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Via Email

Francisco Avila, Principal Planner
Community Development Division
Contra Costa County, Department of
Conservation and Development
30 Muir Road
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Francisco.Avila@dcd.cccounty.us

**Re: Draft Environmental Impact Report for Scannell Properties Project
(County File #CDDP17-03045; SCH No. 2019110186)**

Dear Mr. Avila:

I am writing on behalf of **Laborers International Union of North America, Local Union No. 324** and its members living and working in the City of Richmond and Contra Costa County (collectively "LIUNA") regarding the Draft Environmental Impact Report ("DEIR") prepared for the Scannell Properties Project, proposed to be located at the northeast corner of Richmond Parkway and Parr Boulevard in Richmond, California (County File #CDDP17-03045; SCH No. 2019110186) ("Project"). After reviewing the DEIR, together with our consultants, we have concluded that the document fails to comply with the California Environmental Quality Act ("CEQA") and fails to adequately analyze and mitigate the Project's significant environmental impacts.

Traffic Engineer Rock Miller, P.E., of Rock Miller & Associates has conducted a review of the Project, the DEIR and relevant appendices regarding the Project's transportation impacts. Mr. Miller identifies additional mitigation measures necessary to address the Project's significant transportation impacts. Mr. Miller's expert comments and CV are attached hereto as Exhibit A.

Ecologist Shawn Smallwood, Ph.D also reviewed the Project and DEIR, and visited the Project site to make observations about biological resources. Dr. Smallwood concluded that the Project will have significant impacts on biological resources that have not been adequately analyzed or mitigated. Dr. Smallwood's comments and CV are attached hereto as Exhibit B.

In addition, environmental consulting firm Soil/Water/Air Protection Enterprise ("SWAPE") has reviewed the Project and the DEIR, and concludes that the DEIR's analysis of the Project's air pollution emissions are insufficient and remain potentially significant. SWAPE's expert comments, as well as the CVs of the SWAPE's consultants are attached hereto

as Exhibit C.

A revised EIR should be prepared prior to Project approval to analyze all impacts and require implementation of all feasible mitigation measures, as described more fully below.

I. PROJECT DESCRIPTION

The Project includes the demolition of three vacant one-story buildings as well as slabs and foundations on the site and the construction and operation of two distribution warehouse buildings totaling 325,000 square feet in size. Building 1 would include a 119,000 square foot warehouse with some ancillary office space in the southwestern portion of the project site. Building 2 would consist of a 206,000 square feet warehouse and some office space located along the eastern edge of the project site. It is expected that Building 2 would be leased by FedEx and operated as a sorting and distribution center for delivery routes in the North Bay area. Building 2 would employ about 200 people. Although no potential tenant has been identified for Building 1, it is estimated it will employ about 75 people. The Project is expected to generate 1,920 daily vehicle trips and 40,760 vehicle miles travelled per day, including cars, trucks and delivery vans. DEIR, pp. 3.13-15 – 3.13-16 (Table 3.13-2). Off-site improvements associated with the Project would include roadway improvements such as sidewalks, curbs, bioretention swales and traffic calming features along Parr Boulevard and Richmond Parkway. DEIR, p. 2-8.

A Notice of Preparation of the DEIR was issued by the County on November 8, 2019. Despite the pending environmental review, the County went ahead and issued approvals of demolition permits in furtherance of the project's construction. DEIR, p. 3.14-1.

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*

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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.* 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.

III. ANALYSIS

A. THE DEIR FAILS TO ADEQUATELY MITIGATION THE PROJECT'S SIGNIFICANT TRANSPORTATION IMPACTS.

Mr. Miller visited the site and viewed the surrounding area and transportation facilities. Mr. Miller's review of the DEIR's handling of the Project's transportation impacts identifies a substantial failure to require feasible mitigation measures to address the Project's significant transportation impacts. By failing to require all feasible mitigation measures, including additional bike lanes, shuttles, and other mitigation measures that would quantifiably reduce the Project's significant VMT impacts, the County cannot make the findings necessary to support a statement of overriding consideration.

The DEIR calculates that the average trip length for the Project would be over 20 miles, well in excess of the threshold of significance for VMT impacts used by the County of no more than 15 percent below the nine-county Metropolitan Transportation Commission (MTC) average, *i.e.*, 12.75 miles. DEIR, p. 3.13-16. Mr. Miller calculates that the Project will generate 13,340 VMT per day. Miller Comments, p. 2. In order to mitigate the Project VMT impacts, the Project will have to reduce VMT by at least 4,896 VMT per day. *Id.*

The DEIR only identifies the preparation and implementation of a Transportation Demand Management ("TDM") Plan for the Project. However, as the DEIR notes, "[t]he estimated average one-way trip length for the project (over 20 miles) suggests that, even with the incorporation of all feasible TDM measures, the proposed project's average HBW VMT per employee would likely remain in excess of 12.75 HBW trip VMT per employee." DEIR, p. 3.13.-18.

