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Via Email

May 14, 2021

Alisa Goulart, Associate Planner
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County of San Joaquin
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Re: Comment on Draft Environmental Impact Report, 14800 W. Schulte Road Logistics Center (SCH No. 2020110406)

Dear Ms. Goulart:

This letter is submitted on behalf of the **Laborers International Union of North America, Local Union No. 73** and its members living and/or working in or around San Joaquin County (“LIUNA”) regarding the Draft Environmental Impact Report (“DEIR”) prepared for the 14800 W. Schulte Road Logistics Center Project (SCH No. 2020110406) (the “Project”).

LIUNA respectfully requests that the County circulate an updated DEIR taking into account the concerns discussed below before proceeding with the Project. LIUNA’s comments have been prepared with the assistance of wildlife biologist Shawn Smallwood, Ph.D., and environmental consulting firm Soil/Water/Air Protection Enterprise (“SWAPE”). Dr. Smallwood’s comment and curriculum vitae are attached as Exhibit A hereto and are incorporated herein by reference and entirety. SWAPE’s comment and curriculum vitae are attached as Exhibit B hereto and are incorporated herein by reference in their entirety.

I. PROJECT DESCRIPTION

The Project proposes to develop three single-story warehouse buildings totaling approximately 678,913 square feet on an approximately 37.96-acre site located at 14800 West Schulte Road within southwestern unincorporated San Joaquin County (APN 209-240-23). The Project would also include on-site circulation and site access, parking, landscaping, and utility improvements.

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 Environment v. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109.

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 Cal. Code Regs. (“CEQA Guidelines”) § 15002(a)(1). “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564. The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“Berkeley Jets”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

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 § 21081; CEQA Guidelines § 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.

The EIR is the very heart of CEQA “and the integrity of the process is dependent on the adequacy of the EIR.” *Berkeley Jets*, 91 Cal. App. 4th 1109, 1355. CEQA requires that a lead agency analyze all potentially significant environmental impacts of its proposed actions in an EIR. Pub. Res. Code § 21100(b)(1); 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*, 221 Cal.App.3d 692, 732. “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*, 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 at p. 1355 (emphasis added) (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.” (*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.)

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 University of California* (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.’” 6 Cal.5th at 516, citing *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197. “The determination whether a discussion is sufficient is not solely a matter of discerning whether there is substantial evidence to support the agency’s factual conclusions.” 6 Cal.5th at 516. Whether a discussion of a potential impact is sufficient “presents a mixed question of law and fact. As such, it is generally subject to independent review. However, underlying factual determinations—including, for example, an agency’s decision as to which methodologies to employ for analyzing an environmental effect—may warrant deference.” *Sierra Club v. Cty. of Fresno*, 6 Cal.5th at 516. 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.

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*").

III. DISCUSSION

A. The City Fails to Adopt the Environmentally Superior Alternative.

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 § 21081; CEQA Guidelines § 15092(b)(2)(A) & (B). A "feasible" alternative is one that is capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors. Pub. Res. Code § 21061.1; CEQA Guidelines § 15364.

The lead agency is required to select the environmentally preferable alternative unless it is infeasible. As explained by the Supreme Court, an environmentally superior alternative may not be rejected simply because it is more expensive or less profitable:

The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.

Citizens of Goleta Valley v. Bd. of Supervisors (1988) 197 Cal.App.3d 1167, 1180-81; *see also*, *Burger v. County of Mendocino* (1975) 45 Cal.App.3d 322.

In addition, an environmentally superior alternative may not be rejected because it does not meet all of the Project's objectives. Inconsistency with only some of the Project Objectives is not necessarily an appropriate basis to eliminate impact-reducing project alternatives from analysis in an EIR. CEQA Guidelines § 15126.6(c), (f); *see also* *Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1089.

