead of analyzing this potentially significant impact, the City again states that the goal of an EIR is not to analyze every possible impact on biological resources, and states that the Project's design would curtail the potential for free roaming house cats. FEIR, p. 3-113. Dr. Smallwood relied on several studies to predict that the Project would add 1,076 house cats, which would kill an estimated 131,272 vertebrate wildlife per year. Ex. A, p. 19. The City has failed to provide evidence to support its conclusion that this would not be a significant impact.

G. The EIR's Analysis of the Project's Cumulative Impacts on Biological Resources Violates CEQA.

Dr. Smallwood determined that the DEIR's conclusion that the Project would not result in cumulatively significant impacts to biological resources was based on improper reasoning, and an analysis that is not in compliance with CEQA. LIUNA DEIR Comment, p. 11. Rather than revise its cumulative impacts analysis, the City instead continues to rely on the "plan approach" and adds language to the EIR repeating the measures proposed to address direct impacts recognized by the EIR. *See* FEIR, pp. 3-113 – 3-114. However, Dr. Smallwood notes that the City's response continues to imply that cumulative impacts are merely residual impacts of mitigation that was not effective, as he previously noted. Ex. A, p. 20. Further, it continues to portray the environmental setting as of low value to special-status species, implying that there will be a low likelihood of impacts, and ignores substantial contributions to ongoing cumulative impacts from collisions with automobiles and windows and predation by house cats that have been recognized by scientists around the world as among the leading anthropogenic causes of wildlife mortality. *Id.*

The EIR's analysis of the Project's cumulative impacts on biological resources remains flawed and must be revised in an RDEIR.

IV. THE PROJECT WILL HAVE SIGNIFICANT AIR QUALITY AND GREENHOUSE GAS IMPACTS THAT THE EIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE.

LIUNA's DEIR Comment discussed the City's failure to adequately analyze the Project's air quality impacts. LIUNA's concerns regarding the Project's air quality impacts are based on the expert analysis and opinions of environmental consulting firm SWAPE. SWAPE's comment on the DEIR identified that the DEIR failed to adequately analyze the Project's diesel particulate matter health risk emissions and greenhouse gas ("GHG") impacts.

Despite the City's duty to investigate issues relating to a project's potential environmental impacts, the City and the EIR have, thus far, attempted to deny SWAPE's expert analysis and refuse to consider with any informed expertise the Project's likely air quality and GHG impacts. *See County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1597-98 ("[U]nder CEQA, the lead agency bears the burden to investigate potential environmental impacts."). Rather than objectively study these serious air quality and GHG impacts, staff attempted to critique SWAPE's expert analysis without itself bringing any expertise to bear on the Project's air quality and GHG impacts. *See FEIR*, pp. 3-115 - 3-121. SWAPE has reviewed the City's comments and prepared a response, which is attached as Exhibit B to these comments.

A. There is Substantial Evidence that the Project may have a Significant Health Risk Impact.

SWAPE found that the DEIR's determination that the Project would result in a less-than-significant health risk impact was incorrect. LIUNA DEIR Comment, p. 14. Specifically, the DEIR's health risk assessment ("HRA") failed to analyze the cancer risk to existing, off-site receptors as a result of the Project's operation and instead only included an analysis for on-site receptors as a result of a stationary source. *Id.*

SWAPE conducted a screening-level HRA to demonstrate the potential risk posed by the Project's construction and operation to nearby sensitive receptors. *Id.* SWAPE concluded that the Project will result in an excess cancer risk to children of 22 in one million and over the course of a residential lifetime of 35.04 in one million, both exceeding the Bay Area Air Quality Management District ("BAAQMD") threshold of significance of 10 excess cancers per one million people. *Id.*

Rather than prepare an operational HRA for the Project, the City instead states that the Project is not a "facility" under the Air Toxics Hot Spots Information and Assessment Act and the Project would not propose the operation of significant sources of toxic air contaminants ("TACs"). *FEIR*, p. 3-118. To support this assertion, the City merely states that passenger vehicles are not significant sources of TACs and states that SWAPE's assertions are not substantial evidence of an actual project impact. *Id.* However, these general assertions are not sufficient to evaluate the Project's potential health impacts on nearby existing sensitive receptors, and ignore the diesel emissions generated by trucks during Project operation.