Mr. Miller documents severe constraints on the potential success of the Project's TDM Plan. The DEIR asserts that the Project is served by transit. DEIR, p. 3.13-16. However, the nearest transit stops are approximately one mile away on Fred Jackson Street at Market Street. *See id.*; Miller Comments, p. 3. As Mr. Miller notes, "[t]his distance exceeds all accepted guidelines for effective walking distance to transit." Miller Comments, p. 3. He also notes that the frequency of the nearest transit service is every 30 minutes. *Id.* Mr. Miller also observed

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“long gaps in potential walking routes from the site to transit, requiring pedestrians to walk along dirt shoulders for long distances.” *Id.* Mr. Miller concludes that:

It is incorrect to suggest that the project has access to transit. The project and site vicinity will not have transit access unless transit service is extended to the area, realistically providing stops within ¼ mile of the site.

Id. Mr. Miller suggests a mitigation measure requiring a peak period shuttle service to BART that services the Project as well as the surrounding area coupled with free BART passes for the Project’s employees could significantly reduce VMT in the area:

The site is only about 2.5 miles from the Richmond BART station. A peak period transit service that connected the site to the BART station with stops in the nearby North Richmond neighborhood could be funded by the site or through an assembly of existing and future employers with developments in the vicinity.

Provision of transit could also reduce the VMT for surrounding existing and proposed developments near the site. If transit access is established and its costs are fully funded by the site operator and made available as a service to the surrounding area, it may capture 2% of the daily trip generation for both the site and its vicinity.

Id., p. 3. Mr. Miller estimates that, appropriately designed and implemented, such a transit program from BART to the Project would likely reduce VMT from the Project by almost 300 VMT per day. However, if required to be extended from BART to the Project area and North Richmond neighborhood, such a transit program could reduce VMT by over 1,000 VMT per day. *Id.*

Mr. Miller also reviewed improving bicycle facilities in the area of the project, noting their improvement by the Project could further mitigate the project’s VMT impacts:

A plan to increase usage of pedestrian and bicycle travel by improving facilities near the site can reduce VMT and traffic generation for the site. They can also reduce VMT for the surrounding industrial area uses and reduce VMT for nearby residential uses by making more attractive recreational trips from nearby residential areas to the Bay Trail. Since the baseline condition is relatively poor for walk/bike/transit, measures to improve these facilities can have a more powerful effect upon reducing VMT than site specific measures. Further, the VMT reduction can be measured and proven by measuring increases in these travel modes after improvements to provide a usable system are made.

Miller Comments, p. 4. Mr. Miller provides specific examples of bike lane improvements, especially “as a first/mile last mile connection to existing or potential transit.” *Id.* Mr. Miller’s

specific improvements to Parr Boulevard, Richmond Parkway and other road segments should be specified as required road improvements by the Project in order to reduce its VMT impacts. For example, Mr. Miller identifies an opportunity to add 6-foot bicycle lanes in both directions on the Fred Jackson/Goodrick Avenue Connector. As Mr. Miller notes, “[t]his should be a high priority improvement. It will provide ... VMT reduction benefits by providing an attractive bikeable link between the site and the North Richmond neighborhood.” *Id.*, p. 7. Mr. Miller also focuses on the Project providing resources to establish a bike route to the BART Station:

The site is only about 2.5 miles from the Richmond BART station along Fred Jackson and 7th Street to Barrett Avenue. Bicycling is generally accepted as an appropriate way to serve trips of up to 3-5 miles, so the site is well within the bikeable service area of the BART station, but the route needs to be bikeable and comfortable to potential users. It is not bikeable and comfortable at this time based upon the level of or absence of existing improvements.

Miller Comments, p. 7. He also identifies feasible improvements to roadways leading to the North Richmond neighborhood:

Indefinite traffic calming improvements have been mentioned in the EIR in the north Richmond areas. There are opportunities to provide conventional bicycle lanes along much of this route, often through restriping only. There should be a clear plan for how to comfortably meet the needs of potential bicyclists from the North Richmond neighborhood to the site as well as connections to the Bay Trail system north and west of the site.