The DEIR prepared for the Project only considers a no project alternative, an other development alternative, and an alternative with a 20 percent reduction in building area compared to the proposed Project. DEIR, pp. 7-4 – 7-8. The DEIR failed to adopt the environmentally superior alternative that would reduce some of the Project's impacts. Although the alternative with a 20 percent reduction in building area, the environmentally superior alternative, would lessen the Project's operation emissions, it was not selected because it would meet all the Project objectives "to a lesser extent as proposed under the Project because of the 20% reduction in the Project's size." *Id.*, p. 7-8. This justification is insufficient and does not constitute substantial evidence that the alternative that would reduce the Project's impacts is infeasible. Without any such evidence, the City would abuse its discretion by approving a project with significant impacts that could be lessened or avoided by adopting a project alternative.

B. The DEIR Fails to Adequately Address and Mitigate the Project's Impacts on Biological Resources.

Expert wildlife biologist Shawn Smallwood, Ph.D., reviewed the DEIR and found that it inadequately evaluated the Project's impacts on wildlife. *See* Exhibit A.

Dr. Smallwood performed a site visit at the Project site on May 8. Ex. A, p. 1. He detected 30 species of vertebrate wildlife, 7 of which are special-status species, including 2 listed species – Swainson's hawks and tricolored blackbirds. *Id.* at 6. Dr. Smallwood observed red-winged blackbirds and red-tailed hawk, mourning doves, turkey vultures, American crows, American kestrels, Anna's hummingbirds, and a family of coyotes. *Id.* at 2. A full list of the species observed by Dr. Smallwood can be found in Table 1 of his attached comment. *Id.* at 6.

Based on his site visit and review of the DEIR, Dr. Smallwood concluded that the following factors render the DEIR's discussion of wildlife impacts insufficient:

1. The DEIR provides an inadequate baseline and fails to adequately analyze and mitigate the Project's impacts on biological resources.

As Dr. Smallwood points out, the DEIR's characterization of the environmental setting is flawed and misleading because it is based on the premise that special-status species of wildlife can be found only in specific, narrow portions of California's environment, which the DEIR concludes are not present at the Project site. Ex. A, p. 9. Before addressing the results of a field survey, the City's consultant Dudek dismissed the likelihoods of occurrence of 41 of the 42 special-status species considered in the DEIR. *Id.* Dudek inaccurately concluded that none of 7 special-status species of wildlife that Dr. Smallwood observed occur at the site. *Id.* Dudek performed a survey on October 8, 2020, which is a time of year unlikely to detect Swainson's hawk or most other special-status species. *Id.* After the first week of October, Swainson's hawks have departed the Project area and are on their annual migration to Mexico. *Id.* By this time of year, nesting of all birds is finished so open ground-nesting species such as horned lark would not have been seen by a visiting biologist. *Id.* Additionally, Dudek claims that no suitable burrows were identified on site to support the occurrence of burrowing owls. However, Dr. Smallwood observed numerous ground squirrel burrows that appeared suitable, and the site typifies the environment where Dr. Smallwood has found burrowing owls. *Id.* at 10.

Not only did Dudek perform an inadequate field survey for wildlife, but Dr. Smallwood also noted that Dudek neglected to consult available databases or information sources on the occurrence histories and occurrence likelihoods of special-status species of wildlife in the area. *Id.* Nor does the DEIR consider all of the potentially-occurring species that are also covered by the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan ("SJMSCP"). *Id.* at 14. Dudek stated that measures from the Incidental Take Minimization Measures issued by the San Joaquin Council of Governments provided an alternative way to participate with the SJMSCP and are sufficient to avoid and minimize any impacts to biological resources that could result from the Project. However, Dr. Smallwood notes this conclusion is inadequate for several reasons and the SJMSCP is providing inadequate mitigation for the Project:

- (1) Not all special-status species are covered by the SJMSCP;
- (2) Many non-covered species of birds are still protected by the International Migratory Bird Treaty Act (MBTA) and by California Fish and Game Code section 3513 as amended by Governor Newsom's September 27, 2019 signing of AB 454, both of which warrant CEQA review of potential impacts;
- (3) The SJMSCP requires protocol-level detection surveys at project sites for covered species, but no such surveys have been performed at the site of the proposed Project site; and
- (4) Available evidence indicates that the premise is likely false that SJMSCP participation conserves covered species.

See Ex. A, pp. 14-22.