The City's conclusion is not supported by a quantitative HRA. In order to fully disclose the potential health risks associated with the Project's operation, an accurate HRA for the Project's operation should be prepared. Currently, the EIR's conclusion that the Project will not result in any significant health risks related to the Project's operation is not supported by substantial evidence and the EIR's discussion and conclusion is insufficient pursuant to CEQA. The EIR's cursory discussion of the Project's operational health impacts is insufficient and fails to "enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises[.]" *Sierra Club v. Cty. of Fresno* (2018) 6 Cal.5th 502, 510. By failing to provide any analytical basis for the conclusion that the Project would not have significant health impacts on nearby sensitive receptors from the Project's operation is not supported by substantial evidence.

B. The Project will have a Significant Greenhouse Gas Impact.

SWAPE determined that the DEIR's justifications and conclusion that the Project's GHG impacts are less-than-significant violated CEQA for several reasons. LIUNA DEIR Comment, pp. 15-16. Further, SWAPE compared the Project's emissions to AEP's *Beyond Newhall and 2020: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California's 2030 Land Use Efficiency Threshold* of 2.6 MT CO₂e/SP/year. *Id.* at 16. SWAPE calculated that the Project's GHG emissions would total 4.84 MT CO₂e/SP/year, exceeding the threshold of 2.6 MT CO₂e/SP/year and resulting in a potentially significant impact. *Id.*

Instead of preparing its own analysis and providing informed expertise to dispute SWAPE's calculations, the City merely criticizes SWAPE's use of the AEP guidance and threshold. FEIR, pp. 3-119 – 3-121. Further, the City refers to the BAAQMD's significance threshold of 10,000 MT CO₂e/year for stationary sources and concludes that the stationary source GHG emissions from the Project's operation would be less than significant because they would be less than the threshold. *Id.* at p. 3-121. However, SWAPE notes that the City's responses are insufficient because the Project's GHG emissions, as estimated by the EIR, are demonstrably significant regardless of the AEP threshold. Ex. B, p. 2. SWAPE also notes that the same BAAQMD guidance that provides the stationary source threshold of 10,000 MT CO₂e/year, as relied upon by the EIR, provides a bright-line threshold of 1,100 MT CO₂e/year for non-stationary sources. *Id.* SWAPE concludes that the Project should have the 1,100 MT CO₂e/year threshold to evaluate the Project's non-stationary emissions. *Id.* at pp. 2-3. SWAPE also compared the Project's emissions, as estimated in the DEIR, to the widely-used 2030 "Substantial Progress" threshold of 660 MT CO₂e/SP/year and found that the Project would result in 12,205 MT CO₂e/year, exceeding the 1,100 MT CO₂e/year threshold, resulting in a potentially significant GHG impact that was not previously identified or addressed by the EIR. *Id.* at p. 3.

SWAPE also noted that in the FEIR, the City continued to rely on the Project's consistency with CARB's Scoping Plan to conclude that the Project would result in a less-than-

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significant GHG impact. FEIR, p. 3-121. However, SWAPE states that this reliance is incorrect because the EIR fails to consider performance-based measures proposed by CARB. *See* Ex. B, pp. 4-5. SWAPE compared the Project to CARB's Scoping Plan projections and found that the Project exceeds numerous projections, which shows that the City's claim that the Project would not conflict with the CARB 2017 Scoping Plan is unsupported. *Id.* at p. 5.

An updated and accurate RDEIR must be prepared to provide additional information and analysis to support the City's less than significant GHG impact determination.

IV. CONCLUSION

For the foregoing reasons, and for the reasons stated in our previous comments, LIUNA requests the City Council decline to certify the EIR and approve the Project and instead require preparation of a revised DEIR to adequately discuss, disclose, and mitigate the Project's significant impacts.

Sincerely,



Rebecca L. Davis
Lozeau Drury LLP