Id. Mr. Miller calculates that, “[t]he provision of a high-quality bicycle network connecting the proposed site and nearby industrial developments could increase bicycle mode share for the area from zero to 3%, or 2002 VMT per day. This is nearly 41% of the excess VMT that needs to be mitigated.” *Id.* In the end, Mr. Miller concludes that:

The excess VMT for the site can be fully mitigated through a combination of on site, near site, and subregional improvements that can be included as site mitigation measures. These results are possible and can be attributed to the site if the site is fully or largely responsible for funding or producing the improvements.

Id., p. 8.

An agency may not issue a statement of overriding considerations unless it has imposed all feasible mitigation measures and alternatives. *City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, 368-369. CEQA prohibits agencies from approving projects with significant environmental impacts when feasible mitigation measures can substantially lessen or avoid such impacts. Pub. Res. Code § 21002; CEQA Guidelines, 15092(b)(2). Because the DEIR fails to identify numerous, specific VMT reduction projects, including a clear transit plan and bicycle lanes, that could be funded or implemented in the

vicinity of the Project that would quantifiably reduce and mitigate the additional VMT proposed to be added by the Project, the County cannot approve the Project or make the findings necessary to support a statement of overriding considerations.

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

1. The DEIR fails to establish a baseline for special status species at the Project site.

The evening of July 13, 2021, Dr. Smallwood visited the project site and performed a reconnaissance level survey of wildlife utilizing the area of the Project. Smallwood Comments, p. 1. Dr. Smallwood reconnoitered the area for about 2.5 hours. *Id.* He observed that, unlike the photos exhibited in the DEIR, significant portions of the site had recently been graded to form various pads and berms. *Id.*, pp. 1-2. Nevertheless, during his brief visit, he observed the presence of 26 species of vertebrate wildlife at and flying over the Project site, including protected birds of prey including osprey, white-tailed kites, and a red-tailed hawk. *Id.*, pp. 2, 6. Had he spent more time at the site, Dr. Smallwood explains he would have detected even more species. *Id.*, pp. 6-8.

Establishing an accurate baseline is the *sine qua non* to adequately analyzing and mitigating the significant environmental impacts of the Project. *See* CEQA Guidelines, § 15125(a); *Save Our Peninsula*, 87 Cal.App.4th at 121-123. Unfortunately, the EIR's failure to investigate and identify the occurrences of sensitive biological resources at the Project site results in a skewed baseline. Such a skewed baseline ultimately "mislead(s) the public" by engendering inaccurate analyses of environmental impacts, mitigation measures and cumulative impacts for biological resources. *See San Joaquin Raptor Rescue Center*, 149 Cal.App.4th at 656; *Woodward Park Homeowners*, 150 Cal.App.4th at 708-711.

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Dr. Smallwood reviewed the information provided by the reconnaissance-level survey conducted by WRA six years previously in 2015. Smallwood Comments, p. 8. No information is provided on the start time and duration of the WRA site visit in 2015. *Id.*, pp. 8-9. WRA's conclusion that no special status species use the site is plainly incorrect as Dr. Smallwood observed two white-tailed kites, a fully protected species under California Fish & Game Code §3511, fighting over territory at the site. Smallwood Comments, p. 9. As Dr. Smallwood explains:

Considering that the model in Figure 1 predicted that I detected only a fraction of the number of species that use the site, and considering that WRA (2015) detected barely more than a third of the species I detected, it is safe to assume that WRA either committed grossly insufficient effort toward their wildlife survey or their biologists were distracted by other simultaneous survey objectives. To support

sound determinations of the occurrence likelihoods of special-status species, WRA would have needed to commit to a much larger survey effort.

Id. As a result, the baseline description of wildlife use at the site is insufficient.

Dr. Smallwood points out the availability of citizen-science based databases that provide robust information about bird sightings at specific locations, including eBird and iNaturalist. *Id.* These data bases are regularly used by experts to inform them of sightings of wildlife in a particular area. Based on his review and his site inspection, Dr. Smallwood identifies 79 special-status species of vertebrate wildlife which occur in the Project area or whose geographic ranges overlap with the Project site. *Id.*, pp. 10-12 (Table 2). In comparison, WRA only assessed occurrence likelihoods of 35 special-status species for the site. *Id.*, p. 9.

Dr. Smallwood explains that, just because a site is not pristine does not mean wildlife will not take full advantage of it:

WRA's typical reasons for determining species occurrences as unlikely were (1) disturbance of the site, and (2) lack of the species' habitat on the site. These reasons were flawed, however. If disturbance prevented the occurrences of any of the species in Table 2, then these species would occur nowhere. Wildlife communities throughout California make the best of a range of disturbed environments, but none of those environments remain undisturbed. Wildlife communities make use of spaces that have been graded, eroded, mechanically cleared of vegetation once to many times, harvested for specific resources, hunted, subjected to ORV recreation, and polluted with air-deposited toxic particles, plastics and non-native species. The species in Table 2 persist at locations disturbed in these and many other ways. That a site is "disturbed" is insufficient basis for determining that any of the species in Table 2 is unlikely.