Dr. Smallwood visited the Project site on May 8, 2021 and observed 30 species of vertebrate wildlife, including seven special-status species and two listed species within two hours. *Id.* at 6. Dr. Smallwood also reviewed eBird and iNaturalist for occurrence records of special-status species of vertebrate wildlife in the project area, which turned up 74 special-status species observed near the project site or whose geographic ranges overlap the site. *See id.* at 11-

13. Dr. Smallwood observed a red-tailed hawk chasing birds and shredding the tail of a mourning dove he almost caught, red-winged and tricolored blackbirds flying to and from a pond located near the Project site, a pair of horned larks, and a family of coyotes using a den burrow on site. *See id.*, pp. 2-5.

In failing to establish an adequate baseline of biological resources, the DEIR fails to adequately analyze and mitigate the Project's impacts to biological resources.

2. The DEIR fails to adequately analyze the Project's impacts on wildlife movement.

According to the DEIR, the Project will not have a significant impact on wildlife movement and no mitigation is necessary because "[t]he highly disturbed condition of the site and existing perimeter fencing, in conjunction with existing development and agricultural activity that surrounds the Project site, greatly limits the site's suitability as a wildlife movement corridor or habitat linkage." DEIR, p. 4.2-11. However, the CEQA standard is whether a project would interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors. Ex. A, p. 22. "The primary phrase of the standard goes to wildlife movement regardless of whether the movement is channeled by a corridor." *Id.* Wildlife movement includes stopover habitat used by birds and bats, and staging habitat during dispersal, and migration or home range patrol. *Id.* Dr. Smallwood notes that many species of wildlife likely use the Project site for movement across the region and the Project would cut wildlife off from stopover and staging habitat, lengthening the distances wildlife must travel before finding alternate stopover habitat. *Id.* Therefore, the Project would interfere with wildlife movement in the region and an EIR must be prepared to address this impact.

3. The DEIR fails to address the impacts on wildlife from additional traffic generated by the Project.

The DEIR did not address the impacts on wildlife mortality from traffic generated by the Project. Ex. A, p. 24. According to the DEIR, the Project will generate an additional 9,856,559 vehicle miles traveled ("VMT") annually yet the DEIR provides no analysis of the impacts on wildlife that will be caused by an increase in traffic on the roadways servicing the Project. *Id.*

Vehicle collisions with special-status species is not a minor issue, but rather results in the death of millions of species each year. Dr. Smallwood explains:

Across North America traffic impacts have taken devastating tolls on wildlife (Forman et al. 2003). In Canada, 3,562 birds were estimated killed per 100 km of road per year (Bishop and Brogan 2013), and the US estimate of avian mortality on roads is 2,200 to 8,405 deaths per 100 km per year, or 89 million to 340 million total per year (Loss et al. 2014). Local impacts can be more intense than nationally.

Id. at 23. Dr. Smallwood estimated that the Project's additional traffic would cause 5,400 wildlife fatalities per year, and 270,000 wildlife fatalities over 50 years of operations. *Id.* at 24. An RDEIR is required to analyze and mitigate this potentially significant impact on wildlife.

C. The DEIR Inadequately Analyzed and Mitigated the Project's Impacts on Air Quality.

Matt Hagemann, P.G., C.Hg., and Dr. Paul E. Rosenfeld, Ph.D., of the environmental consulting firm SWAPE reviewed the DEIR's analysis of the Project's impacts on air quality. SWAPE's comment letter and CVs are attached as Exhibit B.

1. The DEIR underestimated the Project's emissions.

SWAPE found that the DEIR underestimated the Project's emissions and therefore cannot be relied upon to determine the significance of the Project's air quality impacts. Ex. B, p. 2. The DEIR relies on emissions calculated from the California Emissions Estimator Model Version CalEEMod.2016.3.2 ("CalEEMod"). *Id.* at 1. This model, which is used to generate a project's construction and operational emissions, relies on recommended default values for site-specific information related to a number of factors. *Id.* CEQA requires any changes to the default values to be justified by substantial evidence. *Id.*

SWAPE reviewed the Project's CalEEMod output files and found that the values input into the model were unsubstantiated or inconsistent with information provided in the DEIR. *Id.* at 2. As a result, the DEIR's air quality analysis cannot be relied upon to determine the Project's emissions.

Specifically, SWAPE found that the following values used in the DEIR's air quality analysis were either inconsistent with information provided in the DEIR or otherwise unjustified:

- i. Unsubstantiated changes to individual construction phase lengths. Ex. B, pp. 2-4.
- ii. Unsubstantiated changes to vendor and worker trip numbers. Ex. B, pp. 4-6.
- iii. Unsubstantiated reductions to energy use values. Ex. B, p. 6.
- iv. Unsubstantiated reduction to outdoor water use rate. Ex. B, pp. 7-8.
- v. Underestimated horsepower value for fire pump. Ex. B, p. 8.
- vi. Underestimated number of operational off-road equipment. Ex. B, pp. 8-9.
- vii. Incorrect application of construction-related mitigation measures. Ex. B, pp. 9-11.

As a result of these errors in the DEIR, the Project's construction and operational emissions are underestimated and cannot be relied upon to determine the significance of the Project's air quality impacts. A revised DEIR is necessary to address these errors.

2. The DEIR incorrectly analyzed the mobile-source operational emissions.

In analyzing the Project's operational emissions, the DEIR stated that the emissions from mobile sources during operation of the Project were estimated using a spreadsheet-based model, vehicle trip lengths were assumed to be 40 miles for truck trips and 14.7 miles for passenger car trips, the Project would generate 1,182 daily trips, with 801 trips from passenger vehicles, light-duty trucks, and motorcycles, and 381 trips from heavy-duty trucks and medium-heavy-duty trucks. *See* DEIR, pp. 4.1-29 – 4.1-30. However, SWAPE concludes that the DEIR's analysis of the project's mobile-source operational emissions is incorrect for two reasons. Ex. B, p. 11.

First, review of the Traffic Impact Analysis ("TIA") prepared for the Project demonstrates that it failed to provide the Project's expected number of average daily vehicle trips. *Id.* The TIA states that the Project "will generate approximately 170 Passenger Car Equivalent (PCE) trips during the AM peak hour and 174 PCE trips during the PM peak hour." DEIR, App. F, p. 3. The TIA fails to provide the total number of average daily vehicle trips so the DEIR's claim that the Project would generate 1,182 average daily vehicle trips is unsubstantiated. Ex. B, pp. 11-12.

Second, the DEIR's analysis of mobile-source operational emissions uses an underestimated number of truck trips. *Id.* at 12. The DEIR uses an operational truck fleet mix of 32%, resulting in 381 heavy-duty and medium-heavy-duty truck trips. DEIR, p. 4.1-30. However, the ITE 10th Edition Trip Generation Manual estimates a truck trip generation rate of 0.6 truck trips per 1,000 square feet for ITE Land Use Code 150, "Warehousing." Ex. B, p. 12. Since the Project proposes to construct 678,913 square feet of warehouse space, the Project is expected to generate approximately 407 truck trips. *Id.* The number of truck trips is therefore underestimated by 26 trips in the DEIR's analysis. *Id.*

By including an unsubstantiated number of average daily vehicle trips and an underestimated number of truck trips, the DEIR's analysis of the Project's mobile-source operational emissions may be underestimated and should not be relied on.

3. The DEIR failed to implement all feasible mitigation measures to reduce the Project's unavoidable significant air quality impacts.

The DEIR concluded that the Project's operational-related NO_x emissions would be unavoidable significant impacts. *See* DEIR, p. 4.1-38, Table 4.1-11. Pursuant to the CEQA Guidelines, the City may not approve the Project unless all feasible mitigation measures have been applied to reduce significant impacts to reduce the impact as much as possible. CEQA Guidelines § 15096(g)(2). However, SWAPE's review of the DEIR found that not all feasible mitigation measures have been applied. Ex. B, p. 13.

SWAPE has provided guidance on additional mitigation measures that can be implemented to further reduce the Project's emissions. *Id.* at 19. A revised DEIR must be prepared which assesses and applies all feasible mitigation to reduce the Project's significant air quality impacts.