Smallwood Comments, p. 13. In regard to lack of habitat, Dr. Smallwood notes that:

this reason was too often premised on an unrealistically narrow characterization of the environment that allegedly serves as habitat. WRA too often pigeon-holes species into a narrow environment, which can then be said to be absent from the site. In reality, wildlife species typically rely on wider types of environment than those specified by WRA, and they rely on those different types of environment for different reasons.

Id. Dr. Smallwood points out, as an example, the determination that short-eared owls were unlikely to occur at the site was in error given their presence on nearby properties and his expert observation that they would forage and otherwise use the Project site near their nearby breeding locations. *Id.*, p. 14. Dr. Smallwood points out similar shortcomings in addressing burrowing owls, golden eagles and bald eagles, especially given the presence of ground squirrels at the site, as well as tri-colored blackbirds. *Id.*, pp. 14-16.

Dr. Smallwood's expert analysis of the DEIR and its underlying biological report is substantial evidence that the DEIR's wildlife baseline and discussion of the Project's impacts to biological resources is not supported by substantial evidence and that substantial evidence shows the Project impacts remain significant and unmitigated.

2. The Project will have a significant impact on wildlife from vehicle collisions because of increased traffic generated by the Project.

The DEIR does not address the impacts the Project's vehicle trips will have on wildlife. According to the DEIR, the project will generate about 40,760 vehicle miles traveled (VMT) per day by cars and heavy trucks. DEIR, p. 3.13-15 (Table 3.13-2). This translates into more than 14,877,400 vehicle miles per year. Smallwood Comments, p. 19. Yet the DEIR does not analyze the direct and cumulative impacts on wildlife that will be caused by this increase in traffic on roadways servicing the Project. Vehicle collisions have the potential to impact dozens of special-status species.

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

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, as demonstrated by a study performed near the project site.

In a recent study of traffic-caused wildlife mortality, investigators found 1,275 carcasses of 49 species of mammals, birds, amphibians and reptiles over 15 months of searches along a 2.5 mile stretch of Vasco Road in Contra Costa County, California (Mendelsohn et al. 2009). Using carcass detection trials performed on land immediately adjacent to the traffic mortality study (Brown et al. 2016) to adjust the found fatalities for the proportion of fatalities not found due to scavenger removal and searcher error, the estimated traffic-caused fatalities was 12,187. This fatality estimate translates to a rate of 3,900 wild animals per mile per year that were killed by automobiles. In terms comparable to the national estimates, the estimates from the Mendelsohn et al. (2009) study would translate to 243,740 animals killed per 100 km of road per year, or 29 times that of Loss et al.'s (2014) upper bound estimate and 68 times the Canadian estimate. An analysis is needed of whether increased traffic generated by the project site would similarly result in local impacts on wildlife.

Id., p. 18.

“Increased use of existing roads would increase wildlife fatalities (see Figure 7 in

Kobylarz 2001).” *Id.* and, because wildlife roadkill is not randomly distributed, Dr. Smallwood can predict the number of road-related kills that are attributable to the Project’s expected vehicle miles. Based on a number of studies, including local Contra Costa County data, and the annual VMT of 14,877,400 miles, Dr. Smallwood predicts approximately 8,152 wildlife fatalities by collisions with Project-related vehicles each year. *Id.* at 20. This large number of direct kills by the Project’s traffic is a significant potential impact that is not addressed in the DEIR. These deaths also will contribute significantly to the cumulative road kills that occur in Contra Costa County.

Dr. Smallwood’s expert comments constitute substantial evidence that the Project may have a significant impact on biological resources as a result of vehicle collisions stemming from Project-generated traffic. Since this impact was not analyzed in the EIR, a revised EIR is required to analyze and mitigate this significant impact.

3. The DEIR Does Not Sufficiently Address Cumulative Habitat Loss Impacts.

Dr. Smallwood provides his expert assessment that the Project will significantly contribute to cumulative impacts of various bird species. He notes a recent study documenting “a 29% decline in overall bird abundance across North America over the last 48 years – a decline driven by multiple factors, but principally attributed to habitat loss and habitat fragmentation (Rosenberg et al. 2019).” Smallwood Comments, p. 17. Dr. Smallwood estimates that the site has a capacity of up to 673 bird nests annually. *Id.* He then notes the productivity he observed at the site:

In fact, 79 special-status species of vertebrate wildlife possess high likelihoods of occurrence in the project area, and most of these species have been documented there (Table 2). I have seen special-status species right on the project site (see my photos), and others have documented the occurrences of special-status species with photos and audio recordings on eBird. These species are present in the project area; they are not precluded. But the project, along with many planned and pending projects in the area, pose substantial and significant cumulative impacts to these species.