4. An updated analysis indicates that the Project may have a potentially significant air quality impact.

In an effort to more accurately estimate the project's construction-related emissions, SWAPE prepared an updated CalEEMod model using Project-specific information in the DEIR. Ex. B, p. 13. SWAPE's updated analysis estimates that the Project's construction-related VOC emissions would be 401.34 pounds per day, exceeding the applicable daily maximum SJVAPCD threshold of 100 pounds per day. *Id.* SWAPE's model demonstrates that the Project would result in a potentially significant air quality impact that was not previously identified or addressed in the DEIR. An updated EIR should be prepared to adequately assess and mitigate the potential air quality impacts that the Project may have on the surrounding environment.

D. The DEIR Inadequately Analyzed the Project's Impact on Human Health from Emissions of Diesel Particulate Matter.

The DEIR incorrectly concludes that the Project will have a less-than-significant health risk impact. *See* DEIR, p. 4.1-45, Table 4.1-15. Specifically, the DEIR estimates that the mitigated cancer risk posed to nearby, existing sensitive receptors as a result of the Project's operation would be 4.1 in one million, which would not exceed the SJVAPCD significance threshold of 20 in one million. *See id.* With regards to the Project's TAC-related impacts associated with construction, the DEIR states, "[d]ue to this relatively short period of exposure (10 months) and minimal DPM emissions on site TACs generated by the Project would not result in concentrations causing significant health risks." *Id.*, p. 4.1-41. This, combined with CARB ATCMs for in-use off-road diesel fleets and the nearest sensitive receptor being located more than 1,500 feet from the Project site, would result in a less than significant impact of TACs due to the Project's construction. *Id.* However, as SWAPE explains, the DEIR's analysis of the Project's health risk impacts, as well as the subsequent less-than-significant impact conclusion, is incorrect for five reasons. Ex. B, p. 14.

First, the DEIR's operational HRA is incorrect because it relies on an exhaust PM₁₀ estimate from a flawed air model, as discussed above. *See* DEIR, App. B, p. 39. The HRA therefore utilizes an underestimated DPM concentration to calculate the health risk associated with the Project's construction. Ex. B, p. 14. The DEIR's HRA should not be relied on to determine the Project's significance.

Second, the DEIR's operational HRA relies on an underestimated number of truck trips. *Id.* at 15. As previously discussed, the number of truck trips relied on by the DEIR's mobile-source operational HRA is underestimated by 26 truck trips. *Id.* As a result, the truck travel DPM emissions and the on-site truck idling exhaust emissions utilized by the DEIR's operational HRA are underestimated and should not be relied on.

Third, by failing to prepare a quantified construction HRA, the DEIR's discussion of potential TAC's associated with Project construction fails to indicate the concentrations at which such pollutants would trigger adverse health effects. *Id.* Without making a reasonable effort to connect the Project's construction-related TAC emissions to the potential health risks posed to

nearby receptors, the DEIR is inconsistent with CEQA's requirement to correlate the increase in emissions that the Project would generate to adverse impacts on human health caused by those emissions. *Id.*

Fourth, the DEIR's conclusion is inconsistent with the most recent guidance of the Office of Environmental Health Hazard Assessment ("OEHHA"). OEHHA recommends that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors. *Id.*

Fifth, while an operational HRA was conducted, the HRA fails to evaluate the cumulative lifetime cancer risk to nearby, existing receptors as a result of the Project's construction and operation together. *Id.* OEHHA guidance requires that the excess cancer risk be calculated separately for all sensitive receptor age bins, then summed to evaluate the total cancer risk posed by all Project activities. *Id.* Therefore, the DEIR should have quantified the Project's construction and operational health risks, as well as compared the combined construction and operational health risks to the SJVAPCD threshold of 20 in one million. *Id.*

With the above inaccuracies, the DEIR's conclusion that the Project will not result in a significant impact on human health is not supported by substantial evidence.