Smallwood Comments, p. 20. He also explains that pre-construction surveys, especially where, as here, the County improperly authorized grading of the site prior to the completion of the EIR process, do not offset to any degree the Project’s cumulative habitat impacts. *Id.*, p. 21. Dr. Smallwood’s expert assessment demonstrates the insufficiency of the DEIR’s discussion of cumulative habitat impacts.

C. THE DEIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE AIR QUALITY IMPACTS.

1. The DEIR relies on unsubstantiated input parameters to estimate project

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emissions.

To calculate the Project's expected emissions during operation and construction, the EIR Relies on the California Emissions Estimator Model Version CalEEMod.2016.3.2 ("CalEEMod"). This model relies on recommended default values for on-site specific information related to a number of factors. 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. SWAPE explains each of these in its letter. *See* SWAPE, pp. 1-10. For example, the modeling did not include the hauling trips and truck loading that will be necessary to export 23,715 cubic yards of vegetation material from the site and to import 33,089 cubic yards of soil to the site. *Id.*, p. 2. Also of note are unexplained discrepancies in the fleet mix expected and vehicle trips expected from the project and that used in the CalEEMod modeling. *Id.*, pp. 4-6. This results in an underestimation of the Project's emissions. As a result, the Project may have a significant air quality impact and an EIR is required to properly analyze this potential impact.

One of the unsubstantiated changes to the CalEEMod default inputs involves the intention discussed in the DEIR that the vehicles "domiciled at the project site," certain percentages would be zero emission by certain dates, with a goal of 100 percent of those vehicles stationed at the facility would be zero emission by December 31, 2027. DEIR, pp. ES-2; 2-9 – 2-10; SWAPE Comments, pp. 7-8. However, this commitment includes a qualification, noting that "[d]iscussion is ongoing between the project applicant and County staff to include language on compliance with these requirements during surges in vehicle demand or when such vehicles are not commercially available." *Id.* Likewise, the commitment to use zero emission heavy-duty trucks domiciled at the facility by December 31, 2025 is qualified if they are not "commercially available" as of that date. There is no discussion in the DEIR of the likelihood that zero emission vehicles will be commercially available by the identified dates. There appears to be uncertainty when commercial vehicle fleets will be available. *See, e.g.* <https://www.businessfleet.com/10131189/commercial-electric-vehicles-whats-the-real-timeline> (attached as Exhibit D). Despite these qualifications, it appears the CalEEMod modeling may have treated these qualified goals as binding commitments in projecting the emission levels from vehicles using the Project. It also is not clear from the DEIR what percentage of the vehicles using the Project would be domiciled at the Project. As a result, it is not disclosed how many of the vehicles contributing to the Project's VMT would not be subject to the zero emission schedule goals. The number of domiciled vehicles should be clarified and the projections adjusted to reflect any uncertainty in achieving the zero emission timelines.

In an effort to address the shortcomings it identifies in the CalEEMod modeling for the Project's construction emissions, SWAPE re-ran model with the following changes:

In our updated model, we included the correct amount of material import and export required for construction, operational vehicle fleet mix percentages and trips rates, and number of pieces of construction equipment equipped with Tier 4

Final engines; as well as omitted the unsubstantiated changes to the worker trip numbers, area coating emission factors, and operational vehicle emission factors.

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SWAPE Comments, p. 10. SWAPE's updated CalEEMod modeling run calculates the Project's construction will emit 76.41 lbs/day of NOx. That daily emission rate exceeds the BAAQMD threshold of 54 lbs/day. SWAPE's expert comments are substantial evidence that the DEIR's air quality analysis lacks substantial evidence and does not adequately address the Project's significant air quality impacts during construction.

IV. CONCLUSION

For the foregoing reasons, LIUNA requests that the County prepare and recirculate a revised EIR that conforms with CEQA, as described above. Thank you for considering these comments.

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Sincerely,



Michael R. Lozeau

- Exhibit A in its entirety is considered Comment 7 - refer to **Attachment A**
- Exhibit B in its entirety is considered Comment 8 - refer to **Attachment B**
- Exhibit C in its entirety is considered Comment 9 - refer to **Attachment C**
- Exhibit D in its entirety is considered Comment 10 - refer to **Attachment D**