E. The DEIR's Discussion of the Project's GHG Impacts is Insufficient and Not Supported by Substantial Evidence.

The DEIR estimates that the Project would generate 12,493.57 metric tons of carbon dioxide equivalents per year ("MT CO₂e/year"). DEIR, p. 4.5-27, Table 4.5-4. However, SWAPE notes that the DEIR elects not to apply a quantitative threshold and instead evaluates the significance of the Project's GHG impacts based on the Project's consistency with the CARB Scoping Plan, SJCOG 2018 RTP/SCS, and the County's General Plan, as well as SB 32 and EO S-3-05. Ex. B, p. 16; DEIR, p. 4.5-52. SWAPE finds that the DEIR's GHG analysis, and subsequent less-than-significant impact conclusion, is incorrect for three reasons. Ex. B, p. 17.

First, the DEIR's GHG analysis relies on a flawed air model, as discussed above. *Id.* Second, the DEIR incorrectly concludes a less-than-significant impact. *Id.* at 17-18. Lastly, the DEIR fails to consider the performance-based standards under CARB's 2017 Scoping Plan. *Id.* at 18. An updated EIR is required and should provide additional information and analysis to conclude less than significant GHG impacts.

F. The DEIR Fails to Adequately Analyze the Project's Transportation Impacts.

The DEIR assumes that the Project will not have any transportation impacts based on the map-based screening for residential and office projects screening threshold. DEIR, pp. 4.7-11 – 4.7-12. In supporting this conclusion, the DEIR relies on data from the San Joaquin Council of Governments' Regional Travel Demand Model and the California State Transportation Demand Model screening maps by transportation analysis zone. *Id.*

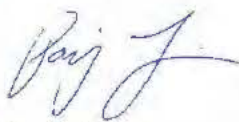
However, according to the OPR guidance, this map-based screening threshold is used for residential and office projects due to their location in concentrated areas of development, with a presumption of low VMT due to factors such as “density, mix of uses, [and] transit accessibility.” OPR Technical Advisory on Evaluating Transportation Impacts in CEQA, April 2018 (“OPR Guidance”), p. 10. The DEIR fails to provide any evidence supporting its use of this residential and office screening threshold for an industrial warehouse. Nor does the OPR Guidance provide any support for using this screening threshold for industrial warehouse projects located outside of downtown areas or in unincorporated areas of a county surrounded by agricultural and industrial uses, such as the Project. In using this screening threshold, the DEIR arbitrarily applies a screening threshold designed for downtown or office areas. “When adopting or using thresholds of significance, a lead agency may consider thresholds of significance previously adopted or recommended by other public agencies or recommended by experts, provided the decision of the lead agency to adopt such thresholds is supported by substantial evidence.” CEQA Guidelines § 15064.7(c). The DEIR fails to reference any substantial evidence justifying the use of the residential and office screening threshold for this industrial use proposed to be located far from any downtown area. Further, the DEIR fails to disclose the actual VMT per employee of the Project and no background information is provided from which a reader could discern whether a VMT rate for the facility was estimated, what the basis of that estimate may be, and what assumptions were employed. For this reason, the DEIR’s conclusion that the Project will have a less than significant transportation impact is not supported by substantial evidence or sufficient to reasonably inform a reader of the Project’s transportation impacts.

Instead, the DEIR should use OPR’s recommended threshold for office projects, which states that a project exceeding a level of 15 percent below existing regional VMT per employee may indicate a significant transportation impact. *See* OPR Guidance, p. 13. San Joaquin County’s average VMT per employee is 19.05. A 15 percent reduction from that average is 16.19 VMT per employee. Currently the Project site generates zero VMTs. *See* DEIR, p. 4.7-1. Because of the lack of rationale for the DEIR’s VMT assessment, the DEIR’s failure to disclose the Project’s expected VMT per employee, and the obvious increase in VMTs that will be generated by the Project, the DEIR is insufficient and fails to provide substantial evidence that the Project will not have a significant transportation impact.

IV. CONCLUSION

For the foregoing reasons, LIUNA believes that the DEIR is wholly inadequate. LIUNA urges the City to prepare an RDEIR that conforms with CEQA, as described above.

Sincerely,



Paige Feunie